





## Office of the Auditor General

Laura Goodspeed, CPA  
Auditor General

Coleman A. Young Municipal Center  
2 Woodward Avenue, Suite 216  
Detroit, Michigan 48226  
Phone: (313) 224-3101  
Fax: (313) 224-4091  
[www.detroitmi.gov](http://www.detroitmi.gov)

### MEMORANDUM

**DATE:** May 1, 2023

**TO:** Honorable City Council  
Mayor Mike Duggan

**FROM:** Laura Goodspeed, CPA *LG*  
Auditor General

**RE:** Audit Of The Civil Rights, Inclusion, And Opportunity Department  
Third Report On Compliance Fee Dollars - Operations

**C:** Anthony Zander,  
Director, Civil Rights, Inclusion, and Opportunity Department  
Colin Handzinski,  
Management Analyst, Office of the Chief Financial Officer  
Jeanet Kulcsar,  
Director of Strategy, Office of the Chief Financial Officer  
John Naglick,  
Chief Deputy CFO/Finance Director, Office of the Chief Financial Officer  
Jay Rising,  
Chief Financial Officer, Office of the Chief Financial Officer  
Nicole Sherard-Freeman,  
Group Executive, Jobs, Economy & Detroit At Work

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Attached for your review is our third report in conjunction with our audit of the "Civil Rights, Inclusion, and Opportunity Department Compliance Fee Dollars." This report focuses on the Civil Rights, Inclusion, and Opportunity Department (CRIO) operations. Our report contains the following elements: audit purpose, scope, objectives, approach and methodology, and conclusions; background; our audit findings and recommendations; note of concerns; noteworthy accomplishments; and the responses from the Civil Rights, Inclusion, and Opportunity Department.

We want to thank the employees of the organization named above for their cooperation and assistance extended to us during this phase of the audit.

Copies of all the Office of the Auditor General reports can be found on the City's website: <https://www.detroitmi.gov/government/auditor-general>.

**AUDIT OF THE CIVIL RIGHTS, INCLUSION, AND OPPORTUNITY DEPARTMENT  
THIRD REPORT ON COMPLIANCE FEE DOLLARS**

**OPERATIONS**

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**AUDIT OF THE CIVIL RIGHTS, INCLUSION, AND OPPORTUNITY DEPARTMENT  
THIRD REPORT ON COMPLIANCE FEE DOLLARS**

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## EXECUTIVE OVERVIEW

In September 2018, the Office of the Auditor General (OAG) was requested by City Council to conduct an audit of the Civil Rights, Inclusion, and Opportunity Department compliance fee dollars, and to specify when dollars were transferred to the Detroit Employment Solutions Corporation and how those dollars were utilized by the Detroit Employment Solutions Corporation (DESC).

To date, we have issued two interim audit reports relating to CRIO's compliance fee dollars:

1. **Audit Of The Civil Rights, Inclusion, And Opportunity Department Interim Report On Compliance Fee Dollars - Financial Operations (December 2020)**<sup>1</sup>

The first interim report focused on CRIO's financial operations related to the collection, deposit, and reconciliation of compliance fee dollars. It should be noted that all the findings and recommendations were directed to divisions within the Office of the Chief Financial Officer (OCFO), as they are primarily responsible for the receipt, deposit, and reconciliation of CRIO's compliance fees.

We found that the OCFO did not follow some of its own directives and departmental policies and procedures, relating to the collection, cash receipts and deposits, and reconciliation of the compliance fee dollars.

2. **Audit Of The Civil Rights, Inclusion, And Opportunity Department Second Interim Report On Compliance Fee Dollars – Detroit Employment Solutions Corporation (May 2021)**<sup>2</sup>

The second interim audit report focused on DESC's receipt and usage of CRIO's compliance fee dollars based on the purposes established within the Workforce Training Fund Agreement. The Workforce Training Fund Agreement is specific in its purpose to build a pipeline of Detroit residents for employment in construction and construction related industries.

We found that DESC training programs related to the execution of EO2016-1 through the Workforce Training Fund Agreement were not used exclusively for the specific program goal of preparing Detroit residents for employment in the skilled construction trades and jobs resulting from new development in the City.

This is our third audit report which focuses on CRIO operations specifically related to the department's activities including the assessment, monitoring, and reporting of compliance fee dollars.

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<sup>1</sup> The Office of the Auditor General Audit Reports can be found at: <https://www.detroitmi.gov/government/auditor-general>.

<sup>2</sup> Same as footnote 1.

We found that CRIO:

- Did not develop proper formulas to accurately assess compliance fees dollars resulting in potential loss of \$819,125 of revenues.
- Did not always complete, perform, and/or submit contractors' compliance evaluations and reports timely to ensure timely billings.
- Does not have a process that ensures that they capture and monitor all projects subject to EO 2016-1.

We also have additional concerns that are not audit findings but rise to the level that warrants additional attention from CRIO. These "Note of Concerns" include, CRIO's "misguided tone at the top" regarding the nature of the compliance fees and a lack of adequate policies and procedures relating to the enforcement of EO 2016-1. Also, there is a lack of due diligence in monitoring the Workforce Training Fund and CRIO does not use "Detroit" specific metrics to augment the results of the Workforce Training Fund activities. As noted in the previous Second Interim audit report<sup>3</sup>, the conflict in language between Executive Order 2016-1, and the Workforce Training Fund Agreement and its Exhibit C still exists. And lastly, we noted that CRIO does not have sufficient project tracking and data management procedures, thus CRIO is unable to "connect all of the dots" among the projects, prime and sub-contractors, compliance fees assessments, and compliance fees collection.

We commend CRIO and the Office of Chief Financial Officer for their efforts to increase the effectiveness of the Department's operations in some areas. During our audit, we observed operational deficiencies that were either resolved or significantly improved during the audit. We have noted these accomplishments in the section listing "Noteworthy Accomplishments" in this report.

A key component of an internal audit is not only to meet specific objectives as requested by the governing body, but also to determine if the operations are effective and efficient. According to the Government Accountability Office (GAO), "the concept of accountability for use of public resources and government authority is key to our nation's governing processes."<sup>4</sup> The Generally Accepted Government Auditing Standards (GAGAS) states that<sup>5</sup>:

Government auditing is essential in providing accountability to legislators, oversight bodies, those charged with governance, and the public. GAGAS engagements provide an independent, objective, nonpartisan assessment of the stewardship, performance, or cost of government policies, programs, or operations, depending upon the type and scope of the engagement.

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<sup>3</sup> "Audit Of The Civil Rights, Inclusion, And Opportunity Department Second Interim Report On Compliance Fee Dollars – Detroit Employment Solutions Corporation (May 2021).

<sup>4</sup> GAO, [GAGAS Performance Audits: Discussion of Concepts to Consider When Auditing Public Functions and Services \(gao.gov\)](https://www.gao.gov/products/GAGAS-Performance-Audits-Discussion-of-Concepts-to-Consider-When-Auditing-Public-Functions-and-Services), GAGAS Paragraph 1.02.

<sup>5</sup> GAO, Government Auditing Standards: 2018 Revision, GAO-18-568G, Chapter 1: Foundation and Principles for the Use and Application of Government Auditing Standards 1.05.

As independent internal auditors, we approach our audits with an unbiased focus on adding value and improving an organization's operations. Responsibility for monitoring the implementation of recommendations is set forth in Section 7.5-105(4) of the City Charter, which states in part that:

Recommendations that are not put into effect by the department shall be reviewed by the Finance Director<sup>6</sup> (or his Designee) who shall advise the Auditor General and the City Council of the action being taken with respect to the recommendations.

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<sup>6</sup> The 2012 City Charter does not reflect that the position and responsibilities of the "Finance Director" were replaced with the creation of the Office of the Chief Financial Officer and its position under the "Emergency Manager Order No. 41" signed into law on September 25, 2014. We interpret the responsibility to lie with the Chief Financial Officer and/or the Deputy Chief Financial Officer/Finance Director as his designee.

