

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN)	RESOLUTION NO. 20-5120
INTERGOVERNMENTAL AGREEMENT FOR THE)	
DEVELOPMENT AND ADMINISTRATION OF THE)	
REGIONAL CLEAN AIR CONSTRUCTION PROGRAM)	Introduced by Chief Operating Officer
AND ACKNOWLEDGING THE APPLICATION OF THE)	Marissa Madrigal in concurrence with
CLEAN AIR CONSTRUCTION STANDARD TO METRO)	Council President Lynn Peterson
PROJECTS BY AMENDMENT OF METRO'S)	
SUSTAINABLE PROCUREMENT ADMINISTRATIVE)	
PROCEDURES)	

WHEREAS, in the Metro Region, the air is unhealthy to breathe because of the presence of ultra-fine particulate matter (“PM”) emissions from older, dirty diesel engines; and

WHEREAS, 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; and

WHEREAS, one of the key opportunities to reduce diesel PM in the Metro Region’s airshed is to support the transition to construction-related equipment and vehicles that emit less diesel PM, hereafter referred to as Clean Air Construction (“CAC”); and

WHEREAS, in 2017, Metro, the City of Portland, Multnomah County, Port of Portland, Washington County and Clackamas County (the “Founding CAC Collaborative Group”) began collaborating to create a regional Clean Air Construction Standard (the “CAC Standard”) (final attached in Exhibit A) to require that nonroad construction equipment and on-road construction vehicles used for public agency construction projects reduce their emissions of PM dramatically; and

WHEREAS, to create certainty and consistency for contractors subject to the requirements, the Founding CAC Collaborative Group proposed that each agency would adopt the same CAC requirements and compliance timeline and that a single Regional Clean Air Construction Program (“Regional CAC Program”) supporting all participating agencies in administering compliance with the CAC Standard would be established by an Intergovernmental Agreement; and

WHEREAS, because the City of Portland consistently conducts the greatest average volume and variety of construction projects among the regional public agency partners, the Founding CAC Collaborative Group proposed that the City of Portland serve as lead agency for the Regional CAC Program; and

WHEREAS, the implementation of the proposed Regional CAC Program is to be governed by an Intergovernmental Agreement between Metro, the City of Portland, Multnomah County, Washington County and the Port of Portland, and any future adopting

members, including a coordinated regional approach with a City of Portland employee as program administrator, working on behalf of all participating public agencies; and

WHEREAS, Metro's fiscal year 2020-21 contribution to the proposed Regional CAC Program has been approved via the Metro Council budget process; and

WHEREAS, Metro has determined that applying the CAC Standard to COBID-certified construction firms would pose additional administrative and financial barriers which would impact their ability to participate on Metro construction project such that a temporary exemption is warranted; and

WHEREAS, Metro staff have negotiated the terms and conditions under which Metro and the regional partners propose to participate, make decisions, and share costs related to developing and administering the Regional CAC Program on behalf of all the parties, which terms are set forth in the Intergovernmental Agreement for the Development and Administration of the Regional Clean Air Construction Program (the "IGA") attached as Exhibit B; and

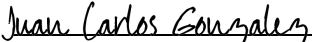
WHEREAS, concurrently with execution of the IGA, Metro's Sustainable Procurement Administrative Procedures will be updated by the Director of Finance and Regulatory Services in accordance with Metro Code Section 2.04.160 and Section 1.4 of said Procedures, to adopt the CAC Standard, attached as Exhibit A and apply it to Metro construction contracts of five hundred thousand dollars and No/100 (\$500,000.00) or more, but exempt COBID-certified firms until grant funding is available, now therefore

BE IT RESOLVED that the Metro Council:

Acknowledges and approves an update to Metro's Sustainable Procurement Administrative Procedures to adopt the CAC Standard attached as Exhibit A, apply it to Metro construction contracts of five hundred thousand dollars and No/100 (\$500,000.00) or more and exempt COBID-certified firms until grant funding is available; and


Authorizes the Metro Chief Operating Officer to execute the IGA attached as Exhibit B.

ADOPTED by the Metro Council this 30th day of July, 2020.



