



600 NE Grand Ave.
Portland, OR 97232-2736

Council work session agenda

Tuesday, January 21, 2020

2:00 PM

Metro Regional Center, Council Chamber

Revised 01/14

2:00 Call to Order and Roll Call

2:05 Safety Briefing

Work Session Topics:

2:10 Legislative Agenda [18-5332](#)

Presenter(s): Randy Tucker, Metro

Attachments: [Resolution No. 20-5073](#)
[Exhibit A to Resolution No. 20-5073](#)
[Exhibit B to Resolution No. 20-5073](#)
[Work Session Worksheet](#)

2:55 Clean Air Construction Standard [18-5333](#)

Presenter(s): Jenna Garmon, Metro
Tracy Fisher, Metro

Attachments: [Clean Air Construction Standard](#)
[Support for COBID Firms](#)
[CAC Regional Program IGA](#)
[Background Information](#)
[Work Session Worksheet](#)

3:40 Supportive Housing Services [18-5353](#)

Presenter(s): Ina Zucker, Metro

4:10 Chief Operating Officer Communication

4:15 Councilor Communication

4:20 Adjourn

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សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានកម្មប្រព័ន្ធរើសអើងសូមចុះលេខស្សនាគោលដៅ www.oregonmetro.gov/civilrights។ បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ ថ្ងៃធ្វើការ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

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تحتزم Metro الحقوق المدنية. للمزيد من المعلومات حول برنامج Metro للحقوق المدنية أو لإيداع شكوى ضد التمييز، يُرجى زيارة الموقع الإلكتروني www.oregonmetro.gov/civilrights. إن كنت بحاجة إلى مساعدة في اللغة، يجب عليك الاتصال مقدماً برقم الهاتف 503-797-1700 (من الساعة 8 صباحاً حتى الساعة 5 مساءً، أيام الاثنين إلى الجمعة) قبل خمسة (5) أيام عمل من موعد الاجتماع.

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Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

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Legislative Agenda

Work Session Topics

Metro Council Work Session
Tuesday, January 21, 2020
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING AN)	RESOLUTION NO. 20-5073
AGENDA FOR THE 2020 OREGON)	
LEGISLATIVE SESSION)	Introduced by Council President Lynn
)	Peterson
)	

WHEREAS, Metro has an interest in bills before the 2020 Oregon Legislature; and

WHEREAS, the Metro Council and Metro staff will represent Metro’s interest during the upcoming legislative session; and

WHEREAS, the Metro Council wishes to establish a united position on important legislative proposals and provide direction to its staff in order to represent the will of the agency; and

WHEREAS, the attached Exhibit “A” of this resolution lists specific expected and potential 2020 issues that are of concern to Metro and the metropolitan region and gives guidance to staff on the Metro Council’s position on these issues; and

WHEREAS, the attached Exhibit “B” states the Metro Council’s principles regarding categories of potential legislation in order to provide guidance to staff in representing Metro; now therefore

BE IT RESOLVED that the Metro Council hereby directs the Metro Chief Operating Officer, the Metro Attorney, and Metro staff to communicate the agency’s position on a variety of legislative proposals to the 2020 Oregon Legislature consistent with Exhibits “A” and “B” attached hereto.

ADOPTED by the Metro Council this _____ day of January, 2020.

Lynn Peterson, Council President

Approved as to Form:

Carrie Maclaren, Metro Attorney

METRO COUNCIL LEGISLATIVE PRIORITIES
2020 Legislative Session



TOP PRIORITY ITEMS

- **Climate:** Support legislation to create a “cap and invest” system to reduce greenhouse gas emissions and incentivize investment in clean energy. Seek specific provisions that directly allocate funds to the Portland region for implementation of the Climate Smart Strategy to reduce transportation-related greenhouse gas emissions. Seek opportunities to support other climate-related investments related to Metro’s other areas of responsibility.
- **Product stewardship for mattresses:** Support legislation based on producer responsibility and product stewardship principles to create a program for managing discarded mattresses.
- **Willamette Falls Locks:** Support legislation to establish a public corporation to take ownership of the Locks and provide the funding necessary to repair and reopen them.
- **Affordable housing:** Support legislation providing policy and funding tools to address housing affordability. Collaborate on potential opportunities for technical amendments to housing legislation passed in 2019.
- **Urban growth management:** Ensure that the Legislature establishes the policy framework and process for local land use decisions and respects the authority of local governments, including Metro, to make specific decisions on local land use matters. Oppose efforts to legislatively determine specific land use designations in the region.
- **Transportation:** Seek opportunities to enhance revenue authority related to potential 2020 regional transportation funding ballot measure. Pursue funding and/or policy, as appropriate, to support development and eventual construction of Southwest Corridor and I-205 projects.
- **Jurisdictional transfer:** Advance efforts to identify candidate highways for jurisdictional transfer and provide funds to facilitate transfers.

OTHER ITEMS

- **Emerging transportation technologies:** Ensure that any legislation establishing statewide policy frameworks for ride-hailing companies, automated vehicles and other technology-driven transportation innovations does not unreasonably limit local government authority or access to data needed for sound transportation management and planning.
- **Geographic data:** Support legislation to create and fund a central state repository for standardized geographic “framework” data.

METRO COUNCIL 2020 LEGISLATIVE PRINCIPLES¹

LOCAL AUTHORITY

1. **Pre-emption:** With respect to issues related to solid waste management, land use, transportation and other matters of regional concern, Metro's authority should not be pre-empted or eroded.
2. **Funding:** To ensure a prosperous economy, a clean and healthy environment, and a high quality of life for all of their citizens, Metro and the region's counties, cities, and other service providers must have the financial resources to provide sustainable, quality public services. Accordingly, the Legislature should remove existing restrictions on local and regional revenue-raising authority and avoid enacting new limitations or pre-emptions, and all state mandates should be accompanied by funding.

EQUITY

3. **Racial Diversity, Equity and Inclusion:** Metro envisions a region and state where a person's race, ethnicity or zip code does not predict their future prospects and where all residents can enjoy economic opportunity and quality of life. Metro therefore supports legislation that acknowledges past discrimination, addresses current disparities and promotes inclusion in public programs, services, facilities and policies.

HOUSING:

4. **Affordable Housing:** Metro supports efforts to ensure that housing choices are available to people of all incomes in every community in our region, and to reduce the number of households that are burdened by the combined costs of housing and transportation.² To achieve these outcomes, Metro supports legislative actions consistent with Oregon's land use laws that increase the supply of both regulated affordable housing and market-rate housing; provide funding for both housing development and services that support lower-income renters; and provide reasonable protections for renters against arbitrary and unfair actions.

LAND USE AND URBAN GROWTH MANAGEMENT:

5. **Local Authority:** The Legislature should take no actions that reduce or compromise Metro's land use and urban growth management authority.
6. **Oregon's Land Use System:** Oregon's land use planning system provides an important foundation for the prosperity, sustainability and livability of our region; this system reflects the values of Oregonians and enjoys strong public support.³ The Legislature should exercise restraint and care when considering changes to Oregon's land use system.
7. **Successful Communities:** Metro supports legislation that facilitates the achievement of the six desired outcomes for successful communities that have been agreed upon by the region: vibrant, walkable communities; economic competitiveness and prosperity; safe and reliable transportation choices; leadership in minimizing contributions to global warming; clean air, clean water and healthy ecosystems; and equitable distribution of the burdens and benefits of growth and change.⁴
8. **Local Land Use Decisions:** Management of the urban growth boundary is a complex undertaking that involves extensive analysis, public input, and a balancing of many factors. Urban growth management decisions have profound impacts not just on land at the

boundary, but on communities within the boundary and on farms and other rural lands outside the boundary. For these reasons, the Legislature should establish the process and policy framework for local land use decisions and should affirm the authority of local governments, including Metro, to make specific decisions on local land use matters.