## **AUDIT PURPOSE, SCOPE, OBJECTIVES, APPROACH AND METHODOLOGY, AND CONCLUSIONS**

### **Audit Purpose**

The “Audit of Civil Rights, Inclusion, and Opportunity Department Compliance Fee Dollars” is being performed in accordance with the Office of the Auditor General’s charter mandate to make audits of the financial transactions, performance, and operations of City agencies based on an annual risk- based audit plan prepared by the Auditor General, or as otherwise directed by the City Council, and report findings and recommendations to the City Council and the Mayor.

### **Audit Scope**

This is a performance audit conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) 2018 Revision, compiled by the Comptroller General of the United States Government Accountability Office, except for a Peer Review of the Office of Auditor General within the last three years (See “**APPENDIX A: Generally Accepted Government Auditing Standards**” on page 36 of this report for more information on GAGAS.)

This audit not only focuses on the Civil Rights, Inclusion, and Opportunity Department (CRIO) for the period of December 1, 2016, through June 30, 2019, specifically relating to CRIO’s compliance fee dollars, but also encompasses Detroit Employment Solutions Corporation’s activities on how to utilize these dollars, and City’s financial operations of compliance fee dollars as well. This third and final audit report focuses on CRIO’s operations, specifically related to the assessment, monitoring, and reporting of compliance fee dollars.

### **Audit Objectives**

The objectives of the “Audit of the Civil Rights, Inclusion, and Opportunity Department (CRIO) Compliance Fee Dollars” specifically related to its operations are to determine if:

- CRIO complies with the collection of compliance fees in accordance with applicable state and local laws, Office of the Chief Financial Officer (OCFO) directives, departmental policies and procedures, and any other applicable policies and procedures.
- There are any other cash-related areas that should be included as a part of the audit.

We are issuing a report that includes findings and recommendations resulting from our audit, and responses from the relevant department’s management related to our findings.



## **Audit Approach and Methodology**

To accomplish our objectives, our audit approach and methodology included:

- Reading relative prior audit reports;
- Reviewing prior audit work papers, the City Charter, Executive Orders, financial reports, budget reports, the City's Comprehensive Annual Financial Report, organization charts, Finance Directives, Chief Financial Officer Directives, and any other reports or directives pertinent to CRIO operations;
- Gathering policies and procedures of core operations and other similar data;
- Conducting audit-planning meetings to determine the scope and audit objectives, and to determine the financial transactions and/or areas to audit;
- Developing questions regarding transactions, processes and procedures, controls, functions, records, and personnel;
- Interviewing relevant personnel of entities directly involved in CRIO's affairs and other relevant City personnel;
- Observing, documenting, and testing of relevant processes, procedures, contracts, and agreements;
- Conducting any necessary additional testing, and completing any other audit steps necessary to draw conclusions to the relevant objectives;
- Developing recommendations for all findings.

*Note: See **"APPENDIX A: Generally Accepted Government Auditing Standards"**<sup>7</sup> for more information on Fieldwork, Developing Findings, Reporting Conclusions and Recommendations in a Performance Audit on page 36 of this report.*

## **Conclusions**

Based upon the results of our audit, we conclude that:

- CRIO did not assess compliance fees in accordance with EO 2016-1. They did not develop proper formulas to assess compliance fees, resulting in \$819,125 potential loss of compliance fees revenues to the City.
- CRIO did not always complete contractors' compliance evaluations as required by EO 2016-1, and they did not perform compliance evaluations timely, nor prepare and submit monthly reports used for billings timely.
- CRIO does not have a process that ensures that they capture and monitor all projects subject to EO 2016-1. They do not utilize other sources of information for "discovery" information relating to property changes, construction activities, and/or other major development.

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<sup>7</sup> Generally Accepted Government Auditing Standards (GAGAS) 2018 Revision, Compiled by the Comptroller General of the United States Government Accountability Office, <https://www.gao.gov/yellowbook>.

In addition to our Findings, we have noted the following concerns:

- In our opinion there is a misguided tone regarding compliance fee requirements set forth in EO 2016-1.
- There is a lack of adequate policies and procedures relating to the enforcement of EO 2016-1.
- There is a lack of due diligence in monitoring the Workforce Training Fund.
- “Detroit” specific metrics are not used to augment the results of Workforce Training Fund activities.
- There is a conflict between EO 2016-1 and Workforce Training Fund Agreement and Exhibit C.
- There is a lack of sufficient project tracking and data management procedures.
- CRIO’s administrative guidelines and/or policies governing compliance fees activities did not cover all related activities.

## **BACKGROUND**

Often lost in Detroit's history is the 1943 riots, a racially charged melee that led to thirty-four deaths and hundreds of injuries. In response, City of Detroit officials created a municipal department focused on civil rights. Throughout the years, the department would undergo many name changes. In 1953, the Committee would become the Commission on Community Relations. In 1974, under a new city charter, the Commission became the Human Rights Department. After 75 years, the department runs and operates as the Civil Rights, Inclusion, and Opportunity Department (CRIO).

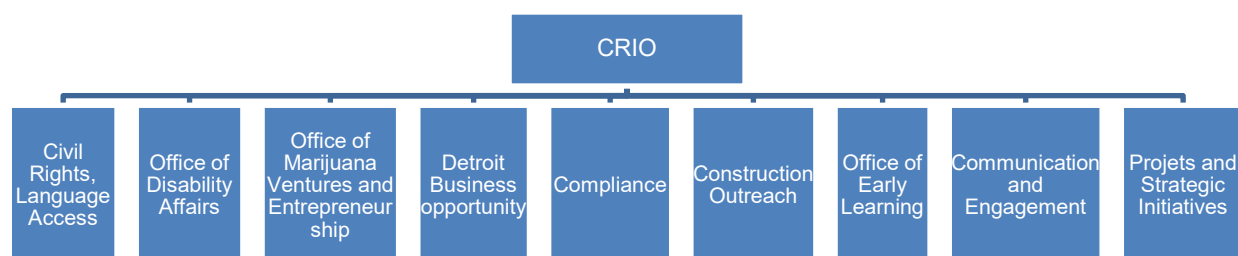
According to information on CRIO's website, the Civil Rights, Inclusion & Opportunity (CRIO) Department's mission is to advocate for inclusion and increased opportunities and to provide excellent service to all who live, work, play or do business in Detroit, resulting in a positive impact on our city. Whether investigating civil rights complaints, advocating for people with disabilities, uplifting Detroit businesses, or hosting community outreach events, CRIO works to ensure opportunities are available for all, and that everyone is treated fairly in our city. The department is responsible for investigating alleged discrimination, securing equal protection of civil rights, promoting inclusion, and creating opportunities and access for all citizens. The department maintains the Limited English Proficiency Plan, enforces the American Disabilities Act, certifies Detroit-Headquartered, Detroit-Based, and Small Businesses, Minority and Start-up businesses. The department's role continues to expand as new opportunities to achieve its mission are developed and implemented, and as the department is charged with new responsibilities.

One of the department's duties include monitoring the inclusion of Detroit-based contractors and Detroit residents on development projects happening throughout the City. The agency goals relating to the Inclusion function are:

1. Produce a monthly City of Detroit Certified Business Registry to be used as a procurement reference for city departments, businesses, public and non-profit organizations;
2. Monitor vendor workforces for companies seeking contract awards for tax abatement relief to ensure equitable representation of minorities and females consistent with local, state, and federal equal employment opportunity policies;
3. Monitor economic development and diversity goals between the City and private developers and those developers that receive tax abatements to ensure inclusion;
4. Increase mutual understanding among the residents of the community, promote good will, and work cooperatively with other agencies of government, community groups, and organizations to eliminate discrimination and future problems.