Juan Carlos Gonzalez, Deputy Council President

Approved as to Form:



Carrie MacLaren, Metro Attorney

Exhibits:

Exhibit A: Metro's Sustainable Procurement Administrative Procedures

Exhibit B: Intergovernmental Agreement for the Development and Administration of the Regional Clean Air Construction Program



SUSTAINABLE PROCUREMENT ADMINISTRATIVE PROCEDURE

**Published:
November 28, 2012
Amended:
July 30, 2020**

Administration of Metro Code Chapter 2.04.500-540 Metro’s Sustainable Procurement Program

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1. Policy and Legal Authority

- 1.1. Metro's contracting authority is established under Metro Charter, the Constitution of the State of Oregon and Oregon Revised Statute 279A.
- 1.2. All procurement procedures shall be subject to authority of all other applicable laws, regulations or requirements in addition to those contained in these administrative procedures and reporting requirements.
- 1.3. These administrative procedures are issued by the Chief Operating Officer pursuant to Metro Code 2.04.520 Metro's Sustainable Procurement Administrative Rules.
- 1.4. The Chief Operating Officer delegates to the Director of Finance and Regulatory Services the authority to update these rules as circumstances dictate.

2. Purpose

- 2.1. The purpose of these administrative procedures is to ensure that Metro's procurement activities support Metro's Sustainability goals, Metro's Sustainability Plan, and to be consistent with Metro's definition of Sustainability -- using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.. They are also intended to support a sustainable environment, economy and community.
- 2.2. These rules will act as a guide so that Metro employees and contractors may follow Metro Code; they will serve as a guide for purchasing decision making. Metro employees and contractors who represent Metro are to comply with these rules.
- 2.3. Nothing in these procedures, however, shall be construed as requiring a purchaser or contractor to procure products that do not perform adequately for their intended use, exclude adequate competition, or are not available at a reasonable price or in a reasonable period of time.

3. Materials Sourcing

3.1. Used or Surplus Goods

- 3.1.1. Try to find the product used before purchasing a new product; check to see if such product is available internally
- 3.1.2. Post a request on the internal bulletin board to see if the product is available as surplus from another Metro facility or department.
- 3.1.3. Email Maintenance Requests at the Metro Regional Center (MRC) to find out whether there are surplus items that meet the procurement needs.

3.2. New products

- 3.2.1. If a product or service is not available from one of these used or surplus sources, procure it from a supplier.
- 3.2.2. To minimize possible packaging and shipping, determine if other Metro departments have the same needs in the same time frame. Coordinate joint procurement. (Contracts List and Procurement Contacts)
- 3.2.3. To the highest extent possible use Best Value when determining your solicitation method. Best Value means that low price is not the only factor in determining what to buy. If practical and feasible use a Request for Proposal rather than low-bid method of solicitation so that factors other than price may be included in the purchasing decision. Factors that may be considered include, but are not limited to: sustainability (both environmental and social) and life cycle cost assessment.

4. Solicitation for Goods and Services

4.1. Sustainability shall be considered in every purchase made by Metro.

4.2. **Required Qualifications** for all purchases:

The following required qualifications shall be incorporated in all Metro solicitations for procurement of goods and services to the highest extent practicable:

- 4.2.1. Purchasers will incorporate these minimum sustainability requirements into all solicitations, where appropriate and practicable. Any exception to this requirement shall be approved in writing by the procurement manager or his or her designee.
- 4.2.2. Copy Paper: All copy paper purchased for office copiers shall be recycled from 100% post consumer material and processed chlorine-free (PCF). High speed copiers shall use minimum 30% post consumer material paper.
- 4.2.3. Electronic Equipment: All electronic equipment purchased shall be Energy Star certified, where certified products are available.
- 4.2.4. Green House Gas Reduction: Green House Gas reduction preferences and/or criteria will be incorporated into specifications and scopes of work.
- 4.2.5. Least Toxic: Request “least toxic” options in specifications and scopes of work.
- 4.2.6. Water Efficiency: All water fixture and equipment purchases will be water efficient (refer to new construction and renovation standards).
- 4.2.7. Vehicles: All vehicles purchased will have a smaller environmental footprint than the vehicle replaced or, if new, will be a Green Vehicle if at all possible.
- 4.2.8. Cleaning Chemicals: All cleaning chemicals will be Green Seal certified to the GS-37 standard, or will be comparably certified.
- 4.2.9. Computers: All computers and monitors will be EPEAT Gold or Silver certified.