9. **Efficiency:** Land within the urban growth boundary should be used efficiently before the boundary is expanded.⁵
10. **Need:** The UGB should not be expanded in the absence of demonstrated need.⁶
11. **Integration of Land Use and Transportation:** Land use and transportation planning should be coordinated so land uses do not undermine the efficiency and reliability of the transportation system and transportation investments do not lead to unintended or inefficient land uses.⁷
12. **Annexation:** Cities are the preferred governing structure for providing public services to urban areas, and Metro supports reforms that will facilitate, or reduce barriers to, orderly annexation and incorporation.
13. **Rules/Statutes:** Administrative rules should not be adopted into statute.
14. **Non-Regulatory Tools:** State efforts at regulatory streamlining should include funding to support development of non-regulatory tools for achieving desired land use outcomes.⁸
15. **Fiscal Responsibility:** Funding to support urban development should be generated at least in part by fees on those who directly benefit from that development.

SOLID WASTE:

16. **Life cycle approach:** Metro supports efforts to minimize the health, safety, environmental, economic and social impacts associated with consumer products and packaging throughout all stages of a product's life cycle, beginning with resource extraction and continuing through design, manufacturing, consumption and disposal.⁹
17. **Product Stewardship/Producer Responsibility:** Metro supports legislation providing that whoever designs, produces, sells or uses a product bears responsibility for minimizing the product's environmental impact throughout all stages of the product's life cycle. Under this market-based approach, the life-cycle costs of a product are internalized into its price rather than being forced onto the general public. This approach also provides an incentive for manufacturers to design and produce their goods in a way that minimizes waste, environmental impact and management costs.

TRANSPORTATION:

17. **Transportation Governance:** The Legislature should take no actions that reduce or compromise Metro's or JPACT's authority in the areas of transportation policy and funding.
18. **Transportation Funding:** Providing adequate funding for all transportation modes that move people and freight supports economic prosperity, community livability, public health and environmental quality. For these reasons, Metro supports an increase in overall transportation funding, investments in a safe and balanced multimodal transportation system that addresses the needs of all users, and flexibility in the system to provide for local solutions to transportation problems.

PARKS AND NATURAL AREAS:

19. **Parks and Natural Areas:** Our region has invested heavily in protecting water quality and wildlife habitat and providing residents with access to nature and outdoor activity. Parks and

natural areas are regional assets that support public health, environmental quality, strong property values and economic prosperity. For these reasons, Metro supports measures to increase local and regional authority to raise revenues to support parks and natural areas and to increase the level of state funding distributed to local governments for acquisition, capital improvements, and park operations.

SUSTAINABILITY:

- 20. Climate Change:** Metro supports efforts to combat and adapt to climate change and to meet the state’s goals for reducing greenhouse gas emissions. Metro and its regional partners are committed to the Climate Smart Strategy, which includes actions needed to achieve state targets for reducing greenhouse gas emissions from transportation. The state should provide financial support for implementation of the Climate Smart Strategy.
- 21. Species Conservation:** Metro supports efforts to protect and restore wildlife habitat, to recover threatened and endangered species, and to create a better future for wildlife, both in Oregon and globally.
- 22. Conservation Education:** Metro supports efforts to provide stable and reliable funding to conservation education.

ECONOMIC PROSPERITY:

- 23. Infrastructure Finance:** Metro supports measures, including funding or revenue measures, which facilitate state, regional or local investments in the public structures needed to accommodate population and economic growth in a way that helps the region achieve its six desired outcomes for successful communities.
- 24. Metro Venues:** Because the Oregon Convention Center, Expo Center, Portland’s Centers for the Arts and Oregon Zoo are assets that contribute millions of dollars to the state and regional economies, Metro supports legislative measures that facilitate the success of these venues in attracting visitors and enhancing the quality of their experiences.

AGENCY OPERATIONS:

- 25. Firearms and Public Facilities:** Metro supports legislation that increases Metro’s authority to regulate the carrying of firearms on Metro properties and public venues, and opposes legislation that limits or reduces that authority.
- 26. Disaster Preparedness:** Metro supports legislative efforts to improve community disaster preparedness and resilience, with the goal of enabling the Portland region to provide for the immediate needs of its residents and businesses after a catastrophic event and facilitating the region’s short- and long-term recovery.

¹ Unless otherwise noted, endnotes refer to applicable policy statements in Metro’s Regional Framework Plan (RFP).

² RFP Policy 1.3 (Housing Choices and Opportunities).

³ See <http://oregonvaluesproject.org/findings/top-findings/> (specifically item 5, Natural Resource Protections for Future Generations)

⁴ RFP Chapter 1 (Land Use).

⁵ RFP Policy 1.1 (Compact Urban Form).

⁶ RFP Policy 1.9 (Urban Growth Boundary).

⁷ RFP Policy 1.3.13 (Housing Choices and Opportunities); Transportation Goal 1 (Foster Vibrant Communities and Efficient Urban Form).

⁸ RFP Policy 1.1 (Compact Urban Form); Policy 1.2 (Centers, Corridors, Station Communities and Main Streets).

⁹ Draft 2030 Regional Waste Plan, page 11.

DRAFT

Clean Air Construction Standard

Work Session Topics

Metro Council Work Session
Tuesday, January 21, 2020
Metro Regional Center, Council Chamber

ATTACHMENT A: CLEAN AIR CONSTRUCTION STANDARD

DEVELOPED BY THE OREGON CLEAN AIR CONSTRUCTION COLLABORATIVE, NOVEMBER 2018

Applicability & Effective Date

Effective January 1, 2020, the following requirements apply to construction projects that [agency name] solicits and contracts for that are over [enter dollar threshold] and when the funding for the project does not prohibit the [agency name] ability to do so.

Standard Review

The following clean air construction requirements may be updated [add agency process reference]. Specifically, updates may be triggered by changes/developments in 1) availability of emission control technologies, 2) alternative fuel technologies, 3) expanding requirements to address other air pollutants besides diesel particulate matter.

The Clean Air Construction Standard shall be reviewed for effectiveness and updates no later than four years after the initial effective date. Results shall be published on the applicable agency's website and any proposed updates to the Standard vetted through a public stakeholder process.

Idle Reduction Requirements

Beginning January 1, 2020 contractors working on [agency name] construction projects shall take the following steps to reduce unnecessary diesel equipment idling:

- All nonroad diesel equipment must shut down after five (5) minutes of inactivity, and
- All nonroad diesel equipment shall have decals/prompts visible to the operator to remind them to shut down the equipment after five (5) minutes of inactivity, and
- Contractors will post "Five Minute Limit" signs in high foot traffic areas of the job site, visible to workers, and
- Contractors will ensure all diesel equipment operators are aware of the policy.

Exemptions to the above idle reduction requirements are allowed in circumstances where:

- the safety of contractors and their employees may be compromised if diesel equipment is turned off; for example, where employees are working in a trench; or
- the equipment meets the most stringent EPA emissions standards or has been retrofit with a DPF; or
- frequent shutdowns may be detrimental to the exhaust control system, reducing the effectiveness of that system by lowering the exhaust temperature; or
- equipment requires testing, servicing, inspection, or repairs.

Diesel Engine Requirements and Phase-In Schedule

Effective January 1, 2021 and in accordance with the phase-in schedule outlined below all diesel-powered nonroad construction equipment greater than 25 horsepower and all on-road diesel dump trucks and cement mixers used on [agency name] construction projects must meet the following requirements:

Effective Date of Diesel Engine Requirement	Nonroad Diesel (over 25hp)	On-Road Diesel (cement mixers and dump trucks)
January 1, 2020	No Idling	
January 1, 2021	No tier 0 engines allowed ¹	
January 1, 2022	No tier 1 engines allowed ¹	
January 1, 2023	No tier 2 engines allowed ¹	
January 1, 2024	No tier 3 engines allowed ^{1,2}	No pre-2007 engines ^{1,2}
January 1, 2025	Tier 4 only ^{1,2}	
January 1, 2026	Tier 4 only ³	No pre-2007 engines ³

¹Diesel engine retrofits (emission control devices) allowed on older equipment/vehicles following the Compliance Options Protocol provided herein.

²No new DOC emission control devices allowed. Equipment retrofitted with DOC emission control devices prior to 2024 are allowed.

