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**CONTRACT NO. 500046**  
**(IFB 308574)**  
**VEHICLE FLUIDS**

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**CONTRACTOR:**

**ARNOLD OIL COMPANY**  
**5909 BURLESON RD**  
**AUSTIN, TEXAS 78744**  
**Phone: (512) 476-2401**

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**AWARD DATE:** **May 4, 2023**

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**CONTRACT TERM:** **May 17, 2023 THRU May 17, 2024**

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**ESTIMATED PRICE:** **NOT TO EXCEED \$127,449.10**

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**PROJECT MANAGER:** Gareth Graham  
Telephone # (512) 389-7494  
Email Address gareth.graham@capmetro.org

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**CONTRACT ADMINISTRATOR:** Kimberley Craft  
Telephone # (512) 389-7579  
Email Address kimberley.craft@capmetro.org

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**PROCUREMENT DEPARTMENT**  
**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**  
**2910 E. 5<sup>th</sup> STREET**  
**AUSTIN, TEXAS 78702**

**CONTRACT 500046  
(IFB 308574)  
VEHICLE FLUID  
TABLE OF CONTENTS**

<b>TAB</b>	<b>DESCRIPTION</b>
1	AWARD/ CONTRACT FORM
2	EXHIBIT A - SCHEDULE
3	EXHIBIT A-1-REVISED-1 - PRICING SCHEDULE
4	EXHIBIT B - REPRESENTATIONS AND CERTIFICATIONS
5	EXHIBIT E - CONTRACTUAL TERMS AND CONDITIONS
6	EXHIBIT F – SCOPE OF SERVICES
7	EXHIBIT-F-1- FLUID SPECIFICATIONS

# TAB 1

Award/Contract Form

**AWARD/CONTRACT**

<b>1. SOLICITATION NO:</b> 308574	<b>2. CONTRACT NO.:</b> 500046	<b>3. EFFECTIVE DATE:</b> Date of Notice to Proceed
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**4. BUYER**

<b>NAME:</b> Kimberley Craft	<b>PHONE:</b> (512) 389-7579
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<b>5. SHIP TO ADDRESS:</b> Capital Metro 2910 East 5 <sup>th</sup> Street Austin, Texas 78702	<b>6. DELIVERY TERMS:</b> FOB Destination
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<b>7. DISCOUNTS FOR PROMPT PAYMENT:</b> None
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**8. CONTRACTOR NAME & ADDRESS:**

Arnold Oil Company 5909 Burleson Rd Austin, TX 78744	<b>9. REMITTANCE ADDRESS:</b> (If different from Item 8)
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<b>PHONE:</b> (512) 476-2401
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<b>FAX:</b>
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**10. DBE GOAL:**

**CONTRACT EXECUTION**

**CAUTION:** A false statement in any bid or proposal submitted to CMTA may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

Contractor is required to sign below and return an original document to the Contracting Officer within five (5) calendar days of receipt.

Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified below and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this Award/Contract, (b) the solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

**SIGNATURE OF CONTRACTOR:**

**Name/Title:** Julian Allen, Business Development Rep **Signature:**  **Date:** 2/16/23

**AWARD:** Items listed below are changes from the original offer and solicitation as submitted.

This Award/Contract Form may be executed in multiple originals, and an executed facsimile shall have the same force and effect as an original document.

**ALTERATIONS IN CONTRACT:**

Refer to Exhibit A-1, Pricing Schedule; Exhibit A-1, Pricing Schedule is being replaced in its entirety with Exhibit A-1-Revised-1, Pricing Schedule. Exhibit A-1-Revised-1 is attached hereto and made a part hereof for all pertinent purposes and has been updated to include the following changes:

1. Columns for "Base Year Bid Rank" and Option Year Bid Rank" have been added to meet requirements listed under Exhibit E, Terms and Conditions, Section 2, Indefinite Quantity, Indefinite Delivery. All changes have been highlighted in yellow with red bold font.
2. Refer to Exhibit E, Terms and Conditions, Section 44, Order or Precedence; Section 44, Order of Precedence is being replaced in its entirety with the following to incorporate Exhibit A-1-Revised-1:

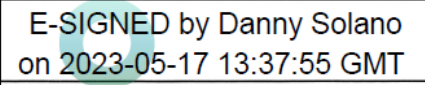
**44. ORDER OF PRECEDENCE**

In the event of any inconsistency between the provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Exhibit A –Schedule
2. Exhibit A-1-Revised-1 – Pricing Schedule
3. Exhibit E – Contractual Terms and Conditions
4. Exhibit F – Scope of Services
5. Exhibit B – Representations and Certifications
6. Other provisions or attachments to the Contract

**ACCEPTED AS TO:** Exhibit A-1-Revised-1, Pricing Schedule, Dated February 8, 2023, Sections 2, Estimated Grand Total of Base and Option Year, Item 1, Total Extended Price for Vehicle Fluids Awarded by Rank in Base Year One, for an Estimated Contract Amount of \$127,449.10

**SIGNATURE OF CONTRACTING OFFICER:**

Typed Name: Danny Solano Contracting Officer	Signature: 	Date: May 17, 2023
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**TAB 2**

**Exhibit A**

**Pricing Schedule**

# **The remainder of Exhibit A – Pricing Schedule has been redacted.**

**For further information regarding Exhibit A, you may:**

- Reach out to the Contractor directly via the Contractor contact details provided on the cover page of this contract.

**OR**

- Submit a public information request directly to [PIR@capmetro.org](mailto:PIR@capmetro.org).

For more information regarding the Public Information Act and submitting public information requests, follow this link to our website: <https://www.capmetro.org/legal/>

**TAB 4**

**Exhibit B**

**Representations**

**Certifications**

**EXHIBIT B**

**REPRESENTATIONS AND CERTIFICATIONS**

**(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)**

**MUST BE RETURNED WITH THE OFFER**

**1. TYPE OF BUSINESS**

(a) The offeror operates as (mark one):

- An individual
- A partnership
- A sole proprietor
- A corporation
- Another entity \_\_\_\_\_

(b) If incorporated, under the laws of the State of:

Texas

**2. PARENT COMPANY AND IDENTIFYING DATA**

(a) The offeror (mark one):

- is
- is not

owned or controlled by a parent company. A parent company is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than fifty percent (50%) of the voting rights in that company.

(b) A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

(c) If not owned or controlled by a parent company, the offeror shall insert its own EIN (Employer's Identification Number) below:

██████████

(d) If the offeror is owned or controlled by a parent company, it shall enter the name, main office and EIN number of the parent company, below:



**3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

(a) The offeror (and all joint venture members, if the offer is submitted by a joint venture) certifies that in connection with this solicitation:

(1) the prices offered have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, with any other offeror or with any other competitor;

(2) unless otherwise required by law, the prices offered have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening of bids in the case of an invitation for bids, or prior to contract award in the case of a request for proposals, directly or indirectly to any other offeror or to any competitor; and

(3) no attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision Julian Allen [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) as an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) as an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

(a) In accordance with the provisions of 2 C.F.R. (Code of Federal Regulations), part 180, the offeror certifies to the best of the offeror's knowledge and belief, that it and its principals:

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) have not within a three (3) year period preceding this offer been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (a)(2) above; and

(4) have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(b) Where the offeror is unable to certify to any of the statements above, the offeror shall attach a full explanation to this offer.

(c) For any subcontract at any tier expected to equal or exceed \$25,000:

(1) In accordance with the provisions of 2 C.F.R. part 180, the prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to the statement, above, an explanation shall be attached to the offer.

(3) This certification (specified in paragraphs (c)(1) and (c)(2), above) shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of the certifications to the Authority upon request.

5. **COMMUNICATIONS**

(a) All oral and written communications with the Authority regarding this solicitation shall be exclusively with, or on the subjects and with the persons approved by, the persons identified in this solicitation. Discussions with any other person not specified could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and thereby compromise the integrity of the Authority's procurement system. If competition cannot be resolved through normal communication channels, the Authority's protest procedures shall be used for actual or prospective competitors claiming any impropriety in connection with this solicitation.

(b) By submission of this offer, the offeror certifies that it has not, and will not prior to contract award, communicate orally or in writing with any Authority employee or other representative of the Authority (including Board Members, Capital Metro contractors or consultants), except as described below:

Individual's Name	Date/Subject of Communication
Julian Allen	12/19/2022
Doug Staton	12/19/2022

(Attach continuation form, if necessary.)

6. **CONTINGENT FEE**

(a) Except for full-time, bona fide employees working solely for the offeror, the offeror represents as part of its offer that it (mark one):

- has
- has not

employed or retained any company or persons to solicit or obtain this contract, and (mark one):

- has
- has not

paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) The offeror agrees to provide information relating to (a) above, when any item is answered affirmatively.

**7. CODE OF ETHICS**

(a) Statement of Purpose

The brand and reputation of Capital Metro is determined in large part by the actions or ethics of representatives of the agency. Capital Metro is committed to a strong ethical culture and to ethical behavior by all individuals serving Capital Metro as employees, members of the Board of Directors or volunteers. Individuals serving Capital Metro will conduct business with honesty and integrity. We will make decisions and take actions that are in the best interest of the people we serve and that are consistent with our mission, vision and this policy. The Code of Ethics (the "Code") documents Capital Metro's Standards of Ethical Conduct and policies for Ethical Business Transactions. Compliance with the Code will help protect Capital Metro's reputation for honesty and integrity. The Code attempts to provide clear principles for Capital Metro's expectations for behavior in conducting Capital Metro business. We have a duty to read, understand and comply with the letter and spirit of the Code and Capital Metro policies. You are encouraged to inquire if any aspect of the Code needs clarification.

(b) Applicability

The Code applies to Capital Metro employees, contractors, potential contractors, Board Members and citizen advisory committee members. Violation of the Code of Ethics may result in discipline up to and including termination or removal from the Board of Directors.

(c) Standards of Ethical Conduct

The public must have confidence in our integrity as a public agency and we will act at all times to preserve the trust of the community and protect Capital Metro's reputation. To demonstrate our integrity and commitment to ethical conduct we will:

- (1) Continuously exhibit a desire to serve the public and display a helpful, respectful manner.
- (2) Exhibit and embody a culture of safety in our operations.
- (3) Understand, respect and obey all applicable laws, regulations and Capital Metro policies and procedures both in letter and spirit.
- (4) Exercise sound judgment to determine when to seek advice from legal counsel, the Ethics Officer or others.
- (5) Treat each other with honesty, dignity and respect and will not discriminate in our actions toward others.
- (6) Continuously strive for improvement in our work and be accountable for our actions.
- (7) Transact Capital Metro business effectively and efficiently and act in good faith to protect the Authority's assets from waste, abuse, theft or damage.
- (8) Be good stewards of Capital Metro's reputation and will not make any representation in public or private, orally or in writing, that states, or appears to state, an official position of Capital Metro unless authorized to do so.
- (9) Report all material facts known when reporting on work projects, which if not revealed, could either conceal unlawful or improper practices or prevent informed decisions from being made.

(10) Be fair, impartial and ethical in our business dealings and will not use our authority to unfairly or illegally influence the decisions of other employees or Board members.

(11) Ensure that our personal or business activities, relationships and other interests do not conflict or appear to conflict with the interests of Capital Metro and disclose any potential conflicts.

(12) Encourage ethical behavior and report all known unethical or wrongful conduct to the Capital Metro Ethics Officer or the Board Ethics Officer.

(d) Roles and Responsibilities

It is everyone's responsibility to understand and comply with the Code of Ethics and the law. Lack of knowledge or understanding of the Code will not be considered. If you have a question about the Code of Ethics, ask.

It is the responsibility of Capital Metro management to model appropriate conduct at all times and promote an ethical culture. Seek guidance if you are uncertain what to do.

It is Capital Metro's responsibility to provide a system of reporting and access to guidance when an employee wishes to report a suspected violation and to seek counseling, and the normal chain of command cannot, for whatever reason, be utilized. If you need to report something or seek guidance outside the normal chain of command, Capital Metro provides the following resources:

(1) Anonymous Fraud Hotline – Internal Audit

(2) Anonymous Online Ethics Reporting System

(3) Contact the Capital Metro Ethics Officer, Vice-President of Internal Audit, the EEO Officer or Director of Human Resources

(4) Safety Hotline

The Capital Metro Ethics Officer is the Chief Counsel. The Ethics Officer is responsible for the interpretation and implementation of the Code and any questions about the interpretation of the Code should be directed to the Ethics Officer.

(e) Ethical Business Transactions

Section 1. Impartiality and Official Position

(1) A Substantial Interest is defined by Tex. Loc. Govt. Code, § 171.002. An official or a person related to the official in the first degree by consanguinity or affinity has a Substantial Interest in:

(i) A business entity if the person owns ten percent (10%) or more of the voting stock or shares of the business entity or owns either 10% or more or \$15,000 or more of the fair market value of the business entity OR funds received by the person from the business entity exceed 10% of the person's gross income for the previous year; or

(ii) Real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

Capital Metro will not enter into a contract with a business in which a Board Member or employee or a Family Member of a Board Member or employee as defined in Section 8 has a Substantial Interest except in case of emergency as defined in the Acquisition Policy PRC-100 or the business is the only available source for essential goods and services or property.