- 4.2.10. Fluorescent Lighting: All fluorescent lighting will meet the LEED credit for Reduced Mercury in Lamps. The maximum target for the overall average of mercury content in lamps will be 90 picograms per lumen-hour or less.
- 4.2.11. All construction or renovation projects at Metro facilities shall follow the Metro Green Building Policy, adopted by Metro Council resolution no. 11-4294A.¹
- 4.2.12. Construction demolition or deconstruction services shall, at a minimum, comply with City of Portland rules regarding construction debris recycling.² Deconstruction services are preferred.
- 4.2.13. Minority, Woman and Emerging Small Business (MWESB): All non-construction contracts between \$5,000 and \$50,000 shall be solicited to at least one MBE, one ESB and one WBE, per Metro's MWESB program.³ Use sustainable procurement as an opportunity for MWESB vendors rather than a barrier to business with Metro.
- 4.2.14. Sheltered Market Program: All construction contracts between \$5,000 and \$50,000 shall be solicited from MWESB vendors only per Metro's Sheltered Market Program.⁴
- 4.2.15. Metro construction or renovation projects that cost \$500,000 or more shall comply with the Clean Air Construction Standard included as Appendix B of these administrative procedures.

4.3. Preferred Qualifications for all purchases:

In addition to the required qualifications above, purchasers will incorporate the following preferred qualifications when procuring goods and services to the highest extent practicable:

- 4.3.1. Certified organic products
- 4.3.2. Repurposed furniture
- 4.3.3. Fair trade certified products
- 4.3.4. Locally available products and services
- 4.3.5. Durable, repairable and refillable products
- 4.3.6. Products and services certified by a third-party ecolabel
- 4.3.7. Products made of recycled and recovered content
- 4.3.8. Green vehicles that are fuel efficient or use alternative fuels

¹ Metro Green Building Policy Administrative Procedure, 2011.

http://library.oregonmetro.gov/files/metro_green_building_policy_resolution_11-2011.pdf

² City of Portland Construction and Demolition Debris recycling requirements, www.portlandoregon.gov/bps/41683.

³ Metro Minority, women and emerging small business program, www.oregonmetro.gov/index.cfm/go/by.web/id=24904.

⁴ Metro Sheltered Market program, <http://imet.metro-region.org/index.cfm/go/by.web/id=20041>.

- 4.3.9. Require vendors to follow sustainable business operations which may include but not limited to use of sustainable and non-toxic cleaning products and use of alternative fuel vehicles for delivery or other services.
- 4.3.10. Request reduced packaging through such methods as vendor take-back of packaging, packaging reuse, and recyclable packaging.
- 4.3.11. Request sustainable delivery and shipping options, such as use of renewable fuels for transportation or bicycle delivery service.
- 4.3.12. Life Cycle Cost Assessment: considering Life Cycle Cost Assessment when evaluating a product's price using a Product Stewardship model for goods or all phases of the product or service (leased carpet tiles, for example).
- 4.3.13. Request reports from selected vendors on compliance with Metro's Sustainable Procurement Administrative Procedure whenever possible.
- 4.3.14. Utilization of the following price preferences allowable by State of Oregon when purchasing agricultural products or recycled content products:
 - 10 percent price preference for agricultural products grown and transported entirely within the State of Oregon (ORS 279A.128)
 - 10 percent price preference for goods that are fabricated or processed, or services that are performed, entirely within the State of Oregon (ORS 279A.128)
 - 5 percent price preference for recycled goods as defined and explained in the EPA's Comprehensive Procurement Guidelines (ORS 279A.125)

5. Roles and Responsibilities

5.1. Department Supervisors and Managers

- 5.1.1. Include Sustainable Purchasing as an area for employee development, where practicable, to identify possible areas of improvement
- 5.1.2. Ensure that employees complete available pertinent training opportunities and ensure that such training is tracked, managed and reported as required
- 5.1.3. Designate department Sustainable Procurement Representative

5.2. Department Sustainable Procurement Representatives

- 5.2.1. Participate in training on sustainable procurement and be the resource for department staff
- 5.2.2. Serve as the point person for department evaluation of the practicability of using particular recovered or sustainable products and services
- 5.2.3. Represent the department on any agency-wide Sustainable Procurement efforts

- 5.2.4. Revise department procedures as necessary to facilitate procurement of sustainable products and services and for ease of data collection