³No older equipment/vehicles allowed unless it was retrofitted with a DPF prior to 2026. Exemption: construction firms that are certified by the State of Oregon Certification Office for Business Inclusion and Diversity (COBID) may use equipment/vehicles retrofitted with a DPF or DOC prior to 2024 and 2026 (for DPFs).

Contractors may apply for exemptions to the above diesel engine requirements on a per project basis in circumstances where:

- The equipment/vehicle is required for an emergency (including for underground equipment operators).
- After following the Compliance Options Protocol, the required emission control device would obscure operator lines of sight or otherwise impact worker safety or the equipment is not able to be retrofit with a verified emission control device; and no compliant rental equipment is available within 100 miles of the job site.
- After following the Compliance Options Protocol, the contractor can demonstrate that due to the uniqueness of the equipment/vehicle or similar special circumstances, it is not reasonable to comply with the diesel engine requirement for a specific piece of equipment/vehicle.

Compliance and Verification

Contractors (prime and sub-contractors, and applicable suppliers) will demonstrate compliance with the Clean Air Construction Standard on an annual basis by providing to the [agency name], or approved program operator, all requested diesel equipment/vehicle information needed to verify compliance, including confirmation that retrofit devices are maintained on the equipment in proper operating condition. Upon determining compliance with the requirements, the [agency name], or approved program operator, will issue an equipment/vehicle decal for each compliant piece of equipment/vehicle. This decal must be displayed on the compliant equipment/vehicle at all times in a location readily visible to [agency name] staff. In addition, random on-site inspections by [agency name] staff (or approved program operator) will be conducted on a project by project basis.

Compliance Options Protocol

Compliance with the Diesel Engine Requirements contained herein will be determined according to the following protocol:

Protocol Step	Question(s)	Answer	Action
1	Is the nonroad equipment over 25hp?	YES	Go to Step 2
	Is the on-road vehicle a cement mixer or dump truck?	NO	Register equipment and obtain compliance verification. No further action required other than anti-idling compliance on job-site.
2	Is the equipment/vehicle required for an emergency? (including for underground equipment operators)	YES	Request Exemption
		NO	Go to Step 3
3	Is the equipment/vehicle powered by electricity or alternative (non-diesel) fuel?	YES	Register equipment and obtain compliance verification. No further action required other than anti-idling compliance on job-site.
	Is the diesel cement mixer or dump truck 2007 or newer? Does the diesel nonroad equipment utilize only a Tier 4 engine(s)?	NO	Go to Step 4
4	Can the equipment/vehicle be repowered or retrofit with a CARB or EPA verified DPF or equivalent? ¹	YES	Repower or retrofit equipment and obtain compliance verification.
		NO	If 2023 or earlier, go to Step 5 If 2024 or later, go to Step 6.
5 (pre-2024)	Can the equipment/vehicle be retrofit with a CARB or EPA verified emissions control device other than DPF (or equivalent)? ¹	YES	Retrofit equipment with an emission control device that maximizes diesel particulate matter emission reduction. Obtain compliance verification.
		NO	Go to Step 6
6	Is compliant rental equipment available within 100 miles of the job site?	YES	Rent equipment and obtain compliance verification.
		NO	Request Exemption.
¹ Equivalent is defined as achieving the same level (within 10%) of diesel particulate matter (PM) emissions reduction as a DPF.			

Terms/Definitions

CARB: California Air Resources Board, a state regulatory agency charged with regulating the air quality in California.

Diesel Particulate Matter – the solid or liquid particles found in the air released through the exhaust from diesel vehicles/equipment. Exposure to diesel particulate matter increases the risk of heart attack, stroke, cardiovascular disease, exacerbates asthma, and can lead to low-weight and pre-term births.

Nonroad: Construction equipment and vehicles that fall under the EPA non-road engine equipment category, which includes all diesel equipment not intended for highway use. For the purpose of this policy, these vehicles/equipment include only diesel construction vehicles/equipment with engines larger than 25 horsepower, which includes tractors, excavators, dozers, scrapers and other construction vehicles/equipment.

ATTACHMENT B: SUPPORT FOR COBID FIRMS

EXISTING/PLANNED SUPPORT

Several mechanisms exist or are planned to assist COBID firms with compliance, including an extended compliance timeline for using retrofitted equipment, targeted outreach and engagement, and grant application support. These are described in more detail below.

Clean Air Construction Standard

The proposed CAC regional program includes the following elements to assist COBID firms with compliance:

- One method of meeting the Standard includes retrofitting existing equipment; this compliance method is gradually phased out over time. However, after the standard is fully-implemented in 2026, COBID-certified firms may continue to use additional types of emissions control devices on retrofitted equipment.
- The regional Clean Air Construction (CAC) program will provide technical assistance and web-based resources to assist contractors, in particular COBID-certified contractors, in registering vehicles/equipment and determining CAC compliance.

Funding for upgrades

There are two main sources of funding for firms to retrofit or replace diesel vehicles and equipment: Oregon DEQ Clean Diesel Grants (Volkswagen Settlement Funds) and Diesel Emissions Reductions Act (DERA) grant funds through the Environmental Protection Agency.

Oregon DEQ Clean Diesel Grants

A bill passed in the 2019 Oregon legislative session (HB 2007) directs the remaining \$50 million in Volkswagen settlement funds to be disbursed through a grant program by the Oregon DEQ. HB 2007 explicitly allows the use of these funds for construction diesel engine retrofit, repower or replacement, with particular preference for supporting COBID-certified firms, emissions standards established by a public body, and owners and operators of heavy-duty trucks registered in Multnomah, Clackamas or Washington Counties. According to DEQ, the timeline for the grant program to start accepting applications is January 2021.

EPA DERA Grant Funds

Two sources of DERA funds are available:

1. EPA regional competitive funds: Local organizations and Oregon DEQ are eligible to apply for a grant up to \$1 million (based on application request) under this program. DEQ can also assist applicants with letters of support and other technical assistance during the application process. The CAC regional collaborative plans on supporting a local non-profit organization in applying for these competitive funds.
2. State allocation funds, administered by Oregon DEQ. Approximately \$800,000 will be available in 2020, which includes the state matching funds. Oregon DEQ

determines how to spend these funds based on a work plan developed with EPA. Current priority is school bus replacement due to the sensitive population and the current state mandate for school buses to comply with 2007 emissions standards by 2025. The next cycle of grant funds will be available in October 2020. There may be a potential to do a trial project related to the Clean Air Construction Standard prior to October 2020.

City of Portland Tier 0 gap grants

In addition, the City of Portland is considering creation of a grant program to provide gap funding to assist COBID firms with Tier 0 retrofits prior to DERA funds being available. The City anticipates \$200,000 in funding for program.

Technical support

City of Portland contract for technical support

The City plans to contract with a diesel expert to provide one-on-one technical assistance to COBID firms to develop compliance plans. The City has \$30,000 budgeted for this fiscal year.

Oregon DEQ technical assistance

DEQ plans to provide technical assistance to COBID firms interested in applying for Oregon DEQ Clean Diesel Grants. DEQ is in the early stages of this effort and details will not be available until rulemaking is complete in the fall of 2020.

METRO COBID SUPPORT OPTIONS

At the July 16, 2019 work session, Council indicated a desire to set a comprehensive threshold for the Standard, while addressing the additional barriers that the Standard may cause for COBID firms. To complement and build on the existing support mechanisms described above, and based on input received from COBID firms to date, staff have proposed types of additional support that Metro could provide to assist COBID firms with compliance. Staff plan to continue to engage COBID firms to further refine these tools and learn what would be most beneficial, after Council provides direction about the magnitude of resources that Metro can offer.

Direct support to COBID firms

Metro may choose to dedicate additional funding to support equipment upgrades and for additional technical support. While this would represent significant support for COBID firms, a funding source would have to be identified through the budgeting process.

Funding for upgrades: Retrofitting existing equipment with after-market emissions control devices is one of the most cost effective means of meeting the Standard, and provides air quality benefits beyond Metro projects. Metro could provide funding to assist with equipment/vehicle upgrades, both within and outside of the active contract process.