(2) No Board Member or employee shall:

(i) Act as a surety for a business that has work, business or a contract with Capital Metro or act as a surety on any official bond required of an officer of Capital Metro.

(ii) Represent for compensation, advise or appear on behalf of any person or firm concerning any contract or transaction or in any proceeding involving Capital Metro's interests.

(iii) Use his or her official position or employment, or Capital Metro's facilities, equipment or supplies to obtain or attempt to obtain private gain or advantage.

(iv) Use his or her official position or employment to unfairly influence other Board members or employees to perform illegal, immoral, or discreditable acts or do anything that would violate Capital Metro policies.

(v) Use Capital Metro's resources, including employees, facilities, equipment, and supplies in political campaign activities.

(vi) Participate in a contract for a contractor or first-tier subcontractor with Capital Metro for a period of one (1) year after leaving employment on any contract with Capital Metro.

(vii) Participate for a period of two (2) years in a contract for a contractor or first-tier subcontractor with Capital Metro if the Board Member or employee participated in the recommendation, bid, proposal or solicitation of the Capital Metro contract or procurement.

## Section 2. Employment and Representation

A Board Member or employee must disclose to his or her supervisor, appropriate Capital Metro staff or the Board Chair any discussions of future employment with any business which has, or the Board Member or employee should reasonably foresee is likely to have, any interest in a transaction upon which the Board Member or employee may or must act or make a recommendation subsequent to such discussion. The Board Member or employee shall take no further action on matters regarding the potential future employer.

A Board Member or employee shall not solicit or accept other employment to be performed or compensation to be received while still a Board Member or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of their duties.

A Board Member or employee with authority to appoint or hire employees shall not exercise such authority in favor of an individual who is related within the first degree, within the second degree by affinity or within the third degree by consanguinity as defined by the Capital Metro Nepotism Policy in accordance with Tex. Govt. Code, Ch. 573.

## Section 3. Gifts

It is critical to keep an arms-length relationship with the entities and vendors Capital Metro does business with in order to prevent the appearance of impropriety, undue influence or favoritism.

No Board Member or employee shall:

(1) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for the Board Member's or employee's decision, vote, opinion, recommendation or other exercise of discretion as a public servant. [Tex. Penal Code §36.02(c)]

(2) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for a violation of any law or duty. [Tex. Penal Code §36.02(a)(1)]

(3) Solicit, accept or agree to accept any benefit or item of monetary value from a person the Board Member or employee knows is interested in or likely to become interested in any Capital Metro contract or transaction if the benefit or item of monetary value could reasonably be inferred as intended to influence the Board Member or employee. [Tex. Penal Code §36.08(d)]

(4) Receive or accept any gift, favor or item of monetary value from a contractor or potential contractor of Capital Metro or from any individual or entity that could reasonably be inferred as intended to influence the Board Member or employee.

Exception: Consistent with state law governing public servants, a gift does not include a benefit or item of monetary value with a value of less than \$50, excluding cash or negotiable instruments, unless it can reasonably be inferred that the item was intended to influence the Board Member or employee. A department may adopt more restrictive provisions if there is a demonstrated and documented business need. [Tex. Penal Code § 36.10(a)(6)]

Exception: A gift or other benefit conferred, independent of the Board Member's or employee's relationship with Capital Metro, that is not given or received with the intent to influence the Board Member or employee in the performance of his or her official duties is not a violation of this policy. The Capital Metro Ethics Officer or Board Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

Exception: Food, lodging, or transportation that is provided as consideration for legitimate services rendered by the Board Member or employee related to his or her official duties is not a violation of this policy.

If you are uncertain about a gift, seek guidance from the Ethics Officer.

#### Section 4. Business Meals and Functions

Board Members and employees may accept invitations for free, reasonable meals in the course of conducting Capital Metro's business or while attending a seminar or conference in connection with Capital Metro business as long as there is not an active or impending solicitation in which the inviting contractor or party may participate and attendance at the event or meal does not create an appearance that the invitation was intended to influence the Board Member or employee.

When attending such events, it is important to remember that you are representing Capital Metro and if you chose to drink alcohol, you must do so responsibly. Drinking irresponsibly may lead to poor judgment and actions that may violate the Code or other Capital Metro policies and may damage the reputation of Capital Metro in the community and the industry.

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#### Section 5. Confidential Information

It is everyone's responsibility to safeguard Capital Metro's nonpublic and confidential information.

No Board Member or employee shall:

(1) Disclose, use or allow others to use nonpublic or confidential information that Capital Metro has not made public unless it is necessary and part of their job duties and then only pursuant to a nondisclosure agreement approved by legal counsel or with consultation and permission of legal counsel.

(2) Communicate details of any active Capital Metro procurement or solicitation or other contract opportunity to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement or contract opportunity.

#### Section 6. Financial Accountability and Record Keeping

Capital Metro's financial records and reports should be accurate, timely, and in accordance with applicable laws and accounting rules and principles. Our records must reflect all components of a transaction in an honest and forthright manner. These records reflect the results of Capital Metro's operations and our stewardship of public funds.

A Board Member or employee shall:

(1) Not falsify a document or distort the true nature of a transaction.

- (2) Properly disclose risks and potential liabilities to appropriate Capital Metro staff.
- (3) Cooperate with audits of financial records.
- (4) Ensure that all transactions are supported by accurate documentation.
- (5) Ensure that all reports made to government authorities are full, fair, accurate and timely.
- (6) Ensure all accruals and estimates are based on documentation and good faith judgment.

#### Section 7. Conflict of Interest

Employees and Board Members are expected to deal at arms-length in any transaction on behalf of Capital Metro and avoid and disclose actual conflicts of interest under the law and the Code and any circumstance which could impart the appearance of a conflict of interest. A conflict of interest exists when a Board Member or employee is in a position in which any official act or action taken by them is, may be, or appears to be influenced by considerations of personal gain rather than the general public trust.

Conflict of Interest [Tex. Loc. Govt. Code, Ch. 171 & 176, § 2252.908]

No Board Member or employee shall participate in a matter involving a business, contract or real property transaction in which the Board Member or employee has a Substantial Interest if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the business, contract or real property that is distinguishable from its effect on the public. [Tex. Loc. Govt. Code, § 171.004]

#### Disclosure

A Board Member or employee must disclose a Substantial Interest in a business, contract, or real property that would confer a benefit by their vote or decision. The Board Member or employee may not participate in the consideration of the matter subject to the vote or decision. Prior to the vote or decision, a Board Member shall file an affidavit citing the nature and extent of his or her interest with the Board Vice Chair or Ethics Officer. [Tex. Loc. Govt. Code, § 171.004]

A Board Member or employee may choose not to participate in a vote or decision based on an appearance of a conflict of interest and may file an affidavit documenting their recusal.

#### Section 8. Disclosure of Certain Relationships [Tex. Loc. Govt. Code, Ch. 176]

#### Definitions

- (1) A Local Government Officer is defined by Tex. Loc. Govt. Code § 176.001(4). A Local Government Officer is:
  - (i) A member of the Board of Directors;
  - (ii) The President/CEO; or
  - (iii) A third party agent of Capital Metro, including an employee, who exercises discretion in the planning, recommending, selecting or contracting of a vendor.
- (2) A Family Member is a person related within the first degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (3) A Family Relationship is a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.

(4) A Local Government Officer must file a Conflicts Disclosure Statement (FORM CIS) if:

(i) The person or certain Family Members received at least \$2,500 in taxable income (other than investment income) from a vendor or potential vendor in the last twelve (12) months through an employment or other business relationship;

(ii) The person or certain Family Members received gifts from a vendor or potential vendor with an aggregate value greater than \$100 in the last 12 months; or

(iii) The vendor (or an employee of the vendor) has a Family Relationship with the Local Government Officer.

(5) A vendor doing business with Capital Metro or seeking to do business with Capital Metro is required to file a completed questionnaire (FORM CIQ) disclosing the vendor's affiliations or business relationship with any Board Member or local government officer or his or her Family Member.

#### Section 9. Duty to Report and Prohibition on Retaliation

Board Members and employees have a duty to promptly report any violation or possible violation of this Code of Ethics, as well as any actual or potential violation of laws, regulations, or policies and procedures to the hotline, the Capital Metro Ethics Officer or the Board Ethics Officer.

Any employee who reports a violation will be treated with dignity and respect and will not be subjected to any form of retaliation for reporting truthfully and in good faith. Any retaliation is a violation of the Code of Ethics and may also be a violation of the law, and as such, could subject both the individual offender and Capital Metro to legal liability.

#### Section 10. Penalties for Violation of the Code of Ethics

In addition to turning over evidence of misconduct to the proper law enforcement agency when appropriate, the following penalties may be enforced:

(1) If a Board Member does not comply with the requirements of this policy, the Board member may be subject to censure or removal from the Board in accordance with Section 451.511 of the Texas Transportation Code.

(2) If an employee does not comply with the requirements of this policy, the employee shall be subject to appropriate disciplinary action up to and including termination.

(3) Any individual or business entity contracting or attempting to contract with Capital Metro which offers, confers or agrees to confer any benefit as consideration for a Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties, or which attempts to communicate with a Board Member or Capital Metro employee regarding details of a procurement or other contract opportunity in violation of Section 5, or which participates in the violation of any provision of this Policy may have its existing Capital Metro contracts terminated and may be excluded from future business with Capital Metro for a period of time as determined appropriate by the President/CEO.

(4) Any individual who makes a false statement in a complaint or during an investigation of a complaint with regard to a matter that is a subject of this policy is in violation of this Code of Ethics and is subject to its penalties. In addition, Capital Metro may pursue any and all available legal and equitable remedies against the person making the false statement or complaint.

#### Section 11. Miscellaneous Provisions

(1) This Policy shall be construed liberally to effectuate its purposes and policies and to supplement such existing laws as they may relate to the conduct of Board Members and employees.



(2) Within sixty (60) days of the effective date for the adoption of this Code each Board Member and employee of Capital Metro will receive a copy of the Code and sign a statement acknowledging that they have read, understand and will comply with Capital Metro's Code of Ethics. New Board Members and employees will receive a copy of the Code and are required to sign this statement when they begin office or at the time of initial employment.

(3) Board Members and employees shall participate in regular training related to ethical conduct, this Code of Ethics and related laws and policies.

**8. RESERVED**

**9. TEXAS ETHICS COMMISSION CERTIFICATION**

In accordance with Section 2252.908, Texas Government Code, upon request of the Authority, the selected contractor may be required to electronically submit a "Certificate of Interested Parties" with the Texas Ethics Commission in the form required by the Texas Ethics Commission, and furnish the Authority with the original signed and notarized document prior to the time the Authority signs the contract. The form can be found at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Questions regarding the form should be directed to the Texas Ethics Commission.

**10. TEXAS LABOR CODE CERTIFICATION (CONSTRUCTION ONLY)**

Contractor certifies that Contractor will provide workers' compensation insurance coverage on every employee of the Contractor employed on the Project. Contractor shall require that each Subcontractor employed on the Project provide workers' compensation insurance coverage on every employee of the Subcontractor employed on the Project and certify coverage to Contractor as required by Section 406.96 of the Texas Labor Code, and submit the Subcontractor's certificate to the Authority prior to the time the Subcontractor performs any work on the Project.

**11. CERTIFICATION REGARDING ISRAEL**

As applicable and in accordance with Section 2271.002 of the Texas Government Code, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

**12. CERTIFICATION REGARDING FOREIGN TERRORIST ORGANIZATIONS**

Contractor certifies and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**13. VERIFICATION REGARDING FIREARM ENTITIES AND FIREARM TRADE ASSOCIATIONS**

As applicable and in accordance with Section 2274.002 of the Texas Government Code, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Contract against a firearm entity or firearm trade association.

**14. BOYCOTT OF ENERGY COMPANIES PROHIBITED**

Pursuant to Chapter 2274 of Texas Government Code, Contractor verifies that:

(a) it does not, and will not for the duration of the Contract, boycott energy companies, as defined in Section 2274.002 of the Texas Government Code, or

(b) the verification required by Section 2274.002 of the Texas Government Code does not apply to Contractor and this Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the Authority.

**15. CRITICAL INFRASTRUCTURE PROHIBITION**

Pursuant to Chapter 2274 of Texas Government Code, Contractor certifies that, if this Contract or any contract between Contractor and Capital Metro relates to critical infrastructure, as defined in Chapter 2274 of the Texas Government Code, Contractor is not owned by or the majority of stock or other ownership interest of its firm is not held or controlled by:

- (a) individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
- (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
- (c) headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.

**16. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

- (a) The Prime Contractor certifies that it shall perform no less than thirty percent (30%) of the work with his own organization. The on-site production of materials produced by other than the Prime Contractor's forces shall be considered as being subcontracted.
- (b) The organization of the specifications into divisions, sections, articles, and the arrangement and titles of the project drawings shall not control the Prime Contractor in dividing the work among subcontractors or in establishing the extent of the work to be performed by any trade.
- (c) The offeror further certifies that no more than seventy percent (70%) of the work will be done by subcontractors.

**17. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) *Prohibition.* This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471 related to the prohibition of certain "covered telecommunications equipment and services", which includes:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

(2) 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).