5.3. Any Metro employee buying goods or services

- 5.3.1. Take into consideration sustainability when planning any purchase
- 5.3.2. Include the above sustainability factors in their purchases, whenever practicable
- 5.3.3. Measure and track all sustainable purchases made using Peoplesoft codes provided for tracking sustainable purchases
- 5.3.4. Participate in Metro's online sustainable procurement training
- 5.3.5. Consult early in the procurement process with appropriate parties (e.g., environmental specialists, contract specialists/contracting officers) to facilitate procurement planning and to prepare sustainable scopes of work or specifications
- 5.3.6. Monitor contract performance to ensure compliance with sustainable procurement requirements in accordance with the terms of the contract
- 5.3.7. Submit the Material Safety Data Sheet (MSDS) to Metro's chemical inventory whenever the product purchased has an MSDS.⁵

5.4. Procurement Services

- 5.4.1. Include formal and informal Sustainable Procurement Training in the Procurement Training Curriculum at least twice a year
- 5.4.2. Provide assistance to Metro buyers in writing and evaluating sustainability in solicitations and purchases
- 5.4.3. Seek opportunities for cooperative purchases, both within Metro and with other public agencies
- 5.4.4. Monitor agency compliance with these rules
- 5.4.5. Revise Procurement Procedures periodically to reflect these rules
- 5.4.6. Provide a Sustainable Procurement Toolbox and keep it maintained and updated. This toolbox will include:
 - 5.4.6.1. Solicitation and Contract templates that include appropriate sustainability language
 - 5.4.6.2. Solicitation and Contract examples that include appropriate sustainability language
 - 5.4.6.3. Lists of suitable, preferred sustainable goods and services and links to such lists

⁵ Metro Material Safety Data Sheet (MSDS) database, <http://imet.metro-region.org/index.cfm/go/by.web/id=18764>.

- 5.4.6.4. Required and allowable third party certifications and advice on how to use such certifications
- 5.4.6.5. Links to MWESB databases and resources
- 5.4.6.6. Guidance on purchasing less-toxic or non-toxic products and link to the Metro chemical inventory
- 5.4.6.7. Training documents and links to external training opportunities
- 5.4.6.8. Sustainable Procurement Checklist

5.5. Metro Sustainability Program

- 5.5.1. Consult with Procurement Services and Departments about how to integrate sustainability criteria into procurements and contracts consistent with the Metro Sustainability Plan⁶ for internal operations
- 5.5.2. Provide input to Procurement Services about best practices in sustainable procurement
- 5.5.3. Coordinate with Procurement Services to incorporate sustainable procurement progress into regular sustainability reports to Metro Council

6. Reporting Requirements

- 6.1. Procurement Services will report fiscal results to the Metro Council and to the Metropolitan Exposition and Recreation Commission (MERC) annually. These reports shall include, at a minimum:
 - 6.1.1. Percentage of sustainable procurements by dollar amount as compared with total overall spending and compared to a fiscal year 2012 – 2013 baseline year;
 - 6.1.2. Extent to which purchases made during the reporting year support Metro's Sustainability Plan goals;
 - 6.1.3. List of instances in which these sustainability rules were waived during the reporting year; and
 - 6.1.4. Barriers to the procurement of sustainable products that meet Metro's and MERC's needs and suggestions for overcoming these barriers.

7. Sustainable Procurement Program Goals

- 7.1. An increase of 5 percent per year on the dollar amount of sustainable products purchased from the prior year. The baseline will be FY 12-13. Metro's five year goal is to achieve a 25 percent increase from baseline year spending levels by FY 17-18;

⁶ Metro Sustainability Plan for Internal and Business Operations, 2010.
http://library.oregonmetro.gov/files/metro_sustainability_plan_final_2010.pdf
Sustainable Procurement Administrative Procedure
Implementing Metro Code Chapter 2.04.500-540
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7.2. An increase in the utilization of MWESB certified firms in Metro contracting, expressed as percent of total spend, consistent with Metro's MWESB program goals; and

7.3. An increase in the utilization of local businesses within 400 miles of Metro.

8. Update of Administrative Procedures

8.1. These procedures may be updated periodically by an action of Metro's Chief Operating Officer.

9. Glossary of terms

For the purposes of this policy, the following terms and definitions apply:

Best Value Contracting: A type of contracting that allows purchasers to consider factors other than price, such as: experience, sustainability, personnel, diversity, financial capabilities.

Certified organic: An item that has been grown according to strict uniform standards that are verified by independent state or private organizations.

Contractor: Any person, group of persons, consultant, designing architect, association, partnership, corporation, or other business entity that has a contract with Metro (including suppliers) or serves in a subcontracting capacity with an entity having a contract with Metro for the provision of goods or services.

Ecolabel: A label that identifies overall environmental preference of a product or service within a specific product/service category based on Life Cycle Cost Assessment considerations and that is awarded Third Party Certification.