The following estimates are provided for a sense of scale of what various levels of funding support could achieve for equipment upgrades. Actual costs and number of upgrades

would depend on the type of equipment, age of equipment, remaining useful life and other factors. The estimates below are based on surveys of equipment owned by COBID firms. They reflect the types of upgrades available for the different Tiers of equipment. EPA uses Tiers to describe the emissions profile of diesel equipment. Tiers 0-1 are the oldest equipment with minimal pollution controls and can be upgraded with a diesel oxidation catalyst (DOC) at an average cost of \$5,000. They will be phased out in 2021 and 2022, respectively. Tiers 2-3 have better pollution controls and can be significantly upgraded with a diesel particulate filter (DPF) at an average cost of \$18,000. They will be phased out in 2023 and 2024, respectively. The estimates assume that Metro would provide 50% matching funds to a firm to cover the cost of upgrade. Tiers 4 and 4i have the highest emissions controls and fully meet the Standard.

Among the COBID firms surveyed, 49% of owned equipment is Tier 4 or 4i, 34% is Tier 2-3 and 17% is Tier 0-1. Assuming all the equipment used on Metro projects over the course of a year represents this same distribution of Tiers, we can estimate the cost of an upgrade fund by applying a multiplier to the projects that represents the magnitude of support.

With a multiplier of 1- Basic, we could assume that each project will provide funding for a DOC upgrade on a Tier 0-1 piece of equipment 17% of the time and a DPF upgrade on a Tier 2-3 piece of equipment 34% of the time. In other words, about one-sixth of the projects will receive a DOC upgrade, and one-third of the projects will receive a DPF upgrade. For the Formal threshold, a basic level of support of \$105,000 represents Metro contribution on about 5 DOCs and 10 DPFs over 30 projects.

Levels of support for equipment upgrades

		Level of support		
Threshold	Projects/year	Basic	Medium	High
Formal	30	\$104,550	\$313,650	\$522,750
	<i>DOC</i>	<i>5</i>	<i>15</i>	<i>26</i>
	<i>DPF</i>	<i>10</i>	<i>31</i>	<i>51</i>
\$500k	10	\$34,850	\$104,550	\$174,250
	<i>DOC</i>	<i>2</i>	<i>5</i>	<i>9</i>
	<i>DPF</i>	<i>3</i>	<i>10</i>	<i>17</i>

Staff have identified multiple pathways for firms to access these funds: either through an active contract, or through proactive upgrades. These funds could be used to bridge the timing gap until other regional grant programs are available. If Metro commits to a longer period of support, firms could pair Metro funds with other regional grant funds when those funds become available. The need for these funds would diminish over time as equipment and vehicles are upgraded or replaced as part of compliance with the Standard.

- *Active contract:* This process would provide a mechanism for firms to seek funding from Metro to help upgrade noncompliant equipment during the procurement process for a Metro construction project. If there’s enough lead time, the preferred

process is to complete equipment upgrades prior to the start of the project. Alternatively, if timing does not allow, COBID firms could request an exemption to the Standard for the particular project, but would be required to complete equipment upgrades prior to completion of the project so the equipment would be in compliance on future projects. Each firm could seek a one-time-only exemption. This option would be limited to firms with gross receipts below a certain amount (e.g., \$30M, similar to COBID requirements). Metro funds would be capped at a maximum amount per project and would only be available for equipment used a minimum amount of time on the project.

- *Proactive upgrades:* Metro could also support COBID firms in upgrading their equipment outside of the procurement process. This would involve an application process and could be limited to COBID firms.

One-on-one technical support: This option would entail engaging a diesel expert to provide one-on-one technical assistance to COBID firms to develop compliance plans. This would include identifying their equipment retrofit/repower/replacement needs, identifying the costs of upgrade options, and assistance with preparation of grant applications. The City of Portland plans a similar approach and has identified a COBID-certified contractor that can provide this assistance. This option would have an estimated cost of \$30,000-\$50,000 annually.

Procurement rule changes

This would entail working with department staff and OMA to review and update the procurement rules and procedures to minimize negative impacts on COBID firms. These options could be implemented with or without direct support to COBID firms. If implemented independently, these would require no dedicated funding, but would spread any additional costs of compliance with the Standard across applicable projects.

Additive alternate for low bid: For covered projects that are procured through low bid, Metro may provide an option for calling out additional costs to comply with the Standard as an additive alternate separate from the base bid.

Special class exemption from low bid: ORS allows a local contract review board to approve a special class of public improvements that are exempt from low bid requirements, as long as the class meets particular requirements. Staff are exploring this allowance as an avenue for permitting some public improvement projects subject to the Standard to be solicited through request for proposals (RFP). The RFP method includes cost as one of multiple evaluation factors. Other factors include sustainability and diversity.

Contingency plan for no bid scenario: in the case that no bids are received on a project subject to the Standard, Metro staff would evaluate the procurement to determine if the Standard served as a barrier in the process or if other factors were at play. In the case of the former, Metro would have the option to exempt the project from the Standard and put the project out for bid again. This should be considered only after consideration of other options, such as modifying the project scope, timeline or budget.

No immediate changes

Alternatively, Council may elect to adopt the Standard without creating any new programs or changing rules and monitor the effectiveness of the Standard for the first year. This would provide time to determine if the assistance offered by the other organizations is effective and if there are gaps for COBID firms. If changes are needed, staff would submit them as part of the budget process for FY22. This option could negatively impact COBID firms in the short-term.

Advantages and disadvantages of types of support

Option	Advantages	Disadvantages
Direct support	<ul style="list-style-type: none">• Is proactive in reducing negative impact to COBID firms• Equipment upgrades would provide lasting emissions reduction• Allows upgrade costs to be passed through to Metro	<ul style="list-style-type: none">• Potentially requires significant new investments that have no current funding source• Creates a new program for Metro to administer (directly or through a partnership)
Procurement rule changes	<ul style="list-style-type: none">• Does not require new investments up front• Is relatively easily to implement• Can allow some costs to be passed through to Metro• Helps COBID firms remain competitive for Metro projects	<ul style="list-style-type: none">• May result in the effectiveness of the standard being diminished if solutions include exemptions• Makes the procurement process more complex• Would require projects to build in compliance costs into budgets
<i>OR</i>		
No immediate changes	<ul style="list-style-type: none">• Reduces scope of implementation planning• Relies on existing support mechanisms	<ul style="list-style-type: none">• May negatively impact COBID firms in the short-term

ATTACHMENT D: BACKGROUND INFORMATION

NEED FOR A CLEAN DIESEL STANDARD

Everyone deserves to breathe healthy air. However, in the Portland metro area, the air is unhealthy to breathe because of the presence of fine and ultra-fine particulate matter from older dirty diesel engines. Clackamas, Multnomah, and Washington counties rank in the top 5 percent of all counties nationwide for ambient diesel particulate concentrations and have the highest exposure rate of all counties in Oregon. In some areas, like near freight corridors, rail yards or construction sites, levels of diesel pollution are over 10 times Oregon health benchmarks. Off-road equipment, primarily construction equipment, is responsible for 65 percent of diesel particulate matter in the Portland area. Children are especially vulnerable because their lungs are still in the developmental phase and they breathe, on average, 50 percent more air per pound of body weight than adults do.

According to the Oregon Department of Environmental Quality (DEQ) study, [The Concerns about Diesel Exhaust](#), diesel engines are disproportionate emitters of fine particulate matter. Exposure to diesel engine exhaust can cause cancer, increase the risk of heart attack, stroke and cardiovascular disease, cause adverse nervous system impacts, exacerbate asthma, and can lead to low-weight and preterm births. The levels of diesel pollution in Oregon have significant public health impacts; a snapshot of annual impacts include:

- Up to 460 premature deaths,
- 145 non-fatal heart attacks, and
- 25,910 work loss days.

The monetized value of health impacts in Oregon exceeds \$3 billion annually. Reducing diesel particulate pollution would yield approximately a 10:1 return in human health benefits per dollar invested in off-road engines, according to U.S. EPA's Diesel Emissions Quantifier Health Module.