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

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of 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) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c) *Representation.* The Offeror represents that—

(1) It

- will  
 will not

provide covered telecommunications equipment or services to the Authority in the performance of any contract, sub-contract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (d)(1) of this section if the Offeror responds "will" in paragraph (c)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

- does  
 does not

use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (d)(2) of this section if the Offeror responds "does" in paragraph (c)(2) of this section.

(d) *Disclosures.*

(1) Disclosure for the representation in paragraph (c)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (c)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (a)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (a)(1) of this provision.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(2) Disclosure for the representation in paragraph (c)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (c)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (a)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (a)(2) of this provision.

**18. SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS**

(a) These representations and certifications concern a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous or false certification, in addition to all other remedies the Authority may have, the Authority may terminate the contract for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future.

(b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.

(c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.

(d) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

(e) I understand that a false statement on this certification may be grounds for rejection of this submittal or termination of the awarded contract.

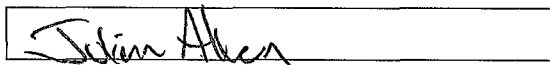
Name of Offeror:

Arnold Oil Company

Type/Print Name of Signatory:

Julian Allen

Signature:



Date:

12/19/2022

**TAB 5**

**Exhibit E**

**Contractual Terms  
and Conditions**

**EXHIBIT E**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(SUPPLY CONTRACT)**

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**1. DEFINITIONS**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- (a) "Applicable Anti-Corruption and Bribery Laws" means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor's provision of goods to the Authority, including without limitation "FCPA" or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.
- (b) "Authority", "Capital Metro", "CapMetro", "CMTA" means Capital Metropolitan Transportation Authority.
- (c) "Authority Data" means all data, content and information (i) submitted by or on behalf of the Authority or its customers to the Contractor or loaded into the System, (ii) obtained, developed, produced or processed by the Contractor or by the Application or System in connection with the Contract, or (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
- (d) "Authority Electronic Property" means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any application programming interfaces (API) to the Authority's information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by customers obtaining products or services from the Authority.
- (e) "Bid" means the offer of the bidder, submitted on the prescribed form, stating prices for performing the supplies.
- (f) "Change Order" means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (g) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (h) "Contract Award Date" means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.
- (i) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (j) "Contract Sum" means the total compensation payable to the Contractor under this Contract as originally contracted for or as subsequently adjusted by Contract Modification.
- (k) "Contract Term" means period of performance set forth in the paragraph entitled "Term" contained in Exhibit E.
- (l) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of the Authority. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (m) "Contractor" means the entity that has assumed the legal obligation to deliver the supplies as identified in the Contract.

- (n) "Days" means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.
- (o) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (p) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (q) "Force Majeure Event" means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.
- (r) "FTA" means the Federal Transit Administration.
- (s) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, software, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- (t) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.
- (u) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.
- (v) "Notice to Proceed" means written authorization for the Contractor to start the performance of the Contract.
- (w) "Project Manager" means the designated individual to act on behalf of Capital Metro, to monitor and certify the technical progress of the Contractor's performance under the terms of this Contract.
- (x) "Subcontract" means the contract between the Contractor and its Subcontractors.
- (y) "Subcontractor" means Subcontractors of any tier.
- (z) "Works" means any tangible or intangible items or things that have been or will be specifically, generated, prepared, created, or developed by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, for the exclusive use of, and ownership by, Authority under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, and (vi) all documentation and materials related to any of the foregoing.



**2. INDEFINITE QUANTITY, INDEFINITE DELIVERY CONTRACT**

(a) This is an indefinite-quantity Contract for the supplies specified and stated elsewhere in the Contract. The quantities of supplies specified are estimates only and are not purchased by this Contract.

(b) This indefinite quantity, indefinite delivery contract is subject to the following minimum/maximum paragraph:

(1) Minimum For each awardee under a contract awarded under this solicitation, the Authority guarantees that it will order a quantity of supplies having a minimum dollar value of \$1,000.00 during the base period. The aggregate of delivery orders issued during contract performance for each awardee during the base period will be applied to the minimum guarantee for each awardee. At the time when the aggregate of delivery orders equals or exceeds the guaranteed minimum for the contract, the guaranteed minimum will have been met and the Authority's obligations regarding the guarantee will have been satisfied.

(2) Maximum order. The maximum dollar value that can be obligated for a contract awarded under this solicitation is \$2,200,000.00, meaning that the cumulative obligations of all orders placed against the contract resulting from this solicitation cannot exceed \$2,200,000.00. The maximum of \$2,200,000.00 also represents the maximum for the acquisition; the sum of all orders against all contracts shall not exceed \$2,200,000.00.

(c) There is no limit to the number of orders that may be placed under this Contract.

(d) The quantities provided by the Authority on the Schedule are estimates used as a basis for Contract award and are, therefore, not hereby purchased under the Contract.

**3. TERM**

The term of the Contract shall be one (1) year from the Contract Award Date. No work shall be performed under this Contract prior to issuance of a Notice to Proceed.

**4. OPTION TO EXTEND CONTRACT TERM**

The Authority shall have the unilateral right and option to extend the Contract for one option period for a one (1) year duration at the option prices set forth in Exhibit A-1 - Pricing Schedule upon written notice to Contractor.

**5. ORDERING**

(a) Any supplies to be furnished under this Contract shall be ordered by issuance of purchase orders.

(b) All purchase orders are subject to the terms and conditions of this Contract. In the event of a conflict between a purchase order and this Contract, the Contract shall control.

(c) Any purchase order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the purchase order. The Contract shall govern the Contractor's and the Authority's rights and obligations with respect to that purchase order to the same extent as if the purchase order was completed during the Contract's effective period.

**6. DELIVERY**

(a) Delivery locations are 2910 E. 5<sup>th</sup> Street, Austin, TX 78702 and 9315 McNeil Rd, Austin TX 78758. Each purchase orders issued by the Authority will include the applicable delivery location.

(b) Delivery shall be made as directed by each purchase order issued by the Authority.

(c) Delivery hours are limited to 8:00 a.m. – 5:00 p.m., prevailing local time.

(d) All deliveries for stock orders shall be made F.O.B. destination. This term means free of expense to the Authority delivered and laid down in the area indicated by the Authority. The Contractor shall:

- (1) pack and mark the shipment to comply with purchase order specifications; or if the specifications do not contain specific packing or marking instructions, pack and mark the shipment in accordance with prevailing commercial practices and in such a manner to assure delivery in good condition and as required by this Contract;
- (2) prepare and distribute commercial bills of lading;
- (3) deliver the shipment in good order and condition to the point of delivery specified in the Contract;
- (4) be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the Authority at the delivery point specified in the Contract;
- (5) furnish a delivery schedule and designate the mode of delivering carrier; and
- (6) pay and bear all charges for all stock orders to the specified point of delivery.

**7. ACCEPTANCE CRITERIA**

A review of the Contractor's supplies will be performed by the Authority upon delivery. If any supplies delivered under this contract are deemed incomplete or unacceptable in any way, per Acceptance Criteria referenced in Exhibit F, Paragraph 4, Acceptance, the Authority will require the Contractor to take corrective measures including replacing any supplies at no additional cost to the Authority.

**8. INVOICING AND PAYMENT**

(a) Invoices may be submitted once per month for work completed and accepted by the Authority, and marked "Original" to:

Accounts Payable  
Capital Metropolitan Transportation Authority  
P.O. Box 6308  
Austin, Texas 78762-6308

Or via e-mail to: [ap\\_invoices@capmetro.org](mailto:ap_invoices@capmetro.org)

and shall conform to policies or regulations adopted from time to time by the Authority. Invoices shall be legible and shall contain, as a minimum, the following information:

- (1) the Contract and order number (if any);
  - (2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any);
  - (3) any discounts offered to the Authority under the terms of the Contract;
  - (4) evidence of the acceptance of the supplies by the Authority; and
  - (5) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.
- (b) All undisputed invoices shall be paid within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov't. Code § 2251.021(b).
- (c) The Contractor shall be responsible for all costs/expenses not otherwise specified in this Contract, including by way of example, all costs of equipment provided by the Contractor or Subcontractor(s), all fees, fines, licenses, bonds, or taxes required or imposed against the Contractor and Subcontractor(s), travel related expenses, and all other Contractor's costs of doing business.

(d) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset the amount of such overpayment or unauthorized charges against any indebtedness owed by the Authority to the Contractor,

whether arising under this Contract or otherwise, including withholding payment of an invoice, in whole or in part, or the Authority may deduct such amounts from future invoices. If an overpayment is made to the Contractor under this Contract which cannot be offset under this Contract, the Contractor shall remit the full overpayment amount to the Authority within thirty (30) calendar days of the date of the written notice of such overpayment or such other period as the Authority may agree. The Authority reserves the right to withhold payment of an invoice, in whole or in part, or deduct the overpayment from future invoices to recoup the overpayment.

**9. INSURANCE**

(a) The Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. The Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and the Authority shall be named as an Additional Insured under each policy except Professional Liability insurance if required by this Contract. All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best's Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Texas. The Contractor shall notify the Authority in writing of any material alteration of such policies, including any change in the retroactive date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk or the maximum liability of the Contractor. The Contractor shall be responsible for setting its own insurance requirements, if any, for the kind and amounts of insurance to be carried by its Subcontractors in excess of the insurance required by the Authority.

The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below.

**CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS**

(1) **Commercial General Liability Insurance** Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) per occurrence Combined Single Limit of Liability for Bodily Injury and Property Damage with an aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:

- (i) Products and Completed Operations Liability
- (ii) Independent Contractors
- (iii) Personal Injury Liability extended to claims arising from employees of the Contractor and the Authority.
- (iv) Contractual Liability pertaining to the liabilities assumed in the agreement.

(2) **Business Automobile Liability Insurance** with minimum coverage limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with combined single limit of One Million Dollars (\$1,000,000), covering all owned, hired and non-owned automobiles used in connection with work for Bodily Injury and Property Damage.

(3) **Workers' Compensation Insurance** providing statutory limits in accordance with the Texas Workers' Compensation Act and/or other State or Federal law as may be applicable to the work being performed under this Contract.

(4) **Employer Liability Insurance** with minimum limits of One Million Dollars and No/100 Dollars (\$1,000,000).

(5) **Terrorism coverage** shall be included on all policies

(b) The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

(c) The Contractor, and all of its insurers shall, in regard to the above stated insurance, agree to waive all rights of recovery or subrogation against the Authority, its directors, officers, employees, agents, successors and assigns, and the Authority's insurance companies arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of the Contractor under this Contract and/or use of any Authority premises or equipment under this Contract.

(d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement. All required endorsements shall be evidenced on the Certificate of Insurance, which shall be evidenced on the Certificate of Insurance. Proof that insurance coverage exists shall be furnished to The Authority by way of a Certificate of Insurance before any part of the Contract work is started.

(e) If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this Contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due the Contractor.

(f) If any part of the Contract is sublet, the Contractor shall be liable for its Subcontractor's insurance coverages of the types and in the amounts stated above, and shall furnish the Authority with copies of such Certificates of Insurance. No delay in the work caused by the Contractor's enforcement of its Subcontractor's insurance requirements shall be excusable delay in the Contract. In the event a Subcontractor is unable to furnish insurance in the limits required under the Contract, the Contractor shall endorse the Subcontractor as an ADDITIONAL INSURED on the Contractor's policies.

(g) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by The Authority. The Authority reserves the right to inspect in person, prior to the commencement of the Contract work, all of the Contractor's insurance policy required under this Contract.

(h) The Contractor must furnish proof of the required insurance within five (5) days of the award of the Contract. Certificate of Insurance must indicate the Contract number and description. The insurance certificate should be furnished to the attention of the Contracting Officer.

(i) The Contractor and its lower tier Subcontractors are required to cooperate with the Authority and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this Contract to the Authority's Risk Management Department at (512) 389-7549 within two (2) days of the incident.

**10. INDEPENDENT CONTRACTOR**

The Contractor's relationship to the Authority in the performance of this Contract is that of an independent contractor. The personnel performing services under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of the Authority. The Contractor shall be fully liable for all acts and omissions of its employees, Subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with Contract requirements. There shall be no contractual relationship between any Subcontractor or supplier of the Contractor and the Authority by virtue of this Contract. The Contractor shall pay wages, salaries and other amounts due its employees in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

**11. COMPOSITION OF CONTRACTOR**

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**12. CHANGES**

(a) The Authority may at any time, by a written order, make changes within the general scope of this Contract in any one or more of the following:

(1) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Authority in accordance therewith;

(2) method of shipment or packing; and

(3) place of delivery.

(b) If any such change causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by the order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.

(c) Any notice of intent to assert a claim for adjustment under this paragraph must be asserted by the Contractor within thirty (30) days from the date of receipt of the Authority's written order; provided, however, that later notice shall not bar the Contractor's claim if the Contractor can demonstrate that the Authority was not prejudiced by the delay in notification. In no event shall any claim be asserted after final payment.

(d) Failure to agree to any adjustment under this paragraph shall be a dispute concerning a question of fact within the meaning of the disputes paragraph of this Contract. However, nothing in this paragraph shall excuse the Contractor from proceeding with the Contract as changed pending resolution of the dispute.

**13. EXTRAS**

Except as otherwise provided in this Contract, no payment for extras shall be made unless such extras and the prices therefor have been authorized in writing by the Authority.