Environmental footprint: the area of productive land and water ecosystems required to produce the resources that one consumes and assimilate the wastes that the he/she produces.

EPEAT: Electronic Product Environmental Assessment Tool. An environmental certification for electronic equipment, commonly computers, developed by the Environmental Protection Agency and maintained by the Green Electronics Council.

Fair trade: A trading partnership, based on dialogue, transparency and respect, which seeks greater equity and contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers.

Green building practices: A whole-systems approach to the design, construction, and operation of buildings and structures that helps mitigate the environmental, economic, and social impacts of construction, demolition, and renovation, and includes Third Party Certification.

Green vehicle: A vehicle that emits low or zero emissions; typically by fuels other than gasoline or diesel.

Habitat friendly: Development practices that reduce the impact of development on natural resources, look beyond the building envelope and focus on land development and site design

that mimic nature's processes, and conserve the natural systems and hydrologic functions of a site.

LEED: Leadership in Energy & Environmental Design. A commonly used building certification system developed and maintained by the US Green Building Council.

Least toxic: No additives that are chemicals of high concern to human or environmental health may constitute part of the product except at levels consistent with background levels in the environment.

Life cycle cost assessment: The comprehensive accounting of the total cost of ownership, including the initial costs, energy and operational costs, longevity and efficacy of service, and disposal costs.

Locally available: Grown, manufactured, or assembled within 400 miles of the Metro Region or sold from a vendor located within 400 miles of the Metro Region.

MWESB: Minority-Owned Enterprise, Woman-Owned Enterprise and Emerging Small Business. A business certification developed and maintained by the State of Oregon.

Post-consumer material: A material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-Consumer Material is a part of the broader category of Recovered Material.

Practicable: Satisfactory in performance and available at a fair and reasonable price.

Pre-consumer material: Material or waste remaining after manufacture of a product.

Product stewardship: Whoever designs, produces, sells, or uses a product takes responsibility for minimizing the product's environmental impact throughout all stages of the product's life cycle.

Qualification: A condition or standard that must be met or complied with.

Recovered material: Waste material and by-products which have been recovered or diverted from solid waste and includes both Post-Consumer Material and manufacturing or Pre-Consumer Material. Also known as recycled material or recycled content.

Recovered product: A product manufactured using Recovered Material and meeting the Minimum Recovered Content Standards established by Metro's Sustainable Procurement Administrative Rules.

Recycled paper: Paper meeting the Minimum Recovered Content Standards established by Metro's Sustainable Procurement Administrative Rules.

Repurpose: To give a new purpose or use to.

Solicitation: A request for a priced offer to sell goods or services.

Source, sourcing: To specify the source of

Supplier diversity: A Sustainable Business Practice that encourages the use of previously underutilized vendors as suppliers.

Sustainability: Using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

Sustainable procurement: Purchasing materials, products, and services in a manner that integrates fiscal responsibility, social equity, and community and environmental stewardship.

Sustainable products: Products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider Life Cycle Cost Assessment.

Third party certification: An independent, objective assessment of a service or product completed by someone other than the service provider or product manufacturer.

Total cost of ownership: A financial estimate whose purpose is to help consumers determine direct and indirect costs of a product or system.

Molly Chidsey, Julie Hoffman

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SUSTAINABLE PROCUREMENT ADMINISTRATIVE PROCEDURE

Appendix A

Administration of Metro Code Chapter 2.04.500-540

Administrative Procedure Adoption Record

Adopts this Sustainable Procurement Administrative Procedure to implement Metro Code Chapter 2.04.500-540, Metro's Sustainable Procurement Program.

Be it so ordered:

Date

Signature

_____, Metro, Chief Operating Officer

APPENDIX B: CLEAN AIR CONSTRUCTION STANDARD

Idle Reduction Requirements

Beginning January 1, 2020 contractors working on Metro 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 ensure all diesel equipment operators are aware of the policy, and
- Contractors will post “Five Minute Limit” signs in high foot traffic areas of the job site, visible to workers.

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, 2022 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 concrete mixers used on Metro construction projects must meet the following requirements. When pursuing diesel emission control device retrofits, equipment and vehicle owners shall install the emission control device that maximizes diesel particulate matter reductions for that specific piece of equipment or vehicle in accordance with the Compliance Options Protocols.