The harms associated with diesel exhaust are not distributed evenly; environmental justice communities, including communities of color and low income populations, experience a disproportionate burden of exposure to diesel pollution because they often live and work in areas with higher pollution levels, such as near busy truck and bus routes, areas of chronic traffic gridlock, freight terminals and construction sites. Using DEQ air quality modeling data, an assessment by Multnomah County determined that African American and Latinx populations in the Portland Metro area face up to three times higher exposure rates than the average area resident.

Fortunately, solutions are available. Diesel trucks and heavy equipment built today are up to 99 percent cleaner than earlier models because of Federal regulation. EPA pollution control standards for on-road trucks with engines built after 2007, and nonroad, Tier 4 equipment available in the marketplace beginning in 2008, have resulted in very low-emitting engines that are considered "clean". For existing engines, techniques are available to reduce emissions, including cleaner fuel and modifying vehicle operations, such as idling

reduction. The most cost-effective approach is to install emission control devices, which are typically done as a muffler replacement.

Many jurisdictions across the country have procurement standards that require cleaner construction equipment on their publicly funded projects. The Clean Air Construction Collaborative hired a consultant to evaluate 14 of these programs to better understand clean diesel construction procurement standards and determine best practices. This research informed development of the Clean Air Construction Standard.

In addition, the City of Portland and Multnomah County co-funded an air quality feasibility study in 2018 to perform an in-depth assessment of various strategies actionable by local government to address Portland metro's air quality issues. A top recommended action in the study was to implement diesel engine specifications for public construction projects.

COBID FLEET SURVEY

The cleaner equipment and vehicles required by this standard can represent a significant capital investment for businesses owning older diesel equipment, especially for COBID firms. To gain a better understanding of the potential impacts to COBID firms and inform policy development, the Collaborative contracted with Professional Business Development Group (PBDG) to conduct a survey to determine the emission status of diesel vehicles and equipment owned by construction firms in its membership. The survey results, covering 14 firms, showed that of the 70 pieces of nonroad equipment, 48.6% (34) were Tier 4 or Tier 4i engines; 34% (24) were either Tier 2 or Tier 3, and 17% (12) were either Tier 0 or Tier 1. This indicates that just under half of the equipment already complies with the highest requirements in the Standard.

STAKEHOLDER ENGAGEMENT

The Collaborative has completed outreach to stakeholder groups including construction project managers, equipment operators, construction firms including COBID firms, industry associations, environmental organizations, and community and neighborhood groups. In addition, the Collaborative held a large stakeholder meeting on August 22, 2018 to take feedback on the proposed approach. The proposed contracting standard was revised based on stakeholder feedback at the Portland City Council hearing on Resolution 37387 in September 2018. In addition, the City of Portland and Multnomah County solicited public comments over a two week period in November 2018. 138 comments were received: 98% in support (with 39% calling for accelerated and additional action); and 2% opposed the Standard.

Regulation of diesel emissions on public projects was opposed by some members of the contracting community, although they acknowledge regulation of diesel emissions will ultimately occur. They advocated for an approach that keeps a level playing field across the region for contractors bidding on jobs, provides a long enough lead time to plan for equipment upgrades and provides financial resources to support COBID-certified firms. This input informed development of the Clean Air Construction Standard.

There has been significant public pressure on government entities to take action to improve local air quality. Community organizations have been supportive of local governments taking leadership on this issue, although they strongly advocate for an accelerated timeline for implementation. Recently, the nonprofit Neighbors for Clean Air and a coalition of 250 organizations submitted a petition to the Oregon Environmental Quality Commission to expand the state's Indirect Source Rule to establish a cap on diesel emissions from nonroad sources.

The proposed Standard balances the health and environmental concerns raised by stakeholders by lowering the equipment horsepower threshold to 25hp to include more equipment, while phasing in the standards over seven years to allow the contracting community to plan ahead for investments and spread out costs. In addition, the proposed standard includes extended compliance timelines and flexibility for COBID certified firms.

In development of the proposed approach for Metro adoption of the Standard, Metro has conducted additional outreach to COBID firms to better understand the barriers that the Standard might pose, and strategies to support COBID firms in complying with the Standard. Metro has incorporated that feedback into the toolkit of support proposed as part of this project. Staff plan to continue to engage COBID firms to further refine these support strategies, after Council provides direction on the magnitude of resources that Metro can offer.

ATTACHMENT C: CAC REGIONAL PROGRAM INTERGOVERNMENTAL AGREEMENT

DRAFT FOR REVIEW, December 18, 2019

INTERGOVERNMENTAL AGREEMENT

Between

Multnomah County, Washington County, Metro, and Port of Portland

And

City of Portland Bureau of Revenue and Financial Services – Procurement Services

For

Development and Administration of the Regional Clean Air Construction Program

This Intergovernmental Agreement (“Agreement”), dated this XX day of XXXXX 2020, is made and entered into by and between the City of Portland (the “City”), through City of Portland Bureau of Revenue and Financial Services – Procurement Services (“Procurement Services”) and Multnomah County, Washington County, Metro, and Port of Portland, collectively referred to as “the Parties.”

RECITALS

1. In the Portland Metro area, the air is unhealthy to breathe because of the presence of ultra-fine particulate matter (PM) from older dirty diesel engines. In 2017 a group of staff representatives from the City of Portland, Multnomah County, Metro, Port of Portland, Washington County and Clackamas County (“Founding CAC Collaborative Group”) began collaborating on a regional Clean Air Construction Standard (“CAC Standard”) that requires the use of cleaner (as in reduced diesel PM emissions) nonroad equipment and on-road construction vehicles for public agency construction projects. To create certainty and consistency for contractors subject to the requirements, the Founding CAC Collaborative Group agreed that each agency would adopt the same CAC requirements and compliance timeline.
2. In addition, the Founding CAC Collaborative Group agreed a single regional Clean Air Construction Program (“CAC Regional Program”) that supports all participating agencies in administering compliance with the CAC Standard is the best implementation approach for the regional CAC Standard. Since the City has the largest volume and variety of construction projects on an annual basis within the Founding CAC Collaborative Group, the City is serving as the lead agency for the CAC Regional Program.
3. The Parties desire to enter into an agreement that will establish the terms and conditions by which the Parties will engage and reimburse the City for staff and services related to developing and administering a CAC Regional Program on behalf of all the Parties.

AGREEMENT

1. ROLES AND RESPONSIBILITIES

The City and the Parties agree to be responsive and perform the following roles and responsibilities in a timely manner. This Agreement does not preclude either the City or the Parties from contributing additional support for Clean Air Construction programming through in-kind or other financial contributions, whether specific to their own agency or for the CAC Regional Program.

a. City of Portland

The City will:

- i. Recruit, hire, and maintain a full-time City employee who will be dedicated to serving as the CAC Regional Program Coordinator for the duration of this Agreement, at a minimum.
- ii. Serve as the CAC Regional Program administrator and fulfill related administrative responsibilities such as, but not limited to:
 - a. Primary point-of-contact for CAC Regional Program inquiries
 - b. Administer shared technology platforms specific to the CAC Regional Program
 - c. Solicit and manage third-party consulting (or other) services related to supporting the CAC Regional Program
 - d. Develop and distribute CAC Regional Program communications
 - e. Organize and facilitate CAC Regional Program meetings
 - f. Develop program budget in coordination with the Clean Air Construction Intergovernmental Oversight Committee (“CAC Committee”)
 - g. Develop and track CAC Regional Program performance metrics
 - h. Develop and distribute CAC Regional Program financial and performance reports
- iii. Develop, host, and maintain a CAC Regional Program website.
- iv. Coordinate CAC Regional Program compliance activities among the Parties in a manner that minimizes duplicative compliance tasks among contractors subject to the CAC Standard.
- v. Integrate the CAC Standard into City solicitation and contract documents as applicable.
- vi. Provide training to internal agency staff such that applicable staff are aware of the CAC Standard and can effectively facilitate agency implementation of the CAC requirements. Applicable staff may include procurement staff and construction project managers.
- vii. Include CAC references in applicable contractor communications and outreach events to help build awareness among the contractor community.
- viii. Commit agency funds in its applicable fiscal year budget to fulfill its cost share of the CAC Regional Program per this Agreement (see Section 3).
- ix. Conduct on-site compliance checks each fiscal year. On-site compliance checks may be conducted by a third-party consultant or agency staff so long as the compliance check requirements are in line with what is agreed upon by the CAC Committee.
- x. Carry out liquidated damages or other consequences or remedy requirements for violations of the CAC requirements per the agency’s applicable rules.

b. The Parties

Each agency will:

- i. Adopt the Clean Air Construction Standard requirements as agreed upon by the Founding CAC Collaborative Group such that they become enforceable contract requirements, as applicable, for that agency. In order to reduce confusion among the contractor community, each agency shall adhere to the original Diesel Engine

Requirements Phase-In Schedule no matter when their agency adopts the Clean Air Construction Standard.