**14. VARIATION IN QUANTITY**

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than ten percent (10%) above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred ten percent (110%) or below ninety percent (90%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request (in writing) an extension of time to be received by the Contracting Officer within ten (10) days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the Contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

**15. EQUITABLE ADJUSTMENTS**

Any requests for equitable adjustments under any provision shall be governed by the following provisions:

(a) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this paragraph, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request for any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be

submitted in the following form:

(1) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(2) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract.

(b) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

**16. INSPECTION**

(a) All supplies (which term throughout this paragraph includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Authority or its authorized representative, to the extent practicable, at all times (including the period of manufacture) and places and, in any event, prior to acceptance.

(b) In the event any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Contract, the Authority shall have the right either to reject those supplies (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Authority, corrected in place by and at the expense of the Contractor promptly after notice and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Authority either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Authority thereby, or (ii) may terminate this Contract for default as provided in the termination paragraph of this Contract. Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Authority may require the delivery of such supplies at a reduction in price that is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the Disputes paragraph of this Contract.

(c) If any inspection or test is made by the Authority or its authorized representative on the premises of the Authority or a Subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Authority's inspectors in the performance of their duties. If the Authority's inspection or test is made at a point other than the premises of the Contractor or a Subcontractor, it shall be at the expense of the Authority, except as otherwise provided in this Contract; provided, that in case of rejection, the Authority shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Authority shall be performed in such a manner as not to unduly delay the work. The Authority reserves the right to charge to the Contractor any additional cost of the Authority's inspection and test when supplies are not ready at the time such inspection and test is required by the Contract or when re-inspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the Authority therefor.

(d) The inspection and test by the Authority of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements that may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except for latent defects, fraud, or such gross mistakes as amount to fraud.

**17. MATERIALS**

All equipment, material, and articles incorporated into the supplies covered by this Contract shall be new and of the most suitable grade for the purpose intended unless otherwise specifically provided in this Contract. If applicable, references in the specifications to equipment, material, articles, or patented processes by trade name, make, or

catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer is equal to that named in the specifications, unless otherwise specifically provided in this Contract.

**18. SUSPENSION OF WORK**

(a) The Contracting Officer may order the Contractor in writing to suspend all or any part of the Contract for such period of time as it may determine to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the Contract is, for an unreasonable period of time, suspended or delayed by an act of the Contracting Officer in the administration of this Contract, or by its failure to act within the time specified in this Contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the Contract modified in writing accordingly. Any adjustment shall be made in accordance with the paragraph entitled "Equitable Adjustments". However, no adjustment shall be made under this paragraph for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

(c) No claim under this paragraph shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this subparagraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

**19. RISK OF LOSS OR DAMAGE**

Except as otherwise provided in this Contract, the Contractor shall be responsible for the supplies covered by this Contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to the Authority at the designated point and prior to acceptance by the Authority or rejection and giving notice thereof by the Authority, the Authority shall be responsible for the loss, destruction of, or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Authority acting within the scope of their employment. The Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Authority shall be responsible for the loss, destruction of, or damage to the supplies only if such loss, destruction, or damage results from the gross negligence of officers, agents, or employees of the Authority acting within the scope of their employment.

**20. TERMINATION FOR DEFAULT**

(a) The Authority may, subject to the provisions of subparagraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in either one of the following circumstances:

(1) if the Contractor fails to make delivery of the supplies within the time specified herein or any extension thereof; or

(2) if the Contractor fails to perform any of the other provisions of this Contract and does not cure such failure within a period of ten (10) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this Contract in whole or in part as provided in paragraph (a) of this paragraph, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this paragraph.

(c) Except with respect to the defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to Force Majeure Events; provided, however, in every case the failure to must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor and if such default arises out of causes beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this subparagraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this Contract under the provisions of this paragraph, it is determined by the Authority that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled "Termination for Convenience" contained in this Exhibit E.

(f) The rights and remedies of the Authority provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **21. TERMINATION FOR CONVENIENCE**

(a) The Authority may, whenever the interests of the Authority so require, terminate this Contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

(b) The Contractor shall incur no further obligations in connection with the terminated orders, and, on the date set forth in the notice of termination, the Contractor will stop work to the extent specified. The Contractor also shall terminate outstanding orders and Subcontracts as they relate to the terminated order. The Contractor shall settle the liabilities and claims arising out of the termination of Subcontracts and orders connected with the terminated orders. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or Subcontracts to the Authority. The Contractor must still complete any orders not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(c) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing Materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and Manufacturing Materials.

(d) The Authority shall pay the Contractor the following amounts:

(1) Contract prices for supplies accepted under the Contract;

(2) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages), less amounts paid or to be paid for accepted supplies; provided, however, that if it appears that the Contractor would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss;



(3) costs of settling and paying claims arising out of the termination of Subcontracts (these costs must not include costs paid in accordance with subparagraph (2) of this paragraph); and

(4) the reasonable settlement costs of the Contractor and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract.

(5) The total sum to be paid the Contractor under this paragraph shall not exceed the total Contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and Manufacturing Materials under this paragraph, and the Contract price of orders not terminated.

**22. PAYMENT TO SUBCONTRACTORS**

(a) Payments by contractors to subcontractors associated with Authority contracts are subject to the time periods established in the Texas Prompt Payment Act, Tex. Gov't Code § 2251.

(b) A false certification to the Authority under the provisions of the paragraph entitled "Invoicing and Payment" hereof may be a criminal offense in violation of Tex. Penal Code § 10.

**23. CONTRACTOR CERTIFICATION**

The Contractor certifies that the fees in this Contract have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

**24. INTELLECTUAL; DATA PRIVACY PROPERTY PROVISIONS**

(a) As between the Contractor and the Authority, the Works and Intellectual Property Rights therein are and shall be owned exclusively by Capital Metro, and not the Contractor. The Contractor specifically agrees that all Works shall be considered "works made for hire" and that the Works shall, upon creation, be owned exclusively by the Authority. To the extent that the Works, under applicable law, may not be considered works made for hire, the Contractor hereby agrees that this Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to the Authority all right, title and interest in and to all worldwide ownership rights in the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the Authority shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works.

(b) The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Authority to evidence more fully the transfer of ownership of all Works to the Authority to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the Authority. In the event the Authority shall be unable for any reason to obtain the Contractor's signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor hereby irrevocably designates and appoints the Authority and its duly authorized officers and agents as the Contractor's agent and the Contractor's attorney-in-fact to act for and in the Contractor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor.

(c) To the extent that any pre-existing rights and/or third-party rights or limitations are embodied, contained, reserved or reflected in the Works, the Contractor shall either:

(1) grant to the Authority the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to:

(i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing,

advertising, and promotion of the Authority's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and

(ii) authorize others to do any or all of the foregoing, or

(2) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third party rights or limitations, request the Authority's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third-party rights on such terms as may be reasonably negotiated, and obtain the Authority's written approval of such pre-existing or third-party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third-party rights that may be embodied, contained, reserved or reflected in the Works. The Contractor shall indemnify, defend and hold the Authority harmless from and against any and all claims, demands, regulatory proceedings and/or causes of action, and all losses, damages, and costs (including attorneys' fees and settlement costs) arising from or relating to, directly or indirectly, any claim or assertion by any third party that the Works infringe any third-party rights. The foregoing indemnity obligation shall not apply to instances in which the Authority either:

(i) exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by the Authority, or

(ii) obtained information or materials, independent of the Contractor's involvement or creation, and provided such information or materials to the Contractor for inclusion in the Works, and such information or materials were included by the Contractor, in an unaltered and unmodified fashion, in the Works.

(d) The Contractor hereby warrants and represents to the Authority that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of the Authority, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. The Contractor agrees to defend, indemnify and hold the Authority harmless from any claims, including but not limited to claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney's fees, resulting from such use, etc., of the Personality Rights.

(e) The Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Contractor may now have or which may accrue to the Contractor's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a Moral Right.

(f) The Contract is intended to protect the Authority's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Authority's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property and confidentiality provisions of this Contract, upon a request by the Authority, without requiring proof of irreparable injury as same should be presumed.

(g) Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor shall surrender to the Authority all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the Authority to the Contractor, including all materials embodying the Works, any Authority confidential information, or Intellectual Property Rights,

regardless of whether complete or incomplete. This paragraph is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the Authority or by anyone else that pertains to the Works.

(h) The Contractor and its subcontractors and their respective employees and personnel may have access to the Authority Data (including without limitation, personally identifiable information ("PII")) in connection with the performance of the Contract. PII shall be any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, ridership and travel pattern data. Customer Personally Identifiable Information, or Customer PII, means any PII relating to the Authority's customers. To the extent any Authority Data (including PII) is made available to the Contractor under the Contract, the Contractor shall take reasonable steps to maintain the confidentiality, security, safety, and integrity of all PII and other Authority Data in accordance with the Authority's Proprietary Rights and Data Security Addendum, which will be attached as an addendum to the Contract, as applicable.

(i) The Contractor and its subcontractors, employees and consultants may require access to the Authority Electronic Property and related Authority Data in connection with the performance of services under the Contract. In such event, the Contractor agrees that it will, and it will cause its subcontractors and any of their respective employees and personnel to, execute the Authority's Access and Use Agreement, which will be attached as an addendum to the Contract, as applicable.

(j) This Section 24 will survive termination or expiration of this Agreement for any reason.

**25. FEDERAL, STATE, AND LOCAL TAXES**

The Contract Sum includes all applicable federal, state, and local taxes and duties. The Authority is exempt from taxes imposed by the State of Texas and local sales and use taxes under Texas Tax Code § 151.309, and any such taxes included on any invoice received by the Authority shall be deducted from the amount of the invoice for purposes of payment. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contractor bears sole and total responsibility for obtaining information pertaining to such exemption.

**26. EQUAL OPPORTUNITY**

During the performance of this Contract, the Contractor agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability or any other characteristic protected by federal, state or local law.

**27. CONFLICT OF INTEREST**

(a) Reference is made to Exhibit B, Representations and Certifications, Code of Ethics, which is incorporated herein and made a part of this Contract. Capitalized terms used in this paragraph and not otherwise defined shall have the meanings as described to them in the Code of Ethics.

(b) The Contractor represents that no Employee has a Substantial Interest in the Contractor or this Contract, which Substantial Interest would create or give rise to a Conflict of Interest. The Contractor further represents that no person who has a Substantial Interest in the Contractor and is or has been employed by the Authority for a period of two (2) years prior to the date of this Contract has or will (1) participate, for the Contractor, in a recommendation, bid, proposal or solicitation on any Authority contract, procurement or personnel administration matter, or (2) receive any pecuniary benefit from the award of this Contract through an ownership of a Substantial Interest (as that term is defined in Paragraph II, subparagraphs (1) and (3) of the Code of Ethics) in a business entity or real property.

(c) The Contractor agrees to ensure that the Code of Ethics is not violated as a result of the Contractor's activities in connection with this Contract. The Contractor agrees to immediately inform the Authority if it becomes aware of the existence of any such Substantial Interest or Conflict of Interest, or the existence of any violation of the Code of Ethics arising out of or in connection with this Contract.

(d) The Authority may, in its sole discretion, require the Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of the Contractor to so comply shall render this Contract voidable by the Authority. Any willful violation of these provisions, creation of a Substantial Interest or existence of a Conflict of Interest with the express or implied knowledge of the Contractor shall render this Contract voidable by the Authority.

(e) In accordance with paragraph 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). The questionnaire shall be sent to the Authority's Contract Administrator.

## **28. GRATUITIES**

The Authority may cancel this Contract, without liability to the Contractor, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any Authority official or employee with a view toward securing favorable treatment with respect to the performance of this Contract. In the event this Contract is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

## **29. REQUEST FOR INFORMATION**

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the Authority and its authorized agents except as otherwise provided by this Contract or after obtaining the prior written permission of the Authority.

(b) This Contract, all data and other information developed pursuant to this Contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this Contract and any deliverables shall be referred to the Authority.

(d) The requirements of Subchapter J, Chapter 552, Government Code, may apply to this **bid/contract** and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

(1) The requirement of Subchapter J, Chapter 552, Government Code as amended currently applies to expenditures of at least \$1 million in public funds for the purchase of goods or services.

## **30. LIMITATION OF LIABILITY**

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to the Contractor or its Subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under this Contract, or the Authority's termination of the Contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. The Contractor shall include similar liability provisions in all its Subcontracts.

## **31. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS**

The Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental requirements, regulations or standards prevailing during the term of this Contract.

**32. CLAIMS**

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor shall give written notice thereof, to the Authority within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Capital Metropolitan Transportation Authority, 2910 E. 5<sup>th</sup> Street, Austin, Texas 78702.

**33. CONTRACTOR CONTACT/AUTHORITY DESIGNEE**

The Contractor shall provide the Authority with a telephone number to ensure immediate communication with a person (not a recording) anytime during Contract performance. Similarly, the Authority shall designate an Authority representative who shall be similarly available to the Contractor.

**34. LICENSES AND PERMITS**

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of work or to the products to be provided under this Contract including, but not limited to, any laws or regulations requiring the use of licensed Subcontractors to perform parts of the work.