Effective Date of Diesel Engine Requirement	Nonroad Diesel (over 25hp)				On-Road Diesel (concrete mixers and dump trucks)			
	Engine Requirements	Retrofit Options			Engine Requirements	Retrofit Options		
		DPF	DOC (only if DPF or equivalent can't be installed)			DPF	DOC (only if DPF or equivalent can't be installed)	
		All Firms	Non-DMWES B/SDVB Firms	DMWES B/SDVB Firms		All Firms	Non-DMWES B/SDVB Firms	DMWESB /SDVB Firms
January 1, 2020	No Idling							
January 1, 2021								
January 1, 2022	No Tier 0 engines allowed unless retrofit	Y	Y	Y				
January 1, 2023	No Tier 0 or 1 engines allowed unless retrofit	Y	Y	Y				
January 1, 2024	No Tier 0, 1, 2, or 3 engines allowed unless retrofit	Y	N (pre-2024 installs allowed)	N (pre-2024 installs allowed)	No pre-2007 engines allowed unless retrofit	Y	N	N (pre-2024 installs allowed)
January 1, 2025			N					

COBID-certified firms are exempt from the diesel engine requirements in the Clean Air Construction Standard set forth in this Appendix B until grant funding to assist with equipment upgrades becomes available, or until January 1, 2024, whichever is earlier. When additional grant funding becomes available to assist with equipment upgrades, the Clean Air Construction Standard will be updated to remove the exemption for COBID-certified firms.

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 an 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 Metro, 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 Metro, 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 Metro staff. In addition, random on-site inspections by Metro staff (or approved program operator) will be conducted on a project by project basis.

Compliance Options Protocols

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

NONROAD Compliance Options Protocol

Protocol Step	Question(s)	Answer	Action
1	Is the nonroad equipment over 25hp?	YES	Go to Step 2
		NO	Register equipment and obtain compliance verification. No further action required other than anti-idling compliance on job-site.
2	Is the equipment required for an emergency? (including for underground equipment operators)	YES	Request Exemption
		NO	Go to Step 3
3	Is the equipment 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.
	Does the diesel equipment utilize only a Tier 4 engine(s)?	NO	Go to Step 4
4	Can the equipment 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 it is currently 2023 or earlier, go to Step 5

			If it is currently 2024 or later, go to Step 6.
5 (pre-2024)	Can the equipment be retrofit with an emissions control device other than DPF?	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.			

ON-ROAD Compliance Options Protocol

Protocol Step	Question(s)	Answer	Action
1	Is the on-road vehicle a concrete mixer or dump truck?	YES	Go to Step 2
		NO	Register equipment and obtain compliance verification. No further action required other than anti-idling compliance on job-site.
2	Is the vehicle required for an emergency? (including for underground equipment operators)	YES	Request Exemption
		NO	Go to Step 3
3	Is the 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 concrete mixer or dump truck 2007 or newer?	NO	Go to Step 4
4	Can the 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 it is currently 2023 or earlier <u>and</u> the vehicle owner is a DMWESB/SDVB firm, go to Step 5. If it is currently 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?	YES	Retrofit equipment with a CARB or EPA verified 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

2018	T4b	T4b	T4b	T4b	T4b	T4b	T4b	T4b
2019	T4b	T4b	T4b	T4b	T4b	T4b	T4b	T4b
2020	T4b	T4b	T4b	T4b	T4b	T4b	T4b	T4b

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.

SDVB: Service Disabled Veteran Business as certified by the State of Oregon Certification Office for Business Inclusion and Diversity.

EXHIBIT B: INTERGOVERNMENTAL AGREEMENT

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 27th day of January 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. One of the key opportunities to reduce diesel PM in the Portland Metro airshed is to support the transition to construction-related equipment and vehicles that emit less diesel PM, hereafter referred to as Clean Air Construction (CAC). 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 City's applicable rules.

b. The Parties

Each agency will:

- i. Adopt the CAC 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 CAC 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

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 and Public Records 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 and public records 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, unless otherwise excused in advance at the discretion of the CAC Regional Program Coordinator.
- 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. If a CAC Committee Agency Representative is unable to attend a specific vote, they may assign an alternate from their agency to attend and vote on their behalf so long as the CAC Committee Agency Representative notifies the CAC Regional Program Coordinator in advance of the applicable meeting. 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 (Annual Cost Share) , 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 * Program Budget Total (*rounded to nearest thousand*)] / [# 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
[Program Budget – Σ Base Fees] * [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 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.

- ii. 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.