- ii. Integrate the CAC Standard into their solicitation and contract documents as applicable.
- iii. Provide training to internal agency staff such that applicable staff are aware of the CAC Standard and can effectively facilitate agency implementation of the CAC requirements. Applicable staff may include procurement staff and construction project managers.
- iv. Commit one staff person to serve on the CAC Committee (see Section 2) and provide that staff person the necessary resources to fulfill their role and responsibilities as part of the CAC Committee.
- v. In general, coordinate with the CAC Regional Program Coordinator on CAC-related communications and outreach to the contractor community and the public.
- vi. Include CAC references in applicable contractor communications and outreach events to help build awareness among the contractor community.
- vii. Provide the CAC Regional Program Coordinator with necessary construction project and related information as needed to populate the regional CAC online registration and compliance system.
- viii. Provide the CAC Regional Program Coordinator with applicable compliance information, such as, but not limited to, list of prioritized projects/contractors for compliance checks.
- ix. Commit agency funds in their applicable fiscal year budgets to fulfill their cost share of the CAC Regional Program per this Agreement (see Section 3).
- x. Conduct on-site compliance checks each fiscal year. On-site compliance checks may be conducted by a third-party consultant or agency staff so long as the compliance check requirements are in line with what is agreed upon by the CAC Committee and that compliance check results are shared with the CAC Regional Program Coordinator.
- xi. Carry out liquidated damages or other consequences or remedy requirements for violations of the CAC requirements per the agency's applicable rules.

c. Decision Making and Oversight

In its role as the CAC Regional Program administrator, the City may make routine, day-to-day program decisions. Any decisions that affect core elements of the Clean Air Construction Standard, the CAC Regional Program budget, or alter CAC Regional Program elements previously-agreed upon by the Parties through the Founding CAC Collaborative Group or CAC Committee shall first be authorized by the CAC Committee (see Section 2).

2. CLEAN AIR CONSTRUCTION INTERGOVERNMENTAL OVERSIGHT COMMITTEE (CAC COMMITTEE)

Upon the effective date of this Agreement, a Clean Air Construction Intergovernmental Oversight Committee ("CAC Committee") will be formed by the Parties. The CAC Committee will be comprised of one representative from each participating agency ("CAC Committee Agency Representative"). Additional agency staff may participate as needed to fulfill needed subject matter expertise, but only one designated agency representative may vote on any required collective committee decisions. The CAC Committee will meet no less than bi-monthly (or as otherwise determined by the CAC Committee) to keep up to date on program activities and provide guidance to the CAC Regional Program Coordinator.

a. CAC Committee Responsibilities

The CAC Committee will be responsible for the following:

- i. Provide collective guidance to the CAC Regional Program Coordinator regarding program activities.
- ii. Decide on any key program elements (new or updating existing) that affect the program at a regional level (e.g. not just one agency), such as, but not limited to: CAC requirements, compliance expectations, registration fees, overarching program communications, and compliance system design and protocols.
- iii. On an annual basis, approve a CAC Regional Program budget.
- iv. Recommend and approve allocation of any CAC Regional Program one-time surplus or Rainy Day Program Funds (see Section 3).
- v. Verify/Approve non-budgeted expenses that are subject to the 5% Contingency Set-Aside (see Section 3).
- vi. Propose amendments, as needed, to this Agreement.

b. Public Meeting Requirements

Based on the CAC Committee responsibilities identified in Section 2.a, the CAC Committee is considered a governing body and thus subject to public meetings requirements.

c. Committee Member Good Standing

To be in good standing and to maintain CAC Committee voting eligibility, each agency representative to the CAC Committee is responsible for:

- i. Attending at least 80% of CAC Committee meetings on an annual basis.
- ii. Serving as a liaison between the CAC Regional Program Coordinator and the agency. This includes providing necessary agency-specific information, such as upcoming construction projects that need to be entered into the CAC online registration system, facilitating the agency's funding contribution per this Agreement, and other agency-specific program related logistics.
- iii. Serving as the agency's primary point of contact for internal agency CAC inquiries and external agency-specific CAC inquiries.

d. Committee Decision Making

Only designated CAC Committee Agency Representatives in good standing may vote on any CAC Committee collective decision items. Quorum shall consist of at least 70% of CAC Committee Agency Representatives in good standing. Once quorum is achieved, decisions by the CAC Committee shall be considered passed if there are no "nay" votes. Members may abstain from a vote and the item may pass so long as other non-abstaining representatives cast a "yea" vote. Per Section 2.b, all CAC Committee meetings and decision making shall follow public meeting requirements.

3. CAC REGIONAL PROGRAM COST SHARE MODEL

The Parties agree to pay the City funds for administrating the CAC Regional Program. Each agency's share of the program costs, including the City's share, will be calculated according to the following.

a. Definitions

- Agency Annual Budget – total adopted budget of an agency's most recent fiscal year
- Agency Scale Percentage – Agency Annual Budget divided by sum of all the Parties Agency Annual Budgets.

- Base Fee - 25% of projected Program Budget rounded to nearest thousand divided by number of participating agencies
 $[0.25 * \text{Program Budget Total (rounded to nearest thousand)}] / [\# \text{ of participating agencies}]$
- Fiscal Year – July 1 through June 30.
- Program Budget – Annual Clean Air Construction Regional Program budget
- Registration Revenue – revenue from equipment registration fees collected by the CAC Regional Program
- Sliding-Scale Fee - projected Program Budget minus sum of all the Parties Base Fees, multiplied by Agency Scale Percentage
 $[\text{Program Budget} - \sum \text{Base Fees}] * [\text{Agency Scale Percentage}]$

b. Cost Share Calculation

Agency's Annual Cost Share = [Base Fee] + [Sliding Scale Fee]

c. Annual Program Surplus

If the CAC Regional Program's annual costs plus revenues results in surplus funds at the end of the fiscal year, that surplus will be managed according to the following:

- i. Up to \$30,000.00 will be carried over to the subsequent fiscal year for the purposes of a "CAC Rainy Day Program Fund" to cover unanticipated program expenses. At the end of the duration of this Agreement, any remaining amount in the CAC Rainy Day Program Fund will be distributed to agencies participating in the CAC Regional Program at the time the Program ends, proportional to their fiscal contributions paid into the Program over the duration of the Program.
- ii. Any remaining amount in excess of \$30,000.00 ("Program Surplus") will be carried over to the subsequent fiscal year and allocated through the budget process for one-time activities during that fiscal year that support the CAC Regional Program, such as, but not limited to, technical assistance, training, education, etc.

The CAC Committee will be responsible for recommending and approving Program Surplus or Rainy Day Program Fund expenditures (see Section 2).

d. 5% Contingency Set-Aside for Unexpected Expenses

The City and the Parties shall budget 5% of their Agency's Annual Cost Share for the purposes of a Contingency Set-Aside. This Contingency Set-Aside will be held by each agency and reserved for use in the event the CAC Regional Program experiences a justified cost in excess of the forecasted budget and any accumulated Rainy Day Program Funds. Justified costs may include, but are not limited to, emergency or otherwise unforeseen CAC Regional Program costs. The CAC Committee shall verify/approve that the costs are justified before the City can request reimbursement from the Parties from their Contingency Set-Asides. The additional, non-budgeted cost will be divided by the participating agencies using their current Agency Scale Percentage.

e. Program Budget Development and Cost Share Declaration

- i. By February 1 the CAC Committee will agree to an adopted CAC Program budget for the upcoming fiscal year. The adopted CAC Program budget will then be used to calculate the City and the Parties' CAC Regional Program cost share per this section and used to populate Attachment A: CAC Regional Program Annual Cost Share Declaration. Each year, this Agreement will be amended with an updated Attachment A reflecting any

changes in the CAC Regional Program annual cost share amounts due to budget changes or participant changes.