**35. INDEMNIFICATION**

(a) **THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST AND PAY ANY AND ALL DAMAGES (AS DEFINED HEREIN) DIRECTLY OR INDIRECTLY RESULTING FROM, RELATING TO, ARISING OUT OF OR ATTRIBUTABLE TO ANY OF THE FOLLOWING:**

(1) **ANY BREACH OF ANY REPRESENTATION OR WARRANTY THAT THE CONTRACTOR HAS MADE IN THIS CONTRACT;**

(2) **ANY BREACH, VIOLATION OR DEFAULT BY OR THROUGH THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OF ANY OBLIGATION OF THE CONTRACTOR IN THIS CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE CONTRACTOR AND THE AUTHORITY;**

(3) **THE USE, CONDITION, OPERATION OR MAINTENANCE OF ANY PROPERTY, VEHICLE, FACILITY OR OTHER ASSET OF THE AUTHORITY TO WHICH THE CONTRACTOR HAS ACCESS OR AS TO WHICH THE CONTRACTOR PROVIDES SERVICES; OR**

(4) **ANY ACT OR OMISSION OF THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CUSTOMERS, INVITEES, REPRESENTATIVES OR VENDORS.**

(b) **"ACTION" MEANS ANY ACTION, APPEAL, PETITION, PLEA, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.**

(c) **"DAMAGES" MEANS ALL DIRECT OR INDIRECT DAMAGES, LOSSES, LIABILITIES, DEFICIENCIES, SETTLEMENTS, CLAIMS, AWARDS, INTEREST, PENALTIES, JUDGMENTS, FINES, OR OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, CONTINGENT OR VESTED, MATURED OR UNMATURED, AND WHETHER OR NOT RESULTING FROM THIRD-PARTY CLAIMS, INCLUDING COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF**

ATTORNEYS, OTHER PROFESSIONAL ADVISORS AND EXPERT WITNESSES) RELATED TO ANY INVESTIGATION, ACTION, SUIT, ARBITRATION, APPEAL, CLAIM, DEMAND, INQUIRY, COMPLAINT, MEDIATION, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.

(d) "THREATENED" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE.

(e) IF ANY ACTION IS COMMENCED OR THREATENED THAT MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION (A "CLAIM") BY ANY INDEMNIFIED PARTY AGAINST THE CONTRACTOR, THEN SUCH INDEMNIFIED PARTY WILL PROMPTLY GIVE NOTICE TO THE CONTRACTOR AFTER SUCH INDEMNIFIED PARTY BECOMES AWARE OF SUCH CLAIM. FAILURE TO NOTIFY THE CONTRACTOR WILL NOT RELIEVE THE CONTRACTOR OF ANY LIABILITY THAT IT MAY HAVE TO THE INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THAT THE DEFENSE OF SUCH ACTION IS MATERIALLY AND IRREVOCABLY PREJUDICED BY THE INDEMNIFIED PARTY'S FAILURE TO GIVE SUCH NOTICE. THE CONTRACTOR WILL ASSUME AND THEREAFTER DILIGENTLY AND CONTINUOUSLY CONDUCT THE DEFENSE OF A CLAIM WITH COUNSEL THAT IS SATISFACTORY TO THE INDEMNIFIED PARTY. THE INDEMNIFIED PARTY WILL HAVE THE RIGHT, AT ITS OWN EXPENSE, TO PARTICIPATE IN THE DEFENSE OF A CLAIM WITHOUT RELIEVING THE CONTRACTOR OF ANY OBLIGATION DESCRIBED ABOVE. IN NO EVENT WILL THE CONTRACTOR APPROVE THE ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WITH RESPECT TO ANY CLAIM WITHOUT THE INDEMNIFIED PARTY'S PRIOR WRITTEN APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. UNTIL THE CONTRACTOR ASSUMES THE DILIGENT DEFENSE OF A CLAIM, THE INDEMNIFIED PARTY MAY DEFEND AGAINST A CLAIM IN ANY MANNER THE INDEMNIFIED PARTY REASONABLY DEEMS APPROPRIATE. THE CONTRACTOR WILL REIMBURSE THE INDEMNIFIED PARTY PROMPTLY AND PERIODICALLY FOR THE DAMAGES RELATING TO DEFENDING AGAINST A CLAIM AND WILL PAY PROMPTLY THE INDEMNIFIED PARTY FOR ANY DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RELATING TO A CLAIM.

(f) THE INDEMNIFICATION OBLIGATIONS AND RIGHTS PROVIDED FOR IN THIS CONTRACT DO NOT REQUIRE (AND SHALL NOT BE CONSTRUED AS REQUIRING) THE CONTRACTOR TO INDEMNIFY, HOLD HARMLESS, OR DEFEND ANY INDEMNIFIED PARTY (OR ANY THIRD PARTY) AGAINST ANY ACTION OR CLAIM (OR THREATENED ACTION OR CLAIM) CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF ANY INDEMNIFIED PARTY, ITS AGENTS OR EMPLOYEES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF ANY INDEMNIFIED PARTY, OTHER THAN THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER.

(g) THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CONTRACT.

### **36. NOTICE OF LABOR DISPUTES**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to the Authority.

(b) The Contractor agrees to insert the substance of this paragraph, including this subparagraph (b), in any Subcontract under which a labor dispute may delay the timely performance of this Contract; except that each Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

### **37. PUBLICITY RELEASES**

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the work hereunder which the Contractor or any of its Subcontractors desires to make for purposes of publication in whole or in part, shall be subject to written approval by the Contracting Officer prior to release.

**38. INTEREST OF PUBLIC OFFICIALS**

The Contractor represents and warrants that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any employee, official, or member of the Board of the Authority with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this paragraph, the Authority shall have the right to terminate this Contract without liability and/or have recourse to any other remedy it may have at law or in equity.

**39. MANUFACTURER'S WARRANTY**

Any and all standard manufacturer's warranties shall accrue to the benefit of the Authority. The manufacturer's warranties referenced herein shall be in addition to the contractual remedies set forth in this Contract and in addition to any and all other statutory remedies or warranties imposed on the Contractor for the benefit of the Authority.

**40. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS**

(a) The Contractor will retain, and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, Subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this Contract or if the Contractor's cost of performance is relevant to any change or modification to this Contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such Contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.

(f) The Contractor agrees to permit the Authority and its contractors access to the sites of performance under this Contract as reasonably may be required.

(g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.

(h) This paragraph will survive any termination or expiration of this Contract.

**41. EXCUSABLE DELAYS**

(a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from Force Majeure Events. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work.

(b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:

- (1) the subcontracted supplies were obtainable from other sources;
- (2) the Authority ordered the Contractor in writing to purchase these supplies from the other source; and
- (3) the Contractor failed to comply reasonably with this order.

(c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Authority determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under this Contract.

**42. INTERPRETATION OF CONTRACT – DISPUTES**

All questions concerning interpretation or clarification of this Contract or the acceptable fulfillment of this Contract by the Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two (2) weeks after the Authority notifies the Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two (2) weeks of the protest filing of his or her final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, the Contractor shall proceed with the Work in accordance with the determinations, instructions, and clarifications of the President/CEO. The Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising from its failure to do so. The Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two-week period shall constitute a waiver by the Contractor of all of its rights to further protest.

**43. TOBACCO FREE WORKPLACE**

(a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.

(b) The tobacco free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.

(c) Tobacco use is not permitted at any time on Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.

(d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

**44. ORDER OF PRECEDENCE**

In the event of any inconsistency between the provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Exhibit A – Schedule
2. Exhibit A-1 – Pricing Schedule
3. Exhibit E – Contractual Terms and Conditions



4. Exhibit F – Scope of Services
5. Exhibit F-1 – Fluid Specifications
6. Exhibit B – Representations and Certifications
7. Other provisions or attachments to the Contract

**45. ANTI-CORRUPTION AND BRIBERY LAWS**

The Contractor shall comply with all Applicable Anti-Corruption and Bribery Laws. The Contractor represents and warrants that it has not and shall not violate or cause the Authority to violate any such Anti-Corruption and Bribery Laws. The Contractor further represents and warrants that, in connection with supplies or services provided to the Authority or with any other business transaction involving the Authority, it shall not pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate applicable laws, including Applicable Anti-Corruption and Bribery Laws. Notwithstanding anything to the contrary herein contained, the Authority may withhold payments under this Contract, and terminate this Contract immediately by way of written notice to the Contractor, if it believes, in good faith, that the Contractor has violated or caused the Authority to violate the Applicable Anti-Corruption and Bribery Laws. The Authority shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

**46. MISCELLANEOUS**

(a) This Contract does not intend to, and nothing contained in this Contract shall create any partnership, joint venture or other equity type agreement between the Authority and the Contractor.

(b) All notices, statements, demands, requests, consents or approvals required under this Contract or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party; an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified; or by e-mail with delivery confirmation. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

**If to the Contractor:** As set forth in Exhibit B to this Contract

**If to the Authority:** Capital Metropolitan Transportation Authority  
**Attn:** Sr. Director/Chief Contracting Officer  
2910 E. 5th Street  
Austin, Texas 78702

Address for notice can be changed by written notice to the other party.

(c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys' fees and expenses, regardless of whether suit is filed.

(d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.

(e) This Contract represents the entire agreement between the parties concerning the subject matter of this Contract and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations. In executing this Contract, the parties do not rely upon any statement, promise, or representation not expressed herein. This Contract may not be changed except by the mutual written agreement of the parties.

- (f) A facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase "facsimile signature" includes without limitation, an image of an original signature.
- (g) Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation". Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. All Exhibits attached to this Contract are incorporated herein by reference.
- (h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Authority, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies the Authority will not constitute a waiver of the right to pursue other available remedies.
- (i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.
- (j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.
- (k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.
- (l) This Contract is subject to the Texas Public Information Act, Tex. Gov't Code, Chapter 552.
- (m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and authority to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.
- (n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.
- (o) No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- (p) Capital Metro is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.
- (q) Funding for this Contract after the current fiscal year is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.
- (r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

**47. FUNDING AVAILABILITY**

Funding after the current fiscal year of any contract resulting from this solicitation is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.

**TAB 6**

**Exhibit F**

**Statement of Work**

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## EXHIBIT F SCOPE OF SERVICES VEHICLE FLUIDS

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### 1. **BACKGROUND**

CapMetro is soliciting for transit vehicle fluids from reliable vendors for our revenue and non-revenue fleet. The fleet consists of multiple vehicle manufacturers ranging in size and style from 35ft through 60 ft.

CapMetro provides transportation services throughout Austin and surrounding Cities with its fleet of 425 buses, cut-a-ways (body on chassis). In addition, CapMetro also has a fleet of over 100 non-revenue vehicles (cars, trucks and vans). Please see access the below link for our online system map.

[https://www.capmetro.org/docs/default-source/plan-your-trip-docs/destination-schedule-book-docs/system\\_map.pdf?Status=Temp&sfvrsn=eb974f8\\_4](https://www.capmetro.org/docs/default-source/plan-your-trip-docs/destination-schedule-book-docs/system_map.pdf?Status=Temp&sfvrsn=eb974f8_4)

### 2. **SCOPE OF SERVICES**

CapMetro maintains a multi manufacturer fleet consisting of multiple year ranges and configurations, listed below are the buses manufacturers in our fleet:

1. Gillig
2. New Flyer
3. M.C.I
4. Proterra
5. Nova

(a) Any proposed alternate fluids must have a product information sheet provided with the submission. For OEM warranty purposes the following fluids CANNOT be substituted:

1. ES Compleat EG pre-mix 50/50 (Blue).
2. Petro Canada Dura Drive HD Synthetic.
3. Petro Canada Traxon E Synthetic MTF.
3. Crystal Clean Coolant OAT #235.

### 4. **ACCEPTANCE OF FLUIDS PROVIDED**

(a) All products supplied under this solicitation shall, at a minimum, meet OEM manufacturers quality and standards. In special circumstances (supply chain delays etc.), CapMetro may approve the ordering of non-OEM fluids. This will be dependent on current OEM availability vs operational needs, and any decision to proceed will be made by the authorized CapMetro personnel. No products which are not OEM or better will be accepted without prior authorization.

(b) Within ten (10) calendar days of receipt of each order, the vendor shall understand and agree that all products which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. CapMetro shall have the right to return any such rejected shipment at the Vendors expense for full credit or replacement and to specify a reasonable date (i.e., within five calendar days) by which replacements must be received.

(c) In case any goods or lots of goods are defective in material or are otherwise not in conformity with the requirements of this Scope of Services, CapMetro shall have the right either to reject them, with or without instruction as to their disposition, to require their correction, or to require their replacement. Goods or lots of goods, which have been rejected or required to be corrected shall be removed or, if required by CapMetro, corrected in place by and at the vendors expense promptly after notice

(d) CapMetro may request Return Merchandise Authorization (RMA) for non-conforming shipments or warranty returns. The Vendors RMA will also include pre-paid return shipping labels. Vendors may select shipment method.

Vendors shall issue RMAs and pre-paid return shipping labels within five (5) business days of CapMetro notification of the nonconformity.

**5. ESTIMATED QUANTITIES**

(a) Exhibit A lists the current Manufacturer Product Names we have on file for use in cross reference or research. Any awarded contract for supply will be based on a 1-year base with 1-year option, any quantities listed against part numbers are a projected usage during the term of the contract. Any contract award will be based on IDIQ principals, a contract may be awarded to one vendor however we will retain the option to purchase from another vendor based on availability over pricing.