## Overview of the Department Organizational Structure

As of March 2023, CRIO operates nine divisions: Civil Rights & language Access, Disability Affairs, Marijuana Ventures and Entrepreneurship, Detroit Business Opportunity, Compliance, Construction Outreach, Early Learning, Communication and Engagement, and Projects and Strategic Initiatives. Our audit focuses on compliance fees activities, which are directly related to Compliance Division, but also touched upon the operations of Construction Outreach Division, and Projects and Strategic Initiatives Division (new division that replaced the operation of Data and Engagement Division). The Compliance division monitors compliance with Executive Order 2016-1, which was superseded by EO 2021-02, Tax Abatements, and the Community Benefits Ordinance. The Construction Outreach division aims to expand the Skilled Trades Employment Program. The Project and Policy division supports CRIO in development of policies, process improvement, data create and analysis of programmatic performance. The following chart is CRIO's organizational structure updated as of March 15, 2023:



## Governance and Leadership of the Department

CRIO is governed by an eleven (11) member "Human [Civil] Rights Commission" established under Section 7-702 of the City Charter. The eleven (11) member Civil Rights Commission were appointed by the Mayor and approved by City Council. The Commission shall be representative of the total community and a member must be a resident of the City. Seven (7) members shall be appointed from the non-at-large districts. The Commission determines CRIO's initiatives and policies.

The current Director of CRIO is Anthony Zander. He was appointed by Mayor Mike Duggan on May 17, 2022, to fill the vacancy created by the departure of CRIO former director, Kimberly Rustem. As Director of CRIO, Mr. Zander reports to the Mayor's Office, Chief of Staff.

## Overview of Executive Orders Governing Compliance Fee Dollars

On August 22, 2014, Mayor Michael E. Duggan issued the first executive order to promote maximizing utilization of Detroit residents on publicly funded construction projects. Contractors or developers who entered publicly funded construction projects but failed to meet the Detroit resident workforce requirement will result in monthly financial penalties (recognized as "compliance fees"). CRIO is the designated agency to enforce the execution of the related Executive Order (EO). The initial EO was superseded three times during the period 2014 to 2021. The following table summarizes the revisions to the initial EO that were enacted to ensure that Detroit

residents' makeup a majority percentage (at least 51%) of the workforce on publicly funded construction projects:

<b>Revisions to Initial Executive Order (EO) Governing Compliance Fee Dollars</b>				
<b>Mayor's Executive Order</b>	<b>Subject</b>	<b>Effective Date</b>	<b>Validation</b>	<b>Major Revisions</b>
EO 2014-4	Utilization of Detroit Residents on Publicly-Funded Construction Projects	8/22/2014	Superseded by Executive Order 2016-1	<ul style="list-style-type: none"> <li>• Original EO to ensure that Detroit residents' makeup a majority percentage (at least 51%) of the workforce on publicly funded construction projects. CRIO is designated as enforcement agency.</li> </ul>
EO 2016-1	Utilization of Detroit Residents on Publicly-Funded Construction Projects	12/16/2016	Superseded by Executive Order 2020-5	<ul style="list-style-type: none"> <li>• First revision to the original EO.</li> <li>• Specifies the threshold for a "publicly-funded construction project" subject to the EO.</li> <li>• Added definitive languages for a "bona-fide Detroit resident", Workforce Target, Measurement Period, Monetary Contributions, and laborers through unions.</li> <li>• Added the escalation process in challenging CRIO's finding.</li> </ul>
EO 2020-5	Utilization of Detroit Residents on Publicly-Funded Construction Projects	11/20/2020	Superseded by Executive Order 2021-02	<ul style="list-style-type: none"> <li>• Second revision to the original EO.</li> <li>• Added demolition projects contracted under the Proposal N Neighborhood Improvement Plan into the EO.</li> </ul>

Revisions to Initial Executive Order (EO) Governing Compliance Fee Dollars				
Mayor's Executive Order	Subject	Effective Date	Validation	Major Revisions
				<ul style="list-style-type: none"> <li>The Proposal N demolition projects are subject to meet the “at least 51% local hiring requirements.”</li> </ul>
EO 2021-02	Utilization of Detroit Residents on Publicly-Funded Construction and Demolition/Rehab Projects	4/14/2021	In Effect	<ul style="list-style-type: none"> <li>Third revision to the original EO.</li> <li>Emphasizes the inclusion of publicly-funded demolition/rehabilitation projects and clarifies the exclusion of publicly-funded projects funded by a grant awarded by a governmental entity.</li> <li>Maintains the original EO procedures for assessing compliance fees.</li> </ul>

Dollars collected from non-compliant contractors are used to provide training to Detroiters in skilled trades and other related areas to increase the pool of qualified laborers for the contractors. The activities related to the usage of compliance fee dollars is referred to in our Second Interim Report: the “Audit of the Civil Rights, Inclusion, and Opportunity Department Compliance Fee Dollars – Detroit Employment Solutions Corporation (May 2021)”.

*Note: See “**Appendix B for an overview of Executive Orders 2014-4 through 2020-5 and Appendix C for the full copy of EO-2016-1 on pages 39 and 43 of this report.**”*

#### Overview of Budget, Collection, and Disbursement of Compliance Fee Dollars

Upon the execution of Executive Order 2014-4, the collected and/or disbursed compliance fees were recorded in the City’s General Fund (Fund 1000). In October 2017, a Special Revenue Fund (Fund 3217 Non-Compliance Fees) was established to account for all collections, disbursements, and other transactions related to the fees associated with EO 2016-1. The following table shows budgeted appropriations and revenues for CRIO’s compliance fee dollars from fiscal year 2016 through fiscal year 2022:

Budget Item	Fiscal Years Ending June 30, Dollars in Millions						
	2016	2017	2018	2019 <sup>(A)</sup>	2020	2021	2022
<b>3217 - Non-Compliance Fees</b>							
Revenues	-	-	\$0.5	\$3.0	\$1.0	\$2.0	\$3.0
Appropriations	-	-	0.5	3.0	1.0	2.0	3.0
<b>Net Tax Cost</b>			\$0.0	\$0.0	\$0.0	\$0.0	\$0.0

*Notes: (A) Fiscal Year 2019 Budgeted Revenues includes a Budget Amendment of \$3 million to capture actual compliance fee revenues collected in prior years.*

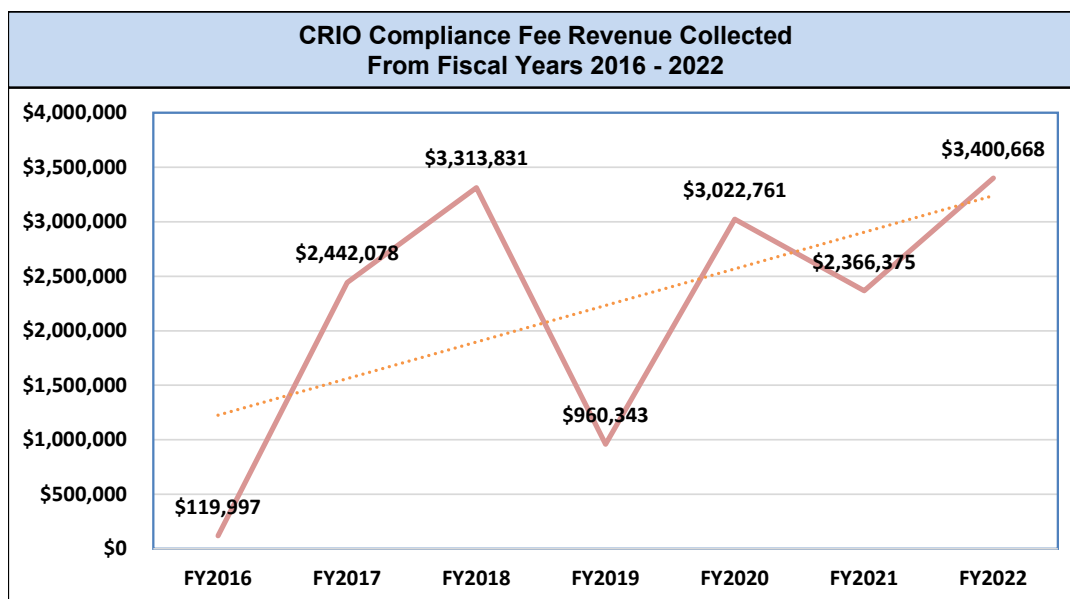
As of June 2022, CRIO collected a total of \$15.6 million dollars in compliance fees:

- From 2016-2019 (our audit period), \$6.8 million was collected from thirty-six projects subject to the EO.
- From 2020-2022, another \$8.8 million was collected from non-compliant contractors.