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. If the conflict cannot be resolved, the Parties agree that

the matter will be submitted to mediation. The mediator shall be chosen by consensus of the Parties and mediator fees shall be split equally amongst the Parties to the mediation.

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.

12. COUNTERPARTS

This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.

IN WITNESS WHEREOF, the City (through the Bureau of Revenue and Financial Services – Procurement Services), Multnomah County, Washington County, Metro, and Port of Portland have executed this Agreement as of the Effective Date.

CITY OF PORTLAND BUREAU OF REVENUE AND FINANCIAL SERVICES – PROCUREMENT SERVICES

Lester Spitler, Chief Procurement Officer

Date

MULTNOMAH COUNTY

Deborah Kafoury, County Chair

Date

PORT OF PORTLAND

Curtis Robinhold, Executive Director

Date

WASHINGTON COUNTY

Erin Calvert, Deputy County Administrator

Date

METRO

Heidi Rahn, Director, Capital Asset Management

Date

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.

IN CONSIDERATION OF RESOLUTION NO. 20-5120, FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR THE DEVELOPMENT AND ADMINISTRATION OF THE REGIONAL CLEAN AIR CONSTRUCTION PROGRAM AND ACKNOWLEDGING THE APPLICATION OF THE CLEAN AIR CONSTRUCTION STANDARD TO METRO PROJECTS BY AMENDMENT OF METRO'S SUSTAINABLE PROCUREMENT ADMINISTRATIVE PROCEDURES

Date: July 16, 2020

Department: Finance and Regulatory
Services and Capital Asset Management

Meeting Date: July 30, 2020

Prepared by: Tracy Fisher, x7596,
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Presenter(s) Tracy Fisher, Jenna Garmon
Length: 10 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. Recent studies also indicate that people of color experience worse effects from COVID-19 infection, and that diesel pollution exacerbates the health impacts of COVID-19. Diesel exhaust is also a significant source of black carbon, a potent global warming pollutant. A significant portion of diesel pollution in the Portland region comes from construction equipment.

To address this issue, Metro has been participating in a regional Clean Air Construction Collaborative with Multnomah County, Washington County, Clackamas County, City of Portland, Port of Portland and TriMet. The Collaborative has developed a common Clean Air Construction Standard (Standard) that would require cleaner equipment and vehicles to be used on public construction projects.

ACTION REQUESTED

- Adopt a resolution in support of amending the Sustainable Procurement Administrative Rules to add the Clean Air Construction Standard
- Approve the Intergovernmental Agreement for regional administration of the Standard

IDENTIFIED POLICY OUTCOMES

Improve regional air quality by reducing diesel pollution from equipment used on Metro's construction projects.

Metro Sustainability Plan

Metro's adopted Sustainability Plan for internal operations (2010) identifies the following actions related to diesel emissions in support of the climate and toxics reductions goals:

Climate Action 2.2 Reduce emissions from the consumption of carbon-intensive fuel related to business operations by adopting sustainable fuel use standards.

Standards should include:

- *Provisions for back-up generators, heavy equipment, offroad vehicles and other equipment;*
- ***Idle reduction policy for fleet and contractors;***
- ***Diesel emission standards for off-road equipment based on EPA's Tier system, and retrofit or replace equipment to meet those standards; and***
- *Fuel efficiency standards for fleet vehicles and increased use of alternative fuels where available.*

*Toxics Action 2.3 Adopt diesel particulate matter (PM) reduction strategies for internal operations and on Metro property. **Include idle reduction policy and require use of diesel PM control technology for all diesel-burning equipment.***

POLICY QUESTION

Does Metro Council support adoption of the Clean Air Construction Standard for Metro's construction projects?

STAFF RECOMMENDATIONS

1. Adopt a resolution in support of amending the Sustainable Procurement Administrative Procedures to add the Clean Air Construction Standard:
 - Adopt a \$500,000 threshold for Metro construction projects subject to the Standard; and
 - Include a compliance exemption for COBID-certified firms until additional grant funding is available or 2024, whichever is earlier.
2. Approve the Intergovernmental Agreement for regional administration of the Standard:
 - Support staff in working with agency partners to promote wider adoption of the Standard; and
 - Prioritize the identification of grant funding for COBID-certified firms to retrofit equipment.

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.

Climate: The Metro Council has identified climate change mitigation as one of its top priorities. Diesel exhaust is the largest source of black carbon in the nation. Black carbon 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.