(b) The quantities indicated in this solicitation are estimates that pertain to the total aggregate quantities that may be ordered throughout the stated contract period. The estimates do not indicate single order amounts unless otherwise stated. CMTA makes no guarantees about single order quantities or total aggregate order quantities.

**6. DELIVERY QUANTITIES**

For bidding purposes, deliveries should be in bulk where feasible, totes/drums/case's will be accepted where bulk quantity order levels cannot be met or stored. Loads will be delivered at 2 locations and, in the case of bulk deliveries, may be split between these locations to allow bulk delivery quantity levels. For smaller quantity orders, drums/individual containers will be ordered and accepted based on Unit of Supply type, referenced below.

1. Drum
2. Tote
3. Bulk Gallons
4. Quart Cans

**7. DELIVERY REQUIREMENTS**

As part of this solicitation, CapMetro is requesting that current known lead times are supplied for each fluid the bidder intends to bid on. This is to be split in two sections; delivery locations are 2910 E. 5<sup>th</sup> Street, Austin, TX 78702 and 9315 McNeil Rd, Austin TX 78758. Bidders are required to enter their estimated lead times in the appropriate column of Exhibit A-1, Pricing Schedule.

**8. FLEET TOTAL ESTIMATES**

In this solicitation, any Fluid Usage Estimate is an estimated total fluid use regardless of unit of supply.

Fluids maybe ordered wholly via totes or split between totes and drums, to total up to the estimated usage through the contract year. The pricing difference between totes, drums, and bulk must be listed in the appropriate row of Exhibit A-1, Pricing Schedule.

**Annual Fluid Usage Estimated Quantities**


<b>Product</b>	<b>Fleet Total Estimate QT's</b>	<b>Fleet Total Estimate GL</b>
<b>15W40</b>	<b>100800</b>	<b>25200</b>
<b>Dura Drive HD Synthetic</b>	<b>34020</b>	<b>8505</b>
<b>Es Compleat (Blue)</b>	<b>28980</b>	<b>7245</b>
<b>75w90</b>	<b>21000</b>	<b>5250</b>
<b>Transynd</b>	<b>7030</b>	<b>1758</b>
<b>Dex III</b>	<b>5940</b>	<b>1485</b>
<b>Crystal Clean OAT Coolant</b>	<b>792</b>	<b>198</b>
<b>Dex VI</b>	<b>432</b>	<b>108</b>
<b>Mil Fluid (MIL H 5606G)</b>	<b>60</b>	<b>15</b>
<b>LX PEP2 Grease</b>	<b>100 Drums</b>	
<b>Traxon E Synthetic MTF</b>	<b>1 55G Drum</b>	

**TAB 7**

**Exhibit F-1**

**Fluid Specifications**

## EXHIBIT F-1 FLUID SPECIFICATIONS

	GILLIG 2501, 2551 2601, 2651 2701, 2751 2851	NEW FLYER 2051, 2063 2201, 2251 2301, 2351 2401	NOVA 5001, 5051 5101, 5151	MCI 9351- 9356	MCI 9401- 9428	Proterra 2111-2116	NEW FLYER 2121-2124 2131-2132
ENGINE	15W - 40 ENGINE OIL					N/A	N/A
TRANSMISSION	PETRO CANADA - DURADRIVE HD SYNTHETIC BLEND ATF					TRAXON E SYNTHETIC MTF	N/A
DIFFERENTIAL & CENTER AXLE (IF Applicable)	Mobil Delvac 1 75W-90		Drive axle: Delvac 1 Center Axle: Fuchs Renolit LX-PEP 2		Mobil Delvac 1 75W-90		
FRONT HUB LUBE	Delvac 1 75W-90	FUCHS RENOLIT LX-PEP 2		Mobil Delvac 1 75W-90	FUCHS RENOLIT LX-PEP 2		N/A
HYDRAULIC SYSTEM / POWER STEERING	TRANSYND	DEXRON III		15W - 40 ENGINE OIL	Dexron VI		DEXRON III
WCL & RAMP HYD PUMP	N/A	DEXRON III		AIRCRAFT HYD FLUID (MIL H 5606G)			N/A
A/C REFRIGERANT	R-407C			R-134a			R-407C
A/C COMPRESSOR OIL	POLYOL ESTER (POE) TK PN# 203- <u>515</u>			POLYOL ESTER (POE)		TRITON SE 55	POLYOL ESTER (POE) TK PN# 203- <u>0964</u>
WHEEL NUT TORQUE [ FT-LB ]	450 - 500	410-440	450 - 500			450	450-500
TIRE PRESSURE COLD [ PSI ]	120	FR - 120 RR - 125	40-Ft FR - 120 RR - 120	60-Ft FR - 120 MD - 125 RR - 125	FR - 120 DR - 85 TAG - 100		130
TIRE SIZE / MODEL	305/85R22.5 X INCITY	305/70R22.5 X INCITY	FR&RR 305/70R22.5 X INCITY MD - X MULTI T 385/55R22.5		315/80R22.5 X Multi Z	315/80R22.5 X INCITY <u>ENERGY Z</u>	305/70R22.5 X INCITY
COOLANT	ES Compleat (BLUE)					Crystal Clean - OAT-Part #235	ES Compleat (BLUE)
A/C BELT TENSION [ LBS. ]	190	185	190	200	220	N/A	N/A
	GILLIG 2501, 2551 2601, 2651 2701, 2751 2851	NEW FLYER 2051, 2063, 2201, 2251 2301, 2351 2401	NOVA 5001, 5051, 5101, 5151	MCI 9351- 9356	MCI 9401-9428	Proterra 2111-2116	NEW FLYER 2121-2124 2131-2132

# PRODUCT INFORMATION



## VALVOLINE™ PREMIUM BLUE™ ONE SOLUTION GEN2 SAE 15W-40

Valvoline Premium Blue Engine Oil is “The Only One”™ exclusively endorsed and recommended by Cummins. It is an extraordinary premium engine oil formulated to provide extended oil drain intervals for heavy duty diesel and natural gas engines.

By using Valvoline Premium Blue One Solution Gen2 with Cummins X15 engines, customers enable an exclusive oil drain interval extension of 5,000 miles\*.

### The Premium Blue One Solution Gen2 Engine Oil Advantages:

- Premium lubricant designed to protect engines fueled by diesel, natural gas, or gasoline under severe service in both on and off highway applications.
- Reduce working capital with inventory consolidation by eliminating the need for multiple engine oils. Can also help avoid critical failures by reducing the potential for human error.
- Outstanding oxidation resistance supports long oil life in heavy duty diesel and natural gas engines
- Excellent wear protection in heavy duty applications.
- Superior deposit protection compared to industry requirements

Premium Blue One Solution Gen2 is licensed for API service CK-4, CJ-4, CI-4 PLUS, CI-4, CH-4, SP, and SN Plus.

Premium Blue One Solution Gen2 is Approved or Recommended for applications where Cummins CES 20092, CES 20086, Mack EOS-4.5, Volvo VDS-4.5, Detroit Diesel DFS 93K222, DFS 93K218, Deutz DQC III-18LA, Renault VI RLD-3, ACEA E9, ACEA E7, MB 228.31, MTU Category 2.1, Caterpillar ECF-3, or JASO DH-2 are specified.

Typical Properties:	SAE 15W-40
KV100 (cSt)	15.1
KV40 (cSt)	115
Viscosity Index	137
Density @ 15 °C g/cm <sup>3</sup>	0.88
CCS @ -20°C, cP	6200
HTHS @ 150°C, cP	4.2
Pour Point (°C)	-33
Sulfated Ash, mass %	0.9
TBN (D-2896), meq KOH/g	11
Noack, % loss	11
Zinc, ppm	890
Phosphorous, ppm	800

Endorsed and Recommended by Cummins Inc.



Part Numbers:	SAE 15W-40
Bulk	891001
Tote	891009
55 Gallon Drum	891011
5 Gallon Pail	891005
1 Gallon	891007
1 Gallon	773780

\*If combined percent idle time plus power takeoff (PTO) time is greater than 40 percent for Short Haul, Normal, or Light intervals, use the next lower drain interval. For Extreme Severe and Severe intervals, use the published drain interval regardless of the combined idle plus PTO time.

Refer to Valvoline’s Safety Data Sheets for health and safety information.

This information only applies to products manufactured in the following location(s): USA, Canada.

Effective Date:  
1/31/22

Author:  
ERM





A HOLLYFRONTIER BRAND

# TECH DATA

## DURADRIVE™ HEAVY DUTY (HD) AUTOMATIC TRANSMISSION FLUIDS

### INTRODUCTION

DuraDrive HD Automatic Transmission Fluids are specially formulated to perform under the demanding severe service operating conditions found in heavy duty transmission systems. They are designed for use in commercial applications where Severe Duty and Extended Drain Interval fluids are specified.

**DuraDrive HD Synthetic 668 ATF** is fully approved for on-highway Allison transmissions. DuraDrive HD Synthetic 668 is the first fluid to complete Allison's rigorous validation program, receive license approval, and be awarded Allison's global factory fill program. DuraDrive HD Synthetic 668 meets and exceeds the TES 668™ specification and is backwards compatible for every Allison transmission that currently requires approved TES 295® ATF\*.

**DuraDrive HD Long Drain ATF** is a full synthetic transmission fluid approved for maximum drain in Voith transmissions. This heavy duty ATF offers excellent wear protection, oxidation control and friction durability demonstrated through extensive rig testing and field trial. The enhanced thermal and oxidative stability together with the improved high and low temperature properties of this fluid translates to excellent performance in a wide range of transmissions.

**DuraDrive HD Synthetic Blend ATF** is fully approved for extended drain application in Voith and ZF commercial transmissions.

DuraDrive HD ATFs are formulated with 99.9% pure base oils. The combination of high quality base oils and leading-edge additive systems in DuraDrive HD ATF formulations helps retain their fresh oil properties longer resulting in superior product performance.

### FEATURES AND BENEFITS

#### Outstanding resistance to oxidative and thermal breakdown

- Prevents corrosion and the formation of harmful sludge and deposits. Keeps transmissions clean & properly functional
- Suitable for severe service & extended drain

#### Exceptional low / high temperature fluidity

- Delivers quick lubrication of transmission components in cold weather
- Maintains desired viscosity & oil film strength in high temperature operation
- Earlier drive away and smooth gear shifting during low temperature operation
- Extends clutch life
- Efficient heat removal from clutch surfaces
- Excellent high and low temperature properties

#### Excellent anti-wear protection

- Reduces wear on bearings, bushings and gears
- Suitable for heavy loading & high operating temperature
- Protects clutches from glazing

#### Stable friction properties

- High torque capacity avoids clutch slippage & wear
- Maintains transmission efficiency & fuel economy
- Suitable for stop-start severe service
- Excellent shift quality throughout service life
- Prevents clutch shudder in modulated torque converters
- Clutch plates and bands last longer

#### Compatible with all transmission seal materials

- Helps maintain seal integrity

\* TES 668™ fluids are not recommended for Allison TC10® transmissions

## APPLICATION CHART

OEM Specification	DuraDrive™ HD Synthetic 668	DuraDrive HD Long Drain ATF	DuraDrive HD Synthetic Blend ATF
	This ATF is suitable for use in heavy duty fleets for extended oil drain intervals. Refer to the OEM oil drain interval recommendations for your application and service type.	This ATF is suitable for use in heavy duty fleets for extended oil drain intervals. Refer to the OEM oil drain interval recommendations for your application and service type.	This ATF is suitable for use in heavy duty fleets for standard and extended oil drain intervals. Refer to the OEM oil drain interval recommendations for your application and service type.
Allison TES 668™	Approved (AN668-10012020)	–	–
Allison C-4 (legacy)	–	–	C-4 29493700
Voith H55.6335.xx (standard drain, 60K km)	SFU	–	Approved
Voith H55.6336.xx (extended drain, 120K km)	–	–	Approved
Voith 150.014524.xx (maximum drain, 180K km) xx- VTI-DIWA Service Bulletins 013 and 118	–	Approved*	–
ZF TE-ML 14A (standard drain)	SFU	–	–
ZF TE-ML 14B (extended drain)	–	–	Approved (ZF004790)
ZF TE-ML 03D, 04D, 17C	–	–	Approved (ZF004790)
ZF TE-ML 16L	–	–	SFU
ZF TE-ML 14C, 20C (extended drain)	–	Approved (ZF004791)	–
ZF TE-ML 04D, 16M, 16S, 25C	–	Approved (ZF004791)	–
MAN 339 Typ V2, Z2	–	–	SFU
MAN 339 Typ Z3, Z12	–	Approved (TUC 1463/19)	–
Mercedes-Benz MB 236.1/ .5/ .6/ .7	–	–	SFU
Mercedes-Benz MB 236.9	–	Approved	–
Volvo STD 1273,41 - transmission oil 97341 (AT101)	Approved (#97341-086)	Approved (#97341-079)	SFU
Caterpillar TO-2 (obsolete)	–	–	SFU
Ford MERCON® V	–	–	SFU
GM DEXRON®-III(H), -III(G), -II(E), or -II	SFU	–	SFU

They can also be used as a hydraulic or power steering fluids.

SFU = Suitable for use \* Including DIWA NXT and DIWA Rail NXT transmissions.

TES 295® and TES 668™ are trademarks of Allison Transmission, Inc.