The following table presents an overview and breakdown of CRIO's compliance fees revenue collected from fiscal years 2016 through 2022:

Account	Fiscal Years Ending June 30, Dollars in Millions						
	2016	2017	2018	2019	2020	2021	2022
Revenue Collected Per The EO	\$0.1	\$2.4	\$3.3	\$1.0	\$3.0	\$2.4	\$3.4

In the past seven years, the maximum compliance fee revenue collected from EO projects in a single year was \$3.4 million, and the average of the compliance fee revenue was \$2.2 million per year. A trend of compliance fees collected under the applicable EO is depicted in the graph below:



## AUDIT FINDINGS AND RECOMMENDATIONS

### **Finding #1: CRIO Did Not Assess Compliance Fees In Accordance With Executive Order 2016-1 Resulting In Potential Loss Of Revenues To The City**

#### **Conditions**

CRIO's calculation and assessment of compliance fees were not in accordance with Executive Order 2016-1 (EO 2016-1). The formula that was developed and used by the Department resulted in inaccurate calculations of compliance fees and a potential loss of revenues (specifically EO compliance fees revenue) to the City.

The table below illustrates a calculation of compliance fees assessment based upon the formula legislated in EO 2016-1 versus the formula implemented by CRIO:

Compliance Fees Calculation Comparison		
	Formula Legislated in EO 2016-1 Section 6	Formula Developed and Implemented by CRIO
Steps	<i>Example: If the Workforce Target Shortfall is 26%</i>	
<b>Step 1</b>	5% × Average Hourly Wage × Total Workhours × 10%	5% × Average Hourly Wage × Nonqualified Workhours <sup>(A)</sup> × 10%
<b>Step 2</b>	10% × Average Hourly Wage × Total Workhours × 10%	10% × Average Hourly Wage × Nonqualified Workhours × 10%
<b>Step 3</b>	15% × Average Hourly Wage × Total Workhours × 6%	15% × Average Hourly Wage × Nonqualified Workhours × 6%
<b>Step 4</b>	Sum of Steps 1, 2, and 3	Sum of Steps 1, 2, and 3

*Notes: (A) "Nonqualified Workhours" = "Total Work-Hours" – "Qualified Detroiters' Work-Hours." In the department practice, CRIO used Nonqualified Workhours instead of using the Total Workhours to calculate EO compliance fees.*

It should be noted that when the Workforce Target Shortfall reaches 51%, this indicates that the number of qualified Detroiters working on the project is below the minimum threshold. Therefore, the Qualified Detroiters' Workhours will be zero. In these instances, the amounts of assessed compliance fees will be same either under the EO 2016-1 legislated formula or under CRIO's adapted formula (See **APPENDIX E: EO-2016-1 Compliance Fees Calculation Explained**, on page 61 of this report, for details on the calculation and a comparison of the required calculation/formula versus CRIO's calculation/formula).

CRIO's use of "Nonqualified Workhours" instead of "Total Workhours" as required by EO 2016-1 has effectively reduced the amount of total compliance fees assessed, resulting in potential loss of revenues.

#### **CRIO Reporting Sample Justification**

As shown on **APPENDIX F: CRIO's Compliance Fees Reporting Process and Sample Reports Justification**, on page 64 of this report, CRIO uses a tiered approach



and three major reports to calculate/assess compliance fees: EO Project Summary Report, EO Project Detail Report, and Monthly Contractor Summary Report. The Summary Reports and the Project Detail Reports totaling the \$6.8 million were made available to us. However, only a small portion of the Monthly Contractor Summary Reports were available for us to audit the calculation of the compliance fees. For the \$6.8 million compliance fees, there should have been 280 Monthly Contractor Summary Reports available during the period, but only 124 reports were provided. The dollar value of those available Monthly Contractor Summary Reports amounted to only \$0.4 million of the \$6.8 million total fees collected. Monthly Contractor Summary Reports were tested based on the available reports. This explains why the sample size of \$0.1 million dollar value appears to be small when compared to the total dollars, but in fact, it represents 24.2% of the population of reports available for us to audit<sup>8</sup>. We consider this as a representative sample.

You should note that the large amount of “missing reports” – over 55% - would have normally amounted to a finding for the lack of good records retention. However, we noted that this was not an ongoing issue, and it was resolved by the following changes to CRIO’s processes:

- Customer Billings and Accounts Receivable were transferred to the Office of Chief Financial Officer (OCFO). New job aids between CRIO and the special projects team of the Office of Departmental Financial Services (ODFS) within the OCFO, requires CRIO to provide and upload all Monthly Contractor Summary Report’s through Smartsheets, which should result in more timely billings;
- CRIO changed their reporting procedures. Old, static reporting was replaced by an online dashboard which is maintained and updated by CRIO with EO projects metrics, including project information, total work hours, work hours done by qualified workers, and compliance fees paid. Also, internal dashboard and smartsheets were used to collect and pull information to help CRIO’s management quickly catch any unusual activity or circumstances.

### Test Results

The incorrect formulas mentioned above were imbedded in CRIO’s template, the “Monthly Contractor Summary Report<sup>9</sup>” that was used to calculate monthly EO compliance fees for all contractors subject to EO 2016-1. According to our review of 30 (or 24.2%) Monthly Contractor Summary Reports of the 124 available reports:

- All of them (100%) used the improper formulas mentioned above to calculate EO compliance fees.
- 16 (or 53.3%) had incorrect assessments.
- 14 (or 46.7%) reached a maximum of 51% workforce target shortfall, and the amounts of assessment were correct.

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<sup>8</sup> Compliance fees reports sampling is explained in **APPENDIX F: CRIO’s Compliance Fees Reporting Process and Sample Reports Justification**, on page 64 of this report.

<sup>9</sup> The template is currently renamed to “EO 2016-1 Contribution Form” which more appropriately represents its contents.

CRIO assessed a total of \$116,047 in compliance fees for the thirty reports we reviewed. We calculated \$13,834 in lost revenues because CRIO used an incorrect formula, as shown in the table below:

Calculation Of EO Compliance Fees Were Not Accurate					
Contractor	Measurement Period	EO 2016-1 Required Compliance Fees	CRIO Assessed Compliance Fees	Revenue Loss Dollars	Revenue Loss %
Century Cement	Apr-19	\$ 235	\$ 150	\$ 85	36.2%
	May-19	1,751	1,300	451	25.8%
Christman Brinker	Oct-18	12,392	9,312	3,080	24.9%
Hunter Pasteur	Mar-19	6,112	6,053	59	1.0%
O'Brien Construction	Apr-19	9,752	9,585	167	1.7%
Sachse	Dec-18	5,814	5,606	208	3.6%
	Feb-19	6,646	6,413	233	3.5%
The Platform	May-18	2,478	571	1,907	77.0%
	Jun-18	4,187	199	3,988	95.2%
	Nov-18	8,528	8,185	343	4.0%
Turner Construction	Apr 18 - Nov 18	5,439	4,618	821	15.1%
	Jan-19	2,357	2,354	3	0.1%
	Mar-19	5,156	4,948	208	4.0%
Walbridge	Jan-19	5,999	5,560	439	7.3%
Walbridge Aristeo	Apr-19	12,105	11,602	503	4.2%
Wolverine Building Group	Mar-19	11,197	9,858	1,339	12.0%
<b>Subtotal (16) Reports with Incorrect Assessment Calculation</b>		<b>\$100,148</b>	<b>\$86,314</b>	<b>\$13,834</b>	<b>13.8%</b>
<b>Subtotal (14) Reports Applied Wrong Formulas but with Correct Assessment Calculation *</b>		<b>\$29,733</b>	<b>\$29,733</b>	<b>\$ -</b>	<b>0.0%</b>
<b>Grand Total</b>		<b>\$129,881</b>	<b>\$116,047</b>	<b>\$13,834</b>	<b>10.7%</b>