- ii. By November 30 the CAC Committee shall have a final draft of the proposed CAC Program budget for the upcoming fiscal year. This final draft shall be used to vet any significant changes to the proposed CAC Program budget among each agency's applicable budget and management staff.

f. Changes in the Number of CAC Regional Program Agency Participants

Should an agency want to be added to or removed from the CAC Regional Program, this Agreement shall be amended at the same time as preparing the amendment for the upcoming fiscal year's CAC Regional Program Cost Share Declaration to add/remove that agency. The foundation of the cost share model shall not change, but only be adjusted to reflect the addition/removal of the applicable agency. An agency may unilaterally decide to terminate its participation in the CAC Regional Program, but shall do so within the following parameters:

- i. The applicable CAC Committee Agency Representative shall notify the CAC Regional Program Coordinator in writing of its decision to terminate its participation;
- ii. The notice to terminate shall be provided no later than December 31 for agency termination applicable to the following fiscal year. This timeframe is the only opportunity to opt out. Failure to provide timely written notice will result in the opting out agency to pay the agency's annual CAC Regional Program cost share payment for the following fiscal year.
- iii. The applicable agency shall maintain its CAC Regional Program commitments in accordance with this Agreement through the remainder of the fiscal year during which the notice is provided.
- iv. By July 31 of the fiscal year following the opting out agency's notice, the City will pay the opting out agency that agency's share of any CAC Rainy Day Program Fund balance, as defined in Section 3.c. The agency's share of the CAC Rainy Day Program Fund will be determined in accordance to their fiscal contributions paid into the Program over the duration of that agency's participation in the Program.

4. PAYMENT / PAYMENT PROCEDURE

- a. For the CAC Regional Program annual budget: During July of the applicable fiscal year, the City will issue invoices to each of the Parties for their share of the CAC Regional Program costs according to Attachment A. Each of the Parties shall pay the City within 30 days of receiving the invoice.
- b. For unexpected expenses subject to the 5% Contingency Set-Aside: the City will issue invoices as soon as possible after the cost is incurred and subsequently verified/approved by the CAC Committee. Each of the Parties shall pay the City within 30 days of receiving the invoice.
- c. In the event that any of the Parties fail to pay the City within 60 days of receiving the invoice, the CAC Regional Program Coordinator shall notify the CAC Committee and hold a meeting to discuss an appropriate Program response. In the event that the CAC Committee cannot agree on a feasible Program response, the City may make a unilateral decision to reduce Program activities or other related expenses in order to operate the Program within available funds.

5. EFFECTIVE DATE AND DURATION

This Agreement shall become effective on the date upon which all Parties have signed the Agreement and shall expire on June 30, 2027. This Agreement may be extended upon mutual written agreement.

6. COMPLIANCE WITH LAWS

In connection with its activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.

7. INDEMNIFICATION

- a. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), each Party shall indemnify the other, within the limits of and subject to the restrictions in the Tort Claims Act, against any liability arising from its respective acts or omissions under this Agreement (including the acts and omissions of its respective officers, employees and agents acting within the scope of their employment). Notwithstanding the previous sentence, neither Party shall be required to indemnify the other for any liability arising out of the acts or omissions of the other party (including the acts or omissions of the other Party's officers, employees or agents acting within the scope of their employment).

8. PROGRAM RECORDS, AND RECORDS REQUESTS

- a. The City shall be the custodian of all CAC Regional Program records and documents after the Effective Date of this Agreement.
- b. Any public records request or media request pertaining to the CAC Regional Program after the Effective Date of this Agreement shall be handled by the City. All Parties shall cooperate with and jointly assist the City in responding to public or media queries related to the CAC Regional Program.
- c. The City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, The City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the City's performance. The City acknowledges and agrees that the Parties shall have access to such fiscal records and other books, electronic records, documents, papers, and writings that are pertinent to this Agreement to perform examinations and audits. The City also acknowledges and agrees that the City shall retain such documents for a period of three years after termination or expiration of this Agreement, or such longer period as may be required by applicable law. In the event of any audit, controversy or litigation arising out of or related to this Agreement, the City shall retain such documents until the conclusion thereof. Copies of applicable records shall be made available to Parties upon written request.

9. CONFLICT RESOLUTION

If a conflict arises regarding any conditions of this Agreement, the Parties agree to exercise good faith in expeditiously resolving said conflict.

10. AMENDMENTS

This Agreement may only be amended by a written agreement signed by all Parties. Amendments shall occur no more than once per year and timing shall align with the development of the required annual update to Attachment A.

11. MERGER, NON-WAIVER

This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any party unless in writing and signed by all parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

INTERGOVERNMENTAL AGREEMENT
Between
Multnomah County, Washington County, Metro, and Port of Portland
And
City of Portland Bureau of Revenue and Financial Services – Procurement Services
For
Development and Administration of the Regional Clean Air Construction Program

ATTACHMENT A: CAC Regional Program Annual Cost Share Declaration

For Fiscal Year 2020-2021 the Parties agree to pay the City according to the following for their share in funding the CAC Regional Program. The following does not include the required 5% Contingency Set-Aside for Unexpected Expenses, nor agency funds for conducting the required on-site compliance checks. The Parties shall include in their CAC budget allocation the following CAC Regional Program cost share, the 5% Contingency Set-Aside for Unexpected Expenses, and funds for conducting the required on-site compliance checks.

Agency Name	CAC Regional Program Cost Share to be Paid to City
Multnomah County	\$53,000.00
Port of Portland	\$49,000.00
Washington County	\$42,000.00
Metro	\$40,000.00

For Fiscal Year 2020-2021, the City's share in funding the CAC Regional Program is: \$120,000.00.

CLEAN AIR CONSTRUCTION STANDARD

Date: January 7, 2020

Department: FRS, PES

Meeting Date: January 21, 2020

Prepared by: Tracy Fisher, x7596,

tracy.fisher@oregonmetro.gov;

Jenna Garmon, x1649,

jenna.garmon@oregonmetro.gov

Presenter(s) Tracy Fisher, Jenna Garmon

Length: 45 min.

ISSUE STATEMENT

Pollution from diesel exhaust poses a threat to the health of people living and working in the greater Portland area, with a disproportionate impact on people of color. In some areas, diesel pollution levels are over 10 times higher than state health benchmarks. In addition, diesel exhaust is a significant source of black carbon, a potent global warming pollutant. The majority of diesel pollution in the Metro region comes from nonroad construction equipment. Although newer diesel engines have pollution controls that minimize diesel emissions, older dirty diesel engines are still prevalent due to their long lifespan.

To address this issue, Metro has been participating in a regional Clean Air Construction Collaborative with the City of Portland, Multnomah County, Washington County, Clackamas County, Port of Portland and TriMet. The Collaborative has developed a common Clean Air Construction Standard that will require cleaner equipment and vehicles to be used on public construction projects. To date, the City of Portland and Multnomah County have adopted the Standard. The Collaborative is developing a [Clean Air Construction \(CAC\) Regional Program](#) to support participating agencies in administering the Standard, with the City of Portland serving as the lead agency.

ACTION REQUESTED

Staff requests Council direction on adoption of a Clean Air Construction Standard for Metro projects. At this work session, staff will present options and recommendations to address key issues identified by Council at its July 16, 2019 work session.

If Council provides direction to proceed with adoption of the Standard, staff will bring to Council a resolution to amend the Sustainable Procurement Administrative Procedure to add the Clean Air Construction Standard at the February 6, 2020 Council meeting. Staff would then continue to develop an implementation plan for the Standard and return to Council with an update on that plan prior to January 2021, if desired.