DEXRON® is a registered trademark of General Motors LLC. MERCON® is a registered trademark of Ford Motor Company.

## TYPICAL PERFORMANCE DATA

Property	Test Method	DuraDrive™ HD Synthetic 668	DuraDrive HD Long Drain ATF	DuraDrive HD Synthetic Blend ATF
Density, kg/l @ 15°C (60°F)	ASTM D4052	0.846	0.841	0.854
Colour	—	Red	Red	Red
Flash Point, COC, °C (°F)	ASTM D92	217 (423)	243 (469)	189 (372)
Pour Point, °C (°F)	ASTM D5950	-57 (-71)	-45 (-49)	-45 (-49)
Viscosity, cSt @ 40°C (SUS @ 100°F) cSt @ 100°C (SUS @ 210°F)	ASTM D445	34 (173) 7.0 (50)	38 (178) 7.2 (50)	34 (173) 7.8 (52)
Viscosity Index	ASTM D2270	169	154	208
Brookfield Viscosity, cP @ -40°C (-40°F)	ASTM D2983	11,120	14,800	9,700

The values quoted above are typical of normal production. They do not constitute a specification.

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Contact us: [lubecsr@hollyfrontier.com](mailto:lubecsr@hollyfrontier.com)

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IM-7982E (2021.12)



# ES Compleat™

Lifetime Heavy Duty Fully Formulated Antifreeze/Coolant

- Extended service lifetime coolant with service interval at 250.000 km/4.000 hours
- Meets ASTM 6210(EG), D-6211(PG) performance requirements
- Provides antifreeze and antiboil protection
- Best liner pitting and corrosion protection
- Best aluminum and solder protection
- Compatible with gaskets, elastomers and other non-metallics in the engine
- Optimizes cooling system performance and water pump life
- Contains proprietary scale inhibitors
- Compatible with all other antifreeze/coolants
- Choose from EG and PG formulations
- Available in concentrate and 50/50 premix
- For all diesel, gasoline and natural gas engines



ES Compleat™ is formulated specifically for use in heavy-duty diesel engines. These products contain conventional heavy-duty chemical and organic corrosion inhibitors, which provide enhanced protection for diesel engines from liner pitting and hard water scale deposits. In addition, ES Compleat™ products provide the highest water pump protection available in the marketplace. Fleetguard ES Compleat™ Concentrate mixes readily with clean tap water or, better still, de-mineralised water (50/50 mix), while ES Compleat™ Premix is fully formulated with de-mineralised water and ready to use.

ES Compleat™ is fully compatible with all other antifreeze/coolants and corrosion inhibitor packages. ES Compleat™ Antifreezes are universal products highly recommended for use in all heavy-duty diesel engines. ES Compleat™ is formulated to last till engine rebuilt and can be used until contamination levels are exceeded.

# Use ES Compleat™ to provide superior engine protection, extend service intervals...

## ES Compleat™ is available in the following part numbers

	EG Concentrate	*EG PreMix 50/50	*EG PreMix 40/60	PG Concentrate	*PG PreMix 50/50
5 Liter	CC2747M	CC2748M	N/A	CC2751M	CC2752M
20 Liter	CC2749M	CC2750M	N/A	CC2753M	CC2754M
208 Liter (Drum)	CC2821M	CC2826M	CC2919 ESD	CC2831M	CC2836M
1.000 Liter (Tote)	CC2851M	CC2852M	N/A	CC2853M	CC2854M
Bulk	CC2822M	CC2827M	N/A	CC2832M	CC2837M

\* The first number indicates % glycol followed by the % water.

## ... and to simplify your cooling system maintenance program.

Typical properties	ASTM test no.	EG Conc.	EG Premix 50/50	EG Premix 40/60	PG Conc.	PG Premix 50/50
Colour	Visual	Blue	Blue	Blue	Blue	Blue
Specific Gravity @15°C	D1122	1.13	1.07	1.06	1.05	1.045
pH	D1287	10.5	10.5	10.5	10.5	10.5
Reserve Alkalinity (ml)	D1121	10.0	> 5.0	> 5.0	10.0	> 5.0
Freeze point (°C)	D1177	< -14	< -36	< -24	< -56	< -32
Boiling point (°C)	D1120	> 174	> 108	> 106	> 160	> 105
Water, weight (%)	D1123	4	< 47	59	4	< 47
Glycol, weight (%)	-----	> 95	> 51	41	> 95	> 51
Glassware corrosion test	D1384	Pass	Pass	Pass	Pass	Pass
Water pump cavitation test	D2809	Pass	Pass	Pass	Pass	Pass
Aluminium corrosion test	D4340	Pass	Pass	Pass	Pass	Pass
Simulated service test	D2570	Pass	Pass	Pass	Pass	Pass
Ash content (%)	D1119	< 5	< 2.5	< 2.5	< 5	< 2.5
Chloride (ppm)	-----	< 25	< 25	< 25	< 25	< 25

## Frequently asked questions

■ How do I have to use ES Compleat™ concentrate?  
In Heavy Duty applications it is necessary to maintain an antifreeze/glycol (EG or PG) concentration of 40 to 60 %, depending on your work environment. A 50/50 mix of good quality water, or demineralised water, and antifreeze is preferred.

■ Do I also need to apply a 50/50 mix in hot climate conditions?  
Besides offering freeze protection, antifreeze also increases the boiling point of the coolant to avoid boiling on hot surfaces (i.g. cylinder heads) in the cooling system. Antifreeze also supports the suppression of liner pitting and cooling system corrosion.

■ What's the major benefit of using ES Compleat™ Premix products?  
ES Compleat™ Premix is an easy and ready-to-use product, eliminating the risk of diluting the system. It contains the appropriate amount of inhibitors and anti-freeze (EG or PG) for your initial cooling system fill and worry-free top-up afterwards.

■ What are the benefits of using ES Compleat™ PG?  
Propylene Glycol (PG) has a much lower toxicity than Ethylene Glycol (EG). PG is considered safer for use in the environment primarily because of the lower acute toxicity. PG is not considered a hazardous pollutant. OSHA has not seen the need to set a limit regarding human exposure. These benefits make PG a more user and environmentally friendly product.

## Fleetguard's ES Compleat™ EG and PG Extended Life Coolants meet or exceed the performance requirements of the following:

TMC RP-338 Extended Life ■ TMC RP-329 (EG) ■ THC RP-330 (PG) ■ ASTM D-4985 (EG) ■ D-5216 (PG) ■ ASTM D-6210 (EG) ■ ASTM-6211 (PG) ■ CID-A-A-52624 ■ Waukesha® 4-1974D ■ GM6038M ■ Cummins® SB 3666132 ■ Cummins® CES 14603 ■ Caterpillar® ■ Detroit Diesel® 7SE298 ■ John Deere® 8650-5 ■ Case New Holland® Navistar® ■ Freightliner® 48-22880 ■ Volvo® ■ PACCAR® ■ MACK® 014617004 ■ EMD M.I. 1784E



For more information, visit [cumminsfiltration.com](http://cumminsfiltration.com)

LT15070GB  
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## Mobil Delvac 1™ Gear Oil 75W-90

Mobil Commercial-Vehicle-Lube , United States

Fully Synthetic Heavy Duty Drivetrain Lubricant

### Product Description

Mobil Delvac 1 Gear Oil 75W-90 is a fully synthetic drivetrain lubricant engineered to meet very demanding extended drain and warranty requirements. This product is designed for use in heavy-duty drivetrains that require gear lubricants with excellent load-carrying capability and where extreme pressures and shock loading are expected. Mobil Delvac 1 Gear Oil 75W-90 incorporates synthetic basestock and advanced additives providing significant advantages over conventional gear oils.

The state-of-the-art technology in Mobil Delvac 1 Gear Oil 75W-90 delivers excellent performance, helps to protect against thermal degradation and oxidation, contributes to reduced wear and corrosion, improved shear stability and extended service capability.

### Features and Benefits

Today's technology has vastly improved the performance capabilities of heavy-duty on and off-highway equipment load, torque, speed, and control through innovative drivetrain designs. These designs have changed and increased the requirements of lubricants to deliver this higher level of performance, increase productivity, and reduce operating costs. For heavy-duty final drives, friction control, wear protection, thermal stability, shear stability, rust and corrosion prevention, and seal protection are features that must be optimally balanced to contribute to extended gear and seal life, smooth operation, improved fuel economy potential and high load high torque capability over a wide range of applications.

The key benefits of Mobil Delvac 1 Gear Oil 75W-90 include:

Features	Advantages and Potential Benefits
Exceptional thermal stability and resistance to high temperature oxidation	Long gear and bearing life due to minimal deposits Long seal life
Outstanding protection against low speed/high torque wear and high speed scoring	Increased load-carrying capability. Helps to reduce maintenance costs and long equipment life
Exceptional shear stability	Helps to retain viscosity and film strength under severe operating conditions to prevent wear
Enhanced friction reduction properties	Has potential for fuel economy and reduce operating costs
Outstanding low temperature fluidity versus conventional oils	Helps to Reduce wear and ease of start-up
Good resistance to foaming	Helps to maintain film strength for reliable lubrication
Compatible with typical automotive seals and gaskets	Minimum leakage and reduced contamination

### Applications

- Heavy duty non-synchronized manual transmissions, axles and finaldrives requiring API GL-5 and MT-1 performance
- On-highway light and heavy duty trucks, busses and vans
- Off-highway industries including: construction, mining, quarrying, and agriculture
- Other heavy-duty industrial gear drives including hypoid and worm gears operating under conditions where high speed/shock load, high speed/low torque, and/or low speed/high torque conditions prevail

- Mobil Delvac 1 Gear Oil 75W-90 is intended for initial fill, topping-off or refilling differentials, final drives and transfer cases
- Recommended for equipment such as winch reduction gears and crawler vehicle propulsion gear drives that are exposed to severe low temperatures
- Recommended where extended service intervals and warranties are required
- Not recommended for applications requiring API GL-4 level performance
- Not intended for automatic, manual or semiautomatic transmissions for which engine oil or automatic transmission fluids are recommended

### Specifications and Approvals

<b>This product has the following approvals:</b>
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Dana SHAES 256 Rev C
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Dana SHAES 429
----------------

Detroit Fluids Specification 93K219.01
--

HYUNDAI DYMOS P110SS AXLE - Low Floor Rear Axle
---

Mack GO-J Plus
----------------

MAN 342 Typ M2
----------------

MB-Approval 235.8
-------------------

Navistar, Inc. MPAPS B-6821
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SAE J2360
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Voith Turbo 132.00374401
--------------------------

Voith Turbo 132.00374402
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VOLVO 97312
-------------

ZF TE-ML 05A
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ZF TE-ML 12L
--------------

ZF TE-ML 12N
--------------

ZF TE-ML 16F
--------------

ZF TE-ML 17B
--------------

ZF TE-ML 19C
--------------

ZF TE-ML 21A
--------------

Siemens Traction Gears GmbH (former Flender Rail) T7302
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Meritor O-95
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<b>This product is recommended for use in applications requiring:</b>
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Eaton PS-163
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**This product is recommended for use in applications requiring:**

MIL (US) MIL-PRF-2105E

**This product meets or exceeds the requirements of:**

API GL-5

API MT-1

R. Bosch AS TE-ML 08

ISUZU Axle Oil

ISUZU Large Manual Transmission Oil

ISUZU LCV Front Axle Oil

Meritor O-76-N

### Properties and Specifications

Property	
Grade	SAE 75W-90
Density @ 15.6 C, kg/l, ASTM D4052	0.86
Flash Point, Cleveland Open Cup, °C, ASTM D92	205
Kinematic Viscosity @ 100 C, mm <sup>2</sup> /s, ASTM D445	15.9
Kinematic Viscosity @ 40 C, mm <sup>2</sup> /s, ASTM D445	120
Pour Point, °C, ASTM D97	-48
Viscosity Index, ASTM D2270	140

### Health and safety

Health and Safety recommendations for this product can be found on the Material Safety Data Sheet (MSDS) @ <http://www.msds.exxonmobil.com/psims/psims.aspx>

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07-2022

### Exxon Mobil Corporation

22777 Springwoods Village Parkway  
Spring TX 77389

1-800-ASK MOBIL (275-6624)

Typical Properties are typical of those obtained with normal production tolerance and do not constitute a specification. Variations that do not affect product performance are to be expected during normal manufacture and at different blending locations. The information contained herein is subject to change without notice. All products may not be available locally. For more information, contact your local ExxonMobil contact or visit [www.exxonmobil.com](http://www.exxonmobil.com)

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## ATF Dex III

Automatic Transmission Fluid

### Description

Castrol ATF Dex III is designed for use in GM automatic transmissions pre 2005 and in Ford automatic transmission built between 1983 and 1996 where Dexron® (II or III) or Mercon performance is required. Also suitable as Power Steering Fluid.

NB: Should not be used where Dexron® VI, Mercon® V or Mercon® SP are required

### Advantages

- Enhanced friction durability prolongs transmission life and promotes smooth shifting.