*\*Note: The Workforce Target Shortfall of those 14 reports reached at a maximum of 51% and the amounts of assessed EO compliance fees were same either under EO 2016-1 required formula or under CRIO adapted formula.*

We estimate a total potential loss of compliance fees through June 2019 of \$819,125. This is based on applying the error rate (or Revenue Loss %) in our sample of 10.7% to the total fees that should have been collected during the audit period as shown in the table below:

Calculation of Potential Loss of EO Compliance Fees Revenue	
Description	Dollar Amount
Total Audited Compliance Fees Collected as of June 2019 <sup>(A)</sup>	\$6,836,249
Amount CRIO Should Have Assessed per EO-2016 Compliance Fee Formula <sup>(B)</sup>	7,655,374
<b>Estimated Potential Loss of Compliance Fees Revenue through June 2019</b>	<b>\$ 819,125</b>

*Notes: (A) Total audited compliance fees can be found in the Office of the Auditor General first interim report, "Audit of the Civil Rights, Inclusion, and Opportunity Department Interim Report On Compliance Fee Dollars – Financial Operations (December 2020)", <https://www.detroitmi.gov/government/auditor-general>.*

*(B) The "Amount CRIO Should Have Assessed per EO-2016 Compliance Fee Formula" is calculated by multiplying the Amount Collected of \$6,836,249 divided by (100% – 10.7% Loss Ratio) to equal \$7,655,374.*

## Criteria

### City of Detroit Executive Order 2016-1

The Executive Order 2016-1 (EO 2016-1) was implemented to "encourage and maximize the utilization of Detroit residents on all City contracts and all projects benefited by City subsidies." Any entity entering publicly funded construction projects with contracts greater than \$3,000,000 (Three million dollars) is required either to meet the 51% Workforce Target or to make the required contribution to the City's Workforce Training Fund. As provided in Section 6 of EO 2016-1, the required contribution for any contractor who does not meet the Workforce Target shall be the sum of the following:

1. For each work-hour comprising the **first 0-10%** of total work-hours by which the contractor fell short of the Workforce Target, 5% of the average hourly wage paid by the contractor on the publicly-funded construction project during the preceding measurement period.
2. For each work-hour comprising the **second 0-10%** of total work-hours by which the contractor fell short of the Workforce Target (if applicable), 10% of the average hourly wage paid by the contractor on the publicly-funded construction project during the preceding measurement period.
3. For each work-hour comprising the **remaining 0-31%** of total work-hours by which the contractor fell short of the Workforce Target (if applicable), 15% of the average hourly wage paid by the contractor on the publicly-funded construction project during the preceding measurement period.

The calculation of compliance fees is explained in **APPENDIX E: Executive Order 2016-1 Compliance Fees Calculation Explained**, on page 61 of this report.

## **Effects**

CRIO's calculation and incorrect assessment of compliance fees resulted in potential loss of revenues for the City, which in turn reduced funding available for training Detroit residents.

Compliance fees are a major source of the Workforce Training Fund whereby the City funds program providers (i.e., Detroit Employment Solutions Corporation) that educate and train local people for jobs and career advancement opportunities. Continuous noncompliance with EO 2016-1 and its updated versions negatively impacts the Workforce Training Fund and impairs the City's ability to fund workforce training programs or promote Detroit workforce development.

## **Causes**

CRIO has a lack of procedures to ensure the accuracy of compliance fees assessment. The template of compliance fees assessment/calculation report (the "Monthly Contractor Summary Report") was never reviewed and examined. The person who initially developed the assessment template did not properly apply the terms of "Total Workhours" in accordance with the executive order, instead they used "Nonqualified Workhours" (Total Workhours minus Qualified Detroiters Workhours) to calculate compliance fees. As of this report, the improper formula is still in use, and no one is responsible for the accuracy of compliance fees assessment.

According to CRIO management, the provisions of the executive order regarding the calculation of compliance fees has not been changed. Once the formula was initially approved and implemented, they assumed that the formula was correct and there was no need to recheck or revise it.

## **Recommendations**

We recommend that CRIO:

- A. Correct the formula set in their assessment template (the template of "Monthly Contractor Summary Report") and adopt an appropriate formula to assess compliance fees.
- B. Review the assessment template (the template of "Monthly Contractor Summary Report") and any associated forms annually, to ensure the template is accurate and updated according to the revisions to the City's executive orders.
- C. Implement procedures to safeguard sensitive fields (i.e., locking the formulas for calculation of compliance status and compliance fees) of the assessment template. Ensure that any editing or updating of the assessment template is only allowed by authorized personnel.
- D. Define and document accountabilities of the compliance fees assessment reports in CRIO's administrative policies. (i.e., responsibilities for maintaining, updating, and revising of the assessment template)

**Finding #2: CRIO Did Not Comply With Executive Order 2016-1 Regarding Timely Contractor Compliance Evaluations And Monthly Reporting For Billings**

CRIO did not comply with the requirement of Executive Order 2016-1 (EO 2016-1) regarding timely contractor compliance evaluations and monthly reporting resulting in late and missing evaluations and long delays in providing billing information to the Office of the Chief Financial Officer.

**Conditions**

- A. CRIO does not have formal procedures or policies in determination of contractors' compliance measurement period. The determination for a longer measurement period is based upon contractors' application. We discovered that CRIO does not have a clear method or a defined threshold to determine if a contractor should be evaluated monthly or quarterly.
- B. CRIO did not always complete compliance evaluations as required by EO 2016-1. During our review of 52 contractors' compliance evaluations, we found that two contractors, RAM, and Modern Mirror, were missing compliance evaluations. Those two contractors were not evaluated month by month, and some months were not evaluated at all during the extended timeframe, as detailed below:

Missing Contractor Compliance Evaluations			
Contractor	Required Measurement Period	CRIO Actual Assessment Over Multiple Months	Missing Evaluations for the Identified Months
RAM	Monthly	April 2018 – November 2018	<ul style="list-style-type: none"><li>• August 2018</li><li>• October 2018</li></ul>
Modern Mirror	Monthly	April 2018 –October 2018	<ul style="list-style-type: none"><li>• July 2018</li><li>• August 2018</li><li>• September 2018</li></ul>

- C. When performing compliance evaluations, CRIO uses the Monthly Contractor Summary Report to summarize contractors' compliance status as well as a calculation of compliance fees. We noted that CIRO did not perform compliance evaluations efficiently nor prepare and submit monthly reports for compliance fee billings in a timely manner.