IDENTIFIED POLICY OUTCOMES

Council provided the following direction on the Standard at the July 16, 2019 work session:

- Proceed with developing a comprehensive Standard at a lower dollar threshold, with the following conditions:

- Provide support for firms certified by the Certification Office for Business Inclusion and Diversity (COBID) and small firms to comply with the Standard
- Have a contingency plan in case no bids are received on lower value projects
- Address potential barriers to COBID and small firms in competing for bids

Based on that direction, staff has developed a few adoption scenarios that represent low dollar thresholds and support for COBID firms, as well as outlined strategies for addressing the other conditions described above.

POLICY QUESTION(S), POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Which threshold does Council prefer for Metro adoption of the Clean Air Construction Standard?
2. What level of support would Council like to provide to COBID and small firms to help with compliance?

Adoption scenarios

Following are some adoption scenarios that pair a dollar threshold with recommended levels of support for COBID firms.

Program adoption scenarios and resource implications

Program Element	Scenario A	Scenario B	Notes
Threshold	Formal procurement thresholds <i>\$100,000 for public improvement; \$150,000 for other construction services</i>	\$500,000 <i>(consistent with Multnomah and Washington Counties)</i>	Council policy question
Estimated # of Projects <i>(past 3 FYs)</i>	29/year average Average value: \$600,000	8/year average Average value: \$1.5 million	
Base Program costs			
CAC regional program cost share	\$46,000	\$46,000	Annual
Program implementation			
Project management for internal implementation	\$25,000	\$25,000	Requested for 1 st year only
Direct COBID support			
COBID technical support	\$50,000	\$30,000	
Levels of support for equipment upgrades	Medium to High <i>See table below</i>	Basic to Medium <i>See table below</i>	Need to identify funds in budgeting process

Metro COBID support options

Some support for COBID firms are built into the CAC regional program, including certain exemptions and technical support. In addition, there are City of Portland, state and federal grant programs that firms could access to help with equipment upgrades. (Note that not all funding sources will be available at the time the Standard goes into effect.)

Based on Council direction and input received from COBID firms to date, staff has proposed additional types of support that Metro could provide to assist COBID firms with compliance. These are summarized below and described in more detail in Attachment B.

Direct support to COBID firms – allocate funds in the FY21 budget for both equipment upgrades and technical assistance.

- Funding for equipment upgrades:* Metro could provide funding to assist with equipment and vehicle upgrades, both within and outside of the active contract process. The following estimates are provided for a sense of scale of what equipment upgrades could be achieved through various levels of funding support. Actual costs and number of upgrades would depend on the type of equipment, remaining useful life and other factors. The estimates below are based on surveys of equipment owned by COBID firms and reflect the types of upgrades available for the different tiers of equipment. EPA uses tiers to describe the emissions profile of diesel equipment. Tiers 0-1 are the oldest equipment with minimal pollution controls and can be upgraded with a diesel oxidation catalyst (DOC) at an average cost of \$5,000; Tiers 2-3 have better pollution controls and can be significantly upgraded with a diesel particulate filter (DPF) at an average cost of \$18,000. The estimates assume that Metro would provide 50% matching funds to a firm to cover the cost of upgrades.

Levels of support for equipment upgrades

		Level of support		
Threshold	Projects/year	Basic	Medium	High
Formal	30	\$104,550	\$313,650	\$522,750
	<i>DOC</i>	5	15	26
	<i>DPF</i>	10	31	51
\$500k	10	\$34,850	\$104,550	\$174,250
	<i>DOC</i>	2	5	9
	<i>DPF</i>	3	10	17

- One-on-one technical assistance:* Metro would contract with a diesel equipment expert to provide one-on-one technical assistance to COBID firms to develop compliance plans. Assistance would include identifying equipment/vehicle retrofit, repower or replacement needs, identifying the costs of upgrade options, and help with preparation of grant applications.

Procurement rule changes – this would entail working with procurement staff and OMA to review and update the procurement rules and procedures to minimize negative impacts on

COBID firms. These options could be implemented with or without direct support to COBID firms.

- *Additive alternative for low bid*: provide a mechanism for firms to seek funding to comply with the Standard during the low bid process by identifying upgrade costs separate from the base bid.
- *Special class exemption from low bid*: create a special class of public improvement projects that are exempt from low bid requirements. This would provide an avenue for procuring these projects through a request for proposals process, which would allow more flexibility in how projects are awarded.
- *Exemption*: provide blanket or hardship exemptions for COBID firms.
- *Contingency plan for no bid scenario*: in the case that no bids are received on a project subject to the Standard, Metro staff would evaluate the procurement to determine if the Standard served as a barrier in the process or if other factors were at play. In the case of the former, Metro would have the option to exempt the project from the Standard and put the project out for bid again. This should be considered only after consideration of other options, such as modifying the project scope, timeline or budget.

No immediate changes – do not create any new programs or change rules for the first year and monitor the effectiveness of the Standard. This would provide time to determine if the assistance offered by the other organizations is effective and if there are gaps for COBID firms. If changes are needed, staff would submit them as part of the FY22 budget process.

Advantages and disadvantages of types of support

Option	Advantages	Disadvantages
Direct support	<ul style="list-style-type: none"> • Is proactive in reducing negative impact to COBID firms • Allows upgrade costs to be passed through to Metro • Equipment upgrades would provide lasting emissions reduction 	<ul style="list-style-type: none"> • Potentially requires significant new investments that have no current funding source • Creates a new program for Metro to administer (directly or through a partnership)
Procurement rule changes	<ul style="list-style-type: none"> • Does not require new investments up front • Is relatively easily to implement • Can allow some costs to be passed through to Metro • Helps COBID firms remain competitive for Metro projects 	<ul style="list-style-type: none"> • May result in the effectiveness of the standard being diminished if solutions include exemptions • Makes the procurement process more complex • Would require projects to build in compliance costs into budgets
<i>OR</i>		
No immediate changes	<ul style="list-style-type: none"> • Reduces scope of implementation planning • Relies on existing support mechanisms 	<ul style="list-style-type: none"> • May negatively impact COBID firms in the short-term

STAFF RECOMMENDATIONS

Based on Council's direction at the July 16, 2019 work session, staff recommends that Council:

1. Direct staff to develop a Resolution to amend the Sustainable Procurement Administrative Procedure to add the Clean Air Construction Standard at Council's preferred dollar threshold and approve the Intergovernmental Agreement for CAC regional program administration.
2. Direct a level of support to COBID firms that aligns with Council's preferred dollar threshold.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Adoption of the Clean Air Construction Standard would align with Metro's regional outcomes related to climate change, clean air and equity. Additional strategic context is provided below.

Racial equity goals: Goal E of Metro's *Strategic Plan to Advance Racial Equity Diversity and Inclusion* directs Metro to "create and implement policies and procedures to ensure that its resources and investments advance racial equity". Communities of color and low-income populations experience a disproportionate burden of exposure to diesel pollution. Reducing diesel emissions on Metro projects will help improve health outcomes for those impacted communities. In addition, in recognition that COBID-certified firms already face barriers to participation in public contracts, providing support to COBID-certified firms in complying with the Standard is crucial.

Climate action goals: In addition to climate and toxics reduction actions in Metro's *Sustainability plan for internal operations*, adoption of the Standard aligns with Metro's desired outcome for the region to be a leader on climate. Diesel exhaust is the largest source of black carbon in the nation. Black carbon, also known as soot, is a type of particulate matter that is a potent but short-lived climate change contributor. Reducing black carbon emissions has an immediate, positive impact on global warming.

Stakeholder engagement: The Collaborative has engaged with stakeholder groups including construction project managers, equipment operators, construction firms including COBID firms, industry associations, environmental organizations, and neighborhood and community groups. Attachment D describes stakeholder engagement in more detail.

ATTACHMENTS

- Attachment A: Clean Air Construction Standard
 - Attachment B: Support for COBID firms
 - Attachment C: CAC Regional Program Intergovernmental Agreement
 - Attachment D: Background information
-
- Is legislation required for Council action? **Yes**
 - If yes, is draft legislation attached? **No**
 - What other materials are you presenting today? **PowerPoint presentation**

Supportive Housing Services

Work Session Topics

Metro Council Work Session
Tuesday, January 21, 2020
Metro Regional Center, Council Chamber