### Typical Characteristics

Name	Method	Units	ATF Dex III
Density @ 15C, Relative	ASTM D4052	g/ml	0.861
Colour	ASTM D1500	-	Red
Appearance	Visual	-	Clear & Bright
Viscosity, Kinematic 100C	ASTM D445	mm <sup>2</sup> /s	7.9
Pour Point	ASTM D97	°C	-42.5
Viscosity, Brookfield @ -40C	ASTM D2983	mPa.s (cP)	17.600
Viscosity, Kinematic 40C	ASTM D445	mm <sup>2</sup> /s	32
Viscosity Index	ASTM D2270	None	186

### Product Performance Claims

Meets Dexron III-H, IID and II.  
Suitable as Power steering fluid.

ATF Dex III  
11 Apr 2014  
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Technical Advice Line: 662 684 3591 Customer Service: 662 684 3555  
www.castrol.com



## Transmax ATF DEXRON®-VI MERCON® LV Multivehicle

Automatic Transmission Fluid

### Description

Castrol Transmax ATF DEXRON®-VI MERCON® LV Multivehicle, formulated with Smooth Drive Technology™, is designed for modern automatic transmissions. Its superior technology enables longer transmission life. It is approved and licenced by GM and Ford for use in vehicles requiring their latest ATF specifications and is also suitable for use in most Asian and European automatic transmissions. Transmax ATF DEXRON®-VI MERCON® LV Multivehicle, formulated with Smooth Drive Technology™, delivers enhanced protection and gives drivers a smoother drive for longer.

### Advantages

- OEM approved and licensed by Ford (MERCON® LV) and GM (DEXRON®-VI)
- Low viscosity formula for maximum fuel efficiency in modern automatic transmissions
- Enhanced friction durability for smooth transmission performance
- Superior high temperature protection to effectively resist oxidation
- Recommended for use in most automatic transmissions

### Typical Characteristics

Name	Method	Units	Transmax ATF DEXRON®-VI MERCON® LV Multivehicle
Density @ 15C, Relative	ASTM D4052	g/ml	0.841
Viscosity, Kinematic 100C	ASTM D445	mm <sup>2</sup> /s	5.9
Viscosity, Kinematic 40C	ASTM D445	mm <sup>2</sup> /s	30.2
Viscosity Index	ASTM D2270	None	161
Viscosity, Brookfield @ -40C (75W)	ASTM D2983	mPa.s (cP)	10000
Pour Point	ASTM D97	°C	-54
Flash Point, COC	ASTM D92	°C	218

## Product Performance Claims

Ford MERCON® LV, GMDEXRON® -VI  
Suitable for use where JASO 1A(03)  
JASO 1A LV(13) is required including:

Toyota T III

T IV

WS

Mitsubishi SP II

IIM

III

IV

PA

J3

Mazda ATF M-III

M-V

FZ

Honda/Acura DW 1/Z 1

Nissan Matic D

J

S

JWS 3314/3317/ 3309

Suzuki AT Oil 5D06

2384K

Isuzu

Subaru F6

Red 1

Daihatsu AMMIX ATF D-III Multi

D3-SP

Hyundai/Kia SP III

SP IV

Also suitable for use in 6-speed automatics from Audi

BMW

Mini-Cooper

Jaguar

Peugeot/Citroen

Saab

Volvo

VW

Porsche

and all vehicles where Dexron III or Mercon SP is required.

Transmax ATF DEXRON®-VI MERCON® LV Multivehicle

21 Feb 2019

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Technical Advice Line: 662 684 3591 Customer Service: 662 684 3555

[www.castrol.com](http://www.castrol.com)



## TranSynd 668

Full-Synthetic Automatic Transmission Fluid

### Description

Castrol TranSynd 668 is a premium, full-synthetic automatic transmission fluid specifically formulated for Allison Transmission® on-highway automatic transmissions. TranSynd 668 provides oxidative stability, anti-wear performance, and friction durability, as well as TES 668™ specification differentiators such as extended anti-shudder durability and extended clutch friction durability. This fluid features an Allison TES 668 approval. The TES 668 spec is fully backwards compatible for TES 295® applications, but is not backwards compatible for TES 468™ applications.

### Advantages

- Delivers improved gear protection.
- Delivers extended anti-shudder durability.
- Delivers extended clutch-friction durability.
- Excellent corrosion and foaming resistance.
- Excellent thermal and oxidative stability that helps to prevent deposits and oil thickening.
- Excellent transmission cleanliness under all conditions permits extended oil-drain intervals and decreased servicing.
- Excellent temperature reduction through reduced friction leads to longer oil and component life.
- Outstanding cold-flow properties enables faster oil flow to all critical components particularly during cold starts.
- Optimized frictional characteristics gives smoother gear changing at all ambient temperatures and load conditions.
- Excellent shear stability properties help to retain full transmission performance over entire oil-drain interval.

## Typical Characteristics

Name	Method	Units	TranSynd 668
Appearance	Visual	-	Bright & Clear
Colour	ASTM D6045	-	6.2
Density @ 15C, Relative	ASTM D4052	g/ml	0.8508
Viscosity, Kinematic 100C	ASTM D445	mm <sup>2</sup> /s	6.9
Viscosity, Kinematic 40C	ASTM D445	mm <sup>2</sup> /s	33
Viscosity Index	DIN ISO 2909	None	168
Viscosity, Brookfield @ -40C (75W)	ASTM D2983	mPa.s (cP)	< 12.000
Flash Point, COC	ASTM D92	°C	> 210
Pour Point	ASTM D5950	°C	-51

## Product Performance Claims

Allison TES 668  
Backwards Compatible with Allison TES 295

TranSynd 668  
25 Feb 2021  
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[www.castrol.com](http://www.castrol.com)



# LIGHT DUTY GLOBAL

NITRITE-FREE OAT  
EXTENDED LIFE ANTIFREEZE/COOLANT

PRODUCT #235

## DESCRIPTION:

Crystal Clean Light Duty Global antifreeze/coolant contains a pure organic acid technology (OAT) inhibitor system that is significantly more durable than conventional additive systems for automotive, light duty use, resulting in up to 5-year/150,000 mile service life. The antifreeze is suitable for use in foreign and domestic passenger cars, vans, SUVs and light trucks requiring extended life antifreeze.

The inhibitor technology used in this extended life antifreeze/coolant contains no borate, nitrate, nitrite, phosphates, silicates, or amines. It is compatible with all major brands of OAT, hybrid and conventional coolants without precipitation problems under typical top off quantities. However, mixing different coolant types should be avoided because it will shorten the life of the "mixed" coolant.

Additionally, this antifreeze/coolant contains inhibitors that protect all cooling system metals. Together with the glycol base, these inhibitors and other additives, give year-round protection against freeze-ups, boil-overs and engine cooling system corrosion.

## BENEFITS:

- Meets the performance requirements of ASTM D3306
- Compatible for use in all cars, light duty trucks, and motor cycles
- Ready-to-use prediluted 50/50
- Yellow color is neutral and will not alter the original color of the coolant.

## PREMIX 50/50

Characteristic	Company Typical	ASTM Method
Specific Gravity (60°F)	1.075	D1122
Boiling Point (50% V/V)	230°F**	D1120
Freezing Point (50% V/V)	-34°F	D1177
pH (50% V/V)	8.5	D1287
Reserve alkalinity*	3 mL	D1121
Color	Yellow	--

### Recommended for, but not limited to, use in the following light duty applications:

- General Motors
- Mitsubishi
- Toyota
- Kia
- Chrysler
- Nissan
- Volkswagen
- Ford Motor Co
- Hyundai
- Mercedes
- Audi
- BMW

\*Reserve alkalinity (RA) is a value agreed between the customer and supplier. The RA listed above is the typical for the additive package being used.

\*\*Boiling point shown at atmospheric pressure. Add 40°F for 15 psi radiator cap

This product contains a limited warranty. Please visit <https://www.crystal-clean.com/af-warranty> for full details. Follow OEM recommendations for specified maintenance.







A HOLLYFRONTIER BRAND

# TECH DATA

## TRAXON™ SYNTHETIC MTF 75W-80

## INTRODUCTION

Petro-Canada's TRAXON Synthetic MTF 75W-80 is a premium performance, fuel efficient commercial vehicle manual transmission fluid/gear oil especially formulated for modern Synchronized Automated Manual Transmissions designed to deliver extended drain capability, long component life and optimal gear shifting.

TRAXON Synthetic MTF 75W-80 starts with the HT Purity Process to produce a 99.9% pure, crystal clear base oil. By removing the impurities that can hinder the performance of competitive conventional oils, and blending in specialty additives, the TRAXON gear oil family delivers maximum performance.

## FEATURES AND BENEFITS

This synthetic manual transmission gear lubricant provides superior year-round performance. It contains a unique anti-wear additive, as well as rust, oxidation and corrosion inhibitors to protect vital transmission and gear parts in severe load/speed, oxidation (temperature) and exceptional stay-in-grade performance.

### All weather Protection

- Provides excellent low temperature performance fluidity and transmission shifting to minimize damage of vital gear and transmission parts during cold temperature start up
- Helps limit drag losses and reduces fuel consumption versus conventional 80W-90 / 75W-90 or higher viscosity grades

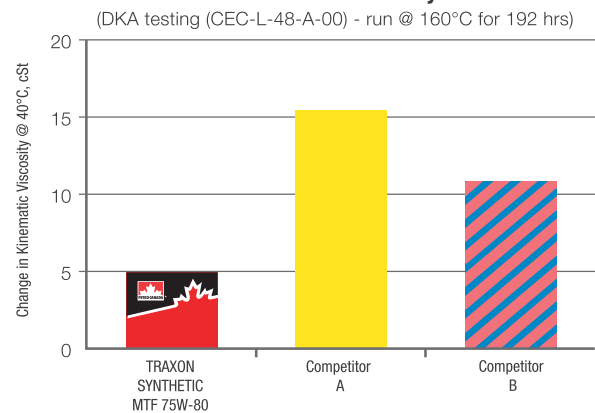
### Long Life

- Provides extended drain capabilities for fewer oil change-outs and reduced maintenance costs and labour
- Helps reduce operating temperatures to reduce wear and tear on vital transmission and gear box components
- Excellent thermal and oxidation stability which resists deposits and sludge formation to reduce issues with transmission shifting, system efficiency and equipment functionality

### Shear Stability

- Exceptional shear stability for outstanding stay in grade performance contributing to less transmission/gear wear and extended component life

### Oxidation Stability



In the DKA oxidation test, product performance is measured by how much the viscosity of the oil can increase over time (therefore the lower the bar after 192 hrs, the better.) Compared to two leading competitors, TRAXON Synthetic MTF 75W-80 advanced formulation resists oil degradation and thickening better.



TRAXON Synthetic MTF 75W-80 shows excellent oxidation and thermal stability versus Competitor A as shown above. Indication of better surface cleanliness with reduced sludge and deposit demonstrates how it can help transmissions run at optimum efficiency.

## APPLICATIONS

TRAXON Synthetic MTF 75W-80 is recommended for extended drain service in heavy duty (class 6, 7, and 8) manual transmissions.

TRAXON Synthetic MTF 75W-80 is also suitable for transaxles, manual gearboxes, transfer boxes and final drives where an API GL-4 lubricant is specified.

It is suitable for use in Volvo I-Shift and Mack mDrive synchronized automated manual transmission applications and can be used in a range of existing and new vehicles using ZF transmissions, including those fitted with ZF-Intarders. Models include ASTronic, TC Tronic, Ecolite, Ecomid and Ecospilt.

TRAXON Synthetic MTF 75W-80 is suitable for use for Volvo STD 1273,07-97307. This transmission fluid is also intended for manual gearboxes of the G7/8, S, SR, SPO, AT and VT series designed by Volvo GTT which are used in normal applications up to an extended maximum 400,000 Km (250,000 mi) oil drain interval.

This product also meets or exceeds the performance requirements for:

- API GL-4
- DAF (See DAF SMF&L 201240 for suitability)
- IVECO (See ZF approvals for specific applicability)
- Approval for MAN 341 Typ Z4  
Suitable where Z1, Z2 and Z3 (obsolete) and Z5 (250,000 mile ODI) is called for
- Renault (Note Technique B0032/2 Annex 3)
- Suitable for use for EATON Europe (300,000 km/3 year) (obsolete)
- Suitable for use where Volvo STD 1273,05 (97305) and XXW-80 are called for (standard lower oil drain intervals)
- Approved against ZF TE-ML - 01L, 02L, 13 (where stipulates ZF TE-ML 02L), 16K (ZF 002286)
- Suitable for use against Bosch TE-ML 08
- Suitable for use in Voith Retarders, Class A and B

## TYPICAL PERFORMANCE DATA

Property	Test Method	TRAXON SYNTHETIC MTF 75W-80
Density, kg/L @ 15°C/60°F	ASTM D4052	0.855
Flash Point, COC, °C (°F)	ASTM D92	227 (440)
Kinematic Viscosity cSt @ 40°C (SUS @ 100°F) cSt @ 100°C (SUS @ 210°F)	ASTM D445	54.8 (131) 9.6 (49)
Brookfield Viscosity cP @ -40°C	ASTM D2983	49,800
Viscosity Index	ASTM D2270	160
Pour Point, °C / °F	ASTM D5950	-42 (-44)
Foaming characteristics Sequence 1 Sequence 2 Sequence 3	ASTM D892	0/0 10/0 0/0
Copper Corrosion 3 hr. @ 150°C /302°F	ASTM D130M	1b

The values quoted above are typical of normal production. They do not constitute a specification.

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