We reviewed a representative sample of CRIO monthly reports. Our sample represented monthly compliance fees reports from March 2019 to June 2019 that related to the new centralized billing process (effective March 2019)<sup>10</sup>. Based on our review, the required evaluations were not always submitted within 30 days, and some evaluation reports did not contain all the required elements. The table below is an overview of the reports submitted with and without submission dates:

<sup>10</sup> For more information regarding the new centralized compliance fees billing, please refer to our first interim report, ***“Audit of the Civil Rights, Inclusion, and Opportunity Department Interim Report On Compliance Fee Dollars – Financial Operations (December 2020).”***

Stratification of Monthly Compliance Fees Reports by Submission Date		
Reports Processing Time	Number of Reports	Percentage of Reports
<b>Reports Submitted without Submission Date</b>	<b>58</b>	<b>52.7%</b>
<i>Reports Submitted with Submission Date:</i>		
Reports Submitted Late	20	18.2%
Reports Submitted on Time	32	29.1%
<b>Subtotal of Reports Submitted with Submission Date</b>	<b>52</b>	<b>47.3%</b>
<b>Total Reports</b>	<b>110</b>	<b>100.0%</b>

- A total of 58 (or 52.7%) monthly reports were submitted without a submission date. We were unable to determine if CRIO evaluated those contractors timely, or if CRIO prepared those assessment reports timely.
- A total of 52 (or 47.3%) monthly assessment reports were submitted with submission dates. Based on the 52 monthly reports with submission dates we found that:
  - The average processing time of compliance evaluation was 92 days.
  - Twenty (20) evaluation reports were submitted late.
  - Within the 20 late submitted reports, 17 (or 85.0%) of these reports were submitted over 120 days after a required measurement period.

The table below lists in detail the evaluation reports that were submitted for billing more than 120 days after a required measurement period:

Late Submission of Compliance Fees Reports					
Contractors*		Sub- Contractors	Required Measurement Period	Actual Assessment Date/ Report Submission Date	Days Elapsed After Required Measurement Period
1	Turner Construction	Modern Mirror	Apr-18	5/2/2019	367
2	Turner Construction	RAM	Apr-18	4/24/2019	359
3	Christman-Brinker	Blaze Contracting, Quality Re Steel, etc.	Apr-18	4/1/2019	336
4	Christman-Brinker	Blaze Contracting, Quality Re Steel, etc.	May-18	4/1/2019	305
5	Christman-Brinker	Credits Adjustment	May-18	4/1/2019	305
6	Christman-Brinker	Blaze Contracting, Quality Re Steel, etc.	Jun-18	4/1/2019	275

Late Submission of Compliance Fees Reports					
Contractors*		Sub- Contractors	Required Measurement Period	Actual Assessment Date/ Report Submission Date	Days Elapsed After Required Measurement Period
7	Christman-Brinker	Credits Adjustment	Jun-18	4/1/2019	275
8	Christman-Brinker	Blaze Contracting, Quality Re Steel, etc.	Jul-18	4/1/2019	244
9	Christman-Brinker	Credits Adjustment	Jul-18	4/1/2019	244
10	Sachse	Morrey's Contracting	Oct-18	6/26/2019	238
11	Christman-Brinker	Blaze Contracting, Quality Re Steel, etc.	Aug-18	4/1/2019	213
12	Christman-Brinker	Blaze Contracting, Quality Re Steel, etc.	Sep-18	4/1/2019	183
13	Christman-Brinker	Credits Adjustment	Sep-18	4/1/2019	183
14	Christman-Brinker	Blaze Contracting, Quality Re Steel, etc.	Oct-18	4/1/2019	152
15	Christman-Brinker	Credits Adjustment	Oct-18	4/1/2019	152
16	Christman-Brinker	Blaze Contracting, Quality Re Steel, etc.	Nov-18	4/1/2019	122
17	Christman-Brinker	Credits Adjustment	Nov-18	4/1/2019	122

*\*Note: CRIO uses General contractors as bill-to customers for compliance fees, and general contractors may include multiple prime contractors and subcontractors who work for the general contractors.*

D. We noted that CRIO did not provide billing information timely to the Office of the Chief Financial Officer. Effective March 2019, CRIO transitioned the invoicing/billing and handling of collections/cash receipts relating to compliance fees to the appropriate divisions within the Office of the Chief Financial Officer (OCFO):

- The Office of Departmental Financial Services (ODFS) Special Projects Team is now responsible for invoicing/billing compliance fees assessed by CRIO to “non-compliant” contractors.
- The Office of the Treasury now handles all compliance fees’ cash receipts, deposits, and related activities.

ODFS, relies on CRIO to inform them who should be invoiced/billed, and the amounts they should be charged. This is accomplished by CRIO “uploading” billing information directly into an “Invoicing” Smartsheet which feeds into the City’s enterprise-wide financial system (Oracle) and triggers the actual invoicing and billing process.

This means that the CRIO is the driver of and solely responsible for initiating compliance fee billings.

During our audit period (from March 2019 to June 2019) there were 131 Oracle

sales invoices of EO compliance fees available for us to review. We randomly selected and reviewed 35 (or 26.7%) CRIO Oracle sales invoices totaling \$100,127. We found that:

1. The average compliance fee billing process time was 127 days.
2. 20 (or 57.1%) invoices totaling \$58,767 were billed to noncompliant contractors over 45 days after a required measurement period.
  - a. For instance, three (3) invoices totaling \$15,107 were billed to noncompliant contractors over one (1) year after a required measurement period.

## **Criteria**

The following criteria apply to the conditions stated above:

A. The Government Accountability Office, GAO-14-704G, Standards for Internal Control in the Federal Government

As stated in the GAO-14-704G, OV4.08 Documentation Requirements (excerpt), documentation is a necessary part of an effective internal control system. Documentation is required for the effective design, implementation, and operating effectiveness of an entity's internal control system. Management documents internal control to meet operational needs. Principle 12 – Implement Control Activities emphasizes that management should implement control activities through policies. The criteria below are applied for the Documentation of Responsibilities through Policies:

12.02 Management documents in policies the internal control responsibilities of the organization.

12.03 Management documents in policies for each unit its responsibility for an operational process's objectives and related risks, and control activity design, implementation, and operating effectiveness.

12.04 Those in key roles for the unit may further define policies through day-to-day procedures, depending on the rate of change in the operating environment and complexity of the operational process. Procedures may include the timing of when a control activity occurs and any follow-up corrective actions to be performed by competent personnel if deficiencies are identified. Management communicates to personnel the policies and procedures so that personnel can implement the control activities for their assigned responsibilities.

B. City of Detroit Executive Order 2016-1 (EO 2016-1)

EO 2016-1 requires that contractors subject to the Order need to be "measured periodically either monthly or quarterly." The period is referred to as "Measurement Period." Each measurement period, CRIO is required to perform a compliance evaluation in determining whether contractors met the 51% local hiring requirement, and from there calculate compliance fees. Measurement Period is key to the calculation of compliance fees as it provides a time length for the compliance evaluation. as provided in Paragraph 5 of the EO 2016-1:



Upon execution of a publicly funded construction contract, the City of Detroit's Civil Rights, Inclusion and Opportunity Department ("CRIO") shall determine whether the Workforce Target in the contract shall be measured periodically either (a) monthly or (b) quarterly. This period shall be referred to as the "measurement period."

C. CFO Directive No. 2018-101-021 Revenue and Revenue Management

Requires the City to "collect as efficiently as possible the resources to which it is already entitled" and "enforce its authority to collect revenue due the City." It states that:

1. Department Directors shall ensure applicable departmental operations are designed in a manner that allows for an efficient and effective billing and collection process (Section 6.4.2);
2. The Office of Departmental Financial Services (ODFS) shall be responsible for invoicing and recording the Departmental Revenues (Section 6.4.3);
3. Department Directors and the ODFS shall periodically review and update department fees and charges in accordance with the City's policies regarding user fees and other applicable law (Section 6.4.4);
4. Department Directors shall ensure applicable operations are designed in a manner that provides complete and accurate information to enable efficient and effective billing (Section 6.6.1).

D. OCFO Job Aid: Accounts Receivable Invoicing Process for CRIO Business Certification and Executive Order

According to the Job Aid:

1. CRIO is responsible for uploading information to the Smartsheet and ODFS-Special Projects team review the supporting documents and process invoices into Oracle AR Cloud System.
2. It is CRIO's responsibility to verify the billing data accuracy with customers before uploading it to the Smartsheet.
3. The procedures to process Executive Order Step 3, Save The Supporting Documents requires printing and save all attached documents for each executive order to the "Accounts Receivable" folder into ODFS-Admin share drive. These supporting documents will be attached with the newly created invoices into Oracle A/R system.