Air quality: Clackamas, Multnomah, and Washington counties rank in the top 5 percent of all counties nationwide for ambient diesel particulate concentrations. In some areas, diesel pollution levels are over 10 times higher than state health benchmarks. Using EPA health effects methodology, the Oregon DEQ estimates that over \$1.6 billion is spent every year on avoidable health related costs such as illness, hospitalization, lost work days, and even premature death due to diesel emissions exposure.

Communities of color and low-income populations experience a disproportionate burden of exposure to diesel pollution. The Harvard School of Public Health released a study that links higher exposure to particulate matter to a higher risk of death from COVID-19 infection. Data also indicates that communities of color are highly vulnerable to the coronavirus pandemic, with disproportionate numbers of infections and deaths among [African Americans](#) and [Latinos](#). Reducing diesel emissions on Metro projects will help improve health outcomes for these impacted communities.

Racial equity: 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". In recognition that COBID-certified firms already face barriers to participation in public contracts, staff recommend a short-term exemption for COBID-certified firms until additional grant funding to support compliance with the Standard is available.

Stakeholder engagement and feedback

The Collaborative has engaged with key stakeholder groups including construction firms, construction project managers, equipment operators, industry associations, environmental organizations, and community groups. The 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 four years to allow the contracting community to plan ahead for investments and spread out costs. In addition, the standard includes extended compliance timelines and flexibility for COBID certified firms.

In development of the proposed approach for Metro adoption of the Standard, staff has conducted additional outreach to COBID firms to better understand the barriers that the Standard might pose, and strategies to support COBID firms with compliance. The regional program administration will focus support activities on COBID firms, and state and federal grants administered by DEQ will be available starting in 2021 to help offset the costs of equipment upgrades.

Changes to the Standard requirements and implementation timeline

Primarily due to the financial and health impacts of COVID-19, the regional collaborative has updated the Standard to:

- Delay the initial engine requirements timeline for a full year, to begin in January 2022;

- Shorten the overall engine requirements timeline by a year to accelerate much-needed air quality benefits; and
- Expand the allowed use of emission retrofit devices to reduce compliance costs and provide more flexibility to contractors

The anticipated net impact of these changes will be an easier compliance path for contractors, especially COBID-certified firms, while achieving equivalent, or better results in reducing harmful diesel particulate matter. These changes give contractors an additional year to plan for these requirements, and allow contractors to access related grant programs during 2021, such as the State's VW Settlement grant funds, prior to the first engine requirement going into effect. The impact on emissions reductions from delaying the start of the program will be moderated by a shortened overall timeline and economy-driven project deferrals. Many projects will now be starting during more advanced phases of the Standard when engine requirements are stricter.

Legal antecedents:

The Oregon legislature passed HB 2007 in the 2019 session, which contains the following provisions:

- Phases out old diesel on-road engines in Multnomah, Clackamas and Washington Counties;
- Requires clean diesel equipment for state-funded construction projects (\$20M or more);
- Directs use of remaining Volkswagen settlement funds (\$53 million) to clean up diesel engines, with preference for COBID firms; and
- Creates a task force to consider additional funding strategies

Anticipated effects:

It is anticipated that implementation of this Standard would accelerate the timeline for upgrading diesel equipment and vehicles in the region to cleaner versions, resulting in improvements to air quality and health outcomes in the region.

Financial implications:

Adoption of the Standard would have financial implications for Metro through Metro's contribution to the regional administration of the Standard. For FY21, Metro's cost share would be \$46,000.

BACKGROUND

Many jurisdictions across the country have procurement standards that require cleaner construction equipment on their publicly funded projects. In 2016, 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.

In 2018, the City of Portland and Multnomah County co-funded an air quality feasibility study to perform an in-depth assessment of various strategies actionable by local government to address the region's air quality issues. A top recommended action in the

study was to implement diesel engine specifications for public construction projects. This research informed development of a Clean Air Construction Standard to reduce the air quality, health and climate impacts that result from public construction projects.

The Collaborative is also 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. To date, the City of Portland, Multnomah County, Washington County and Port of Portland have adopted the Standard.

There have been two Council work sessions to date on the Clean Air Construction Standard. Council has expressed strong support for adopting the Standard, with the key decision points centered on the appropriate dollar threshold for projects subject to the Standard, and how to mitigate potential negative impacts on COBID-certified firms while still achieving the desired air quality outcomes.

- Is legislation required for Council action? **Yes**
- If yes, is draft legislation attached? **Yes**
- What other materials are you presenting today? **PowerPoint presentation**