**Effects**

The lack of compliance with the EO requirements (i.e., periodically measure compliance status either in monthly or quarterly) results in late or missing billings. Any incomplete or missing evaluation or assessment creates potential revenue loss to the City.

**Causes**

The proof of compliance status is manually determined by each CRIO Inclusion Analyst. There are no procedures to ensure the accuracy, timeliness, and completeness of the

manual monitoring process, specifically relating to preparing and submitting the Monthly Contractors Summary Reports. Lack of controls in the EO 2016-1 monitoring process allows for errors such as under accounting the required number of billings, and/or skipping billings during the month. CRIO has a lack of procedures to ensure their assessment reports are performed, submitted, and billed in a timely manner.

Additionally, CRIO lacks adequate performance measures for its compliance fees enforcement and collections. Adequate procedures to monitor and evaluate the performance of its inclusion operations (i.e., key performance metrics) do not exist. High staff turnover within CRIO heavily impacts their inclusion operations and the accurate assessment of compliance fees.

### **Recommendations**

We recommend that CRIO:

- A. Develop and document the measurement period determination.
- B. Evaluate contractors' compliance either monthly or quarterly in accordance with the requirement of the executive order. Complete compliance evaluation for each contractor who is subject to the executive order.
- C. Ensure to submit the Monthly Contractor Summary Reports timely. Continue to maintain and develop the compliance fees master dataset and sufficiently document the compliance fees metrics whereby the compliance fees can be fully tracked, analyzed, and reported. Establish a mechanism by which the inclusion performance can be measured.
- D. Develop procedures to ensure the compliance fees billing information is communicated timely to the ODFS special projects team within the OCFO.

**Finding #3: CRIO Does Not Have A Process That Ensures They Capture And Monitor All Projects Subject To Executive Order 2016-1**

**Condition**

CRIO does not have a process that ensures they capture and monitor all projects subject to EO 2016-1. CRIO relies on other departments, such as the Detroit Building Authority (DBA), Planning and Development Department (PDD), Housing and Revitalization Department (HRD), to alert them to projects that might be subject to the executive order and assessment of compliance fees.

CRIO does not utilize other sources of information for “discovery” relating to property changes, construction activities, and/or other major developments. Some potential sources of discovery information are listed below:

Potential Sources Related to EO Projects		
Source	Name of Source	Types of Information
Internal	City Clerk City Council Agendas	Significant Land Sales requiring approval by City Council
Internal	Buildings, Safety Engineering and Environmental Department (BSE&ED)	Building permits (new construction, additions, and demolitions), special levies for sidewalks
Internal	Assessors Division	Significant changes in parcel composition (i.e., parcel combinations)
Internal	Office of Procurement	Construction Purchase Contract
Internal	Department of Public Works (DPW)	Requests for new addresses
Internal	Legislative Policy Division (LPD)	Abatements and special land deals
External	Wayne County Registrar of Deeds; Wayne County Treasurer	New deeds, sales information
Other Sources	Articles in local business media (e.g. – Crains, Detroit Free Press, Detroit News, etc.)	

**Criteria**

The following criteria apply to the condition stated above:

A. GAO-14-704G, Standards for Internal Control in The Federal Government

Effective information and communication are vital for an entity to achieve its objectives. The *Standards for Internal Control in the Federal Government* issued by the Comptroller General of the United States, Principle 13 – Use Quality Information, requires that management should use quality information to achieve the entity’s objectives. Specifically:

13.02 Management designs a process that uses the entity’s objectives and related risks to identify the information requirements needed to

achieve the objectives and address the risks. Information requirements consider the expectations of both internal and external users. Management defines the identified information requirements at the relevant level and requisite specificity for appropriate personnel.

13.03 Management identifies information requirements in an iterative and ongoing process that occurs throughout an effective internal control system. As change in the entity and its objectives and risks occurs, management changes information requirements as needed to meet these modified objectives and address these modified risks.

13.04 Management obtains relevant data from reliable internal and external sources in a timely manner based on the identified information requirements. Relevant data have a logical connection with, or bearing upon, the identified information requirements. Reliable internal and external sources provide data that are reasonably free from error and bias and faithfully represent what they purport to represent. Management evaluates both internal and external sources of data for reliability. Sources of data can be operational, financial, or compliance related. Management obtains data on a timely basis so that they can be used for effective monitoring.

B. CFO Directive No. 2018-101-042 – Internal Controls

This Directive is to communicate the internal control objectives for the City and to assist with the design, documentation, implementation, and evaluation internal controls.

It states that internal control is necessary to provide the City a reasonable basis for believing and asserting that it is meeting its operational (effectiveness, efficiency, safeguarding of assets), reporting and compliance objectives. The system of internal control is intended to keep the City on course towards meeting its objectives and to reduce the risk, to an acceptable level, that an objective will not be met. The system promotes efficiency, minimizes risk of asset loss, helps ensure the reliability of financial information, and compliance with applicable laws, rules, and regulations.

An effective system of internal control must include the following five components: (1) control environment, (2) risk assessment, (3) control activities, (4) information, and communication and (5) monitoring activities. A system of internal control shall be implemented across all City departments and followed by all City staff. The responsibilities listed below are excerpts from this Directive:

1. All City staff with delegated approval authority shall be responsible for establishing, maintaining, and supporting a system of internal controls within their areas of responsibility and for creating the control environment that encourages compliance with applicable laws, regulations, and internal policies and procedures.

2. All levels of management and supervision shall be responsible for strengthening internal controls when weaknesses are detected. Periodic review of procedures shall be performed to ensure internal controls are being adhered to and continue to be effective.

### **Effects**

The lack of formal or written procedures to capture the projects that should be monitored under the executive order results in delay or missing compliance fees assessment. The Department's monitoring responsibility is set in the executive order. If the Department makes no changes to discover the projects, it will rise a question whether the compliance monitoring can be fully and optimally implemented. The effects of not capturing executive order projects can result in potential revenue loss to the City. A lack of controls over operations and compliance can preclude the Department from accomplishing its mission and objectives.

### **Causes**

CRIO's current policies do not incorporate a process to address how to capture construction projects that should be monitored under the executive order. There is a lack of procedure (i.e., discovery construction development information) to ensure the CRIO is achieving their operation objectives. CRIO was not aware that their inclusion monitoring responsibility starts from the capture of all executive order projects. Their scope for "Monitoring Contracts/Projects Under EO 2016-1" is limited to the initial meeting when projects became active.

### **Recommendations**

We recommend that CRIO:

- A. Expand and create definitive communication channels with all potential stakeholders who are sources of information relating to projects subject to the executive order. Develop a mechanism to proactively capture and monitor this data.
- B. Collect and document sufficient project information (i.e., project contract value, project site, project life, project start date and end date, labor cost estimates, project status, etc.) and establish a mechanism to determine compliance fees to be expected. Develop a procedure to ensure that the projects information is updated timely, accordingly, and completely.
- C. Design and implement applicable procedures to ensure that the projects are monitored from start to the end, and continuously monitor the project's close-out.

## NOTE OF CONCERNS

The following are “Note of Concerns” that we feel warrant additional attention from the Civil Rights, Inclusion, and Opportunity Department (CRIO). While these are not findings, we present them with the hope that the Department will find added value through these observations and will address them accordingly.

1. Inappropriate Tone Regarding Compliance Fees Set In Executive Order 2016-1
2. There Is A Lack Of Adequate Policies And Procedures Relating To The Enforcement Of Executive Order 2016-1
3. There Is A Lack Of Due Diligence In Monitoring The Workforce Training Fund
4. “Detroit” Specific Metrics Are Not Used To Augment The Results Of Workforce Training Fund Activities
5. There Is A Conflict Between Executive Order 2016-1 And Workforce Training Fund Agreement And Exhibit C
6. There Is A Lack Of Sufficient Project Tracking And Data Management Procedures
7. CRIO’s Administrative Guidelines And/or Policies Governing Compliance Fees Activities Did Not Cover All Related Activities

### **1. Inappropriate/Inaccurate Tone Regarding Compliance Fees Set In Executive Order 2016-1.**

In our view, Executive Order 2016-1 (EO 2016-1) sets an inappropriate tone when describing the financial penalty for not complying with the workforce targets by describing the assessments as “contributions” versus compliance fees. It was explained that the term “contribution” was used to signal that the fee dollars are ultimately contributed to the workforce training fund aimed at preparing Detroiters for construction and skilled trade jobs. However, according to the Merriam- Webster Dictionary, contributions is defined as “to give or supply (something, such as money or time) as a part or share” and implies that it is freely given.

Compliance fees are an “assessment” and fits the definition of “the amount assessed: an amount that a person is officially required to pay especially as a tax.” The inappropriate tone in EO 2016-1 misleads CRIO management and construction contractors and may result in contractors opting to pay the compliance fees (“contributions”) rather than making a greater effort to hire Detroiters in compliance with EO 2016-1.

**2. There Is A Lack Of Adequate Policies And Procedures Relating To The Enforcement Of Executive Order 2016-1.**

CRIO policies and procedures relating to enforcement are not clear and are insufficient to hold contractors accountable for non-compliance with the executive order. Specifically:

- a. The escalation process for contractors who do not submit required reports by the 15<sup>th</sup> of the next month (or within the additional grace period) is not always followed nor is it always timely. Penalties for reports submitted late, or not at all, are not clear. We recommend that (at a minimum), the escalation process should start approximately 30 days after a required measurement period.
- b. CRIO did not provide any documents or evidence which demonstrated how the department handled contractors who materially or frequently breached the requirements of the executive order. CRIO is required to report those contractors to the "Panel" for review. The "Panel" consists of the City's Corporation Counsel, the Director of the Department of Administrative Hearings, and the Director of the Buildings, Safety, Engineering, and Environment Department.
- c. CRIO former management's actions towards enforcement of the executive order was not consistent with the spirit of the order. Former management believed and stated that building up good relationships with the contractors could help Detroit's job market regardless of whether they complied with executive order or not.

**3. CRIO Lacks Due Diligence In Monitoring The Workforce Training Fund.**

CRIO has not complied with its administrative responsibilities "to monitor performance and outcomes" of the workforce training programs as defined in Workforce Training Fund Agreement (Agreement). According to the Workforce Training Fund Agreement, section 4.2, CRIO shall:

*4.2.1 Monitor performance and outcomes of the Workforce Training Program on a quarterly basis and provide updates to City Council, including an annual report;*

*4.2.2 Develop and implement a policy to define the collection and use of pre-payments of financial penalties owed to the City under Executive Orders 2014-4 and 2016-1. The current draft of these guidelines "Policy and Guidelines Regarding Pre-Payment Into The Workforce Training Fund," attached hereto as Exhibit C.*

However, CRIO's prior management was not aware of these responsibilities, and they thought that CRIO's responsibilities "ended" when the funds were transferred to DESC. As such, CRIO did not implement any policies or procedures as to how CRIO would monitor the fund. The Agreement requires DESC to provide quarterly performance reports to CRIO, which should form the basis for monitoring the performance and outcomes of the workforce training activities. Even though the Agreement was effective July 2017, DESC did not begin to send quarterly reports

directly to CRIO until 2019, and CRIO did not follow up with DESC to request the reports prior to that time. CRIO needs to fully exercise its responsibilities, follow up with DESC, collect and evaluate performance reports from DESC on a quarterly basis.

**4. “Detroit-Specific” Metrics Are Not Used To Augment The Results Of Workforce Training Fund Activities.**

We noticed that CRIO, DESC and Detroit at Work measure and report Detroit’s job training and employment progress (i.e. – workforce training programs metrics) against state and national employment results, trends, changes in workforce, etc. for the general labor market. We encourage CRIO to work with the City’s Economic and Forecasting Division in the Office of the Chief Financial Officer, Office of the Budget to use “Detroit” specific metrics to enhance and augment the current reporting to arrive at a more accurate analysis of the City’s workforce training activities.

**5. There Is A Conflict Between Executive Order 2016-1 And Workforce Training Fund Agreement And Exhibit C.**

We urge and remind CRIO to seek a legal opinion to resolve the “conflict” between Executive Order 2016-1 and the Workforce Training Fund Agreement as it relates to DESC’s proper operation to ensure the use of workforce training funds appropriately. As stated in of our published audit report “Audit Of The Civil Rights, Inclusion, And Opportunity Department Second Interim Report On Compliance Fee Dollars – Detroit Employment Solutions Corporation (May 2021)<sup>11</sup>”, we found that:

**Finding #1: DESC Used Workforce Training Fund For Various Training Programs And Services, But Not Exclusively For The Specific Program Goal Of Preparing Detroit Residents For Employment In The Skilled Construction Trades.**

DESC used Workforce Training Fund compliance fee dollars for various training programs and services, but not exclusively for the specific program goal of preparing Detroit residents for employment in the skilled construction trades. According to the documentation, some programs may have led to permanent jobs. However, we could not associate some of the jobs indicated, to new construction developments in that industry.

DESC argued that subsequent language in the “Workforce Training Fund Policies and Procedures” (Exhibit C of the Agreement) allowed them to use compliance fee dollars broadly to deliver a variety of programs and services to job seekers in a variety of programs. DESC stated that this and other selected language is the reason and authorization for them to use the Workforce Training Fund, specifically compliance fee dollars, for other industries and/or other purposes other than preparing Detroiters for jobs specifically in construction and related trades.

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<sup>11</sup> Audit Of The Civil Rights, Inclusion, And Opportunity Department Second Interim Report On Compliance Fee Dollars - Detroit Employment Solutions Corporation (May 2021)” page 13 and Attachment B. <https://www.detroitmi.gov/government/auditor-general>.



We disagreed with DESC's response and concluded that the Agreement formulated by the City of Detroit's Corporation Counsel is specific in describing the purpose of the Workforce Training Fund being used for skilled construction trades and/or jobs resulting from new development. We further concluded that the specific purpose contract clause as established by Corporation Counsel takes precedence over conflicting or unclear language in supporting schedules or exhibits. The following language is taken directly from the Agreement, Section 3, Establishment of Workforce Training Fund Program:

The purpose of the Program is to support initiatives undertaken by DESC to provide training, support, and placement for Detroiters seeking jobs in the skilled construction trades and/or the permanent jobs resulting from new development.

**6. CRIO Lacks Sufficient Project Tracking And Data Management Procedures.**

Although CRIO made efforts to implement project tracking and build a "dashboard" to capture project data, we found missing and/or incomplete project information. Prior CRIO management recognized the lack of adequate data management and the inability to report various project attributes, such as **project status, contract values, project life**; CRIO was unable to "connect all of the dots" among the projects, prime and sub-contractors, assessments, and compliance fees. In February 2021, we followed up with CRIO on the progress of the "dashboard" and noticed some relevant project information was missing as shown in the table below:

Summary of Inadequate EO Project Metrics				
Project Status	Number of Projects as of February 2021*	Missing Contract Value	Missing Project Life	Missing Project Site Address
Active	45	22	15	21
Closed	30	16	25	20
On Hold	2	1	1	0
Tracking Not Required	12	9	10	10
Upcoming	25	21	24	7
<b>Total Projects</b>	<b>114</b>	<b>69</b>	<b>75</b>	<b>58</b>
Less: Tracking Not Required		<b>(9)</b>	<b>(10)</b>	<b>(10)</b>
Net of Tracking Not Required		<b>60</b>	<b>65</b>	<b>48</b>
<b>Percentage of Total Projects</b>		<b>52.6%</b>	<b>57.0%</b>	<b>42.1%</b>

*\*Note: Some projects have all three categories (attributes) of missing information. Therefore, the sum of missing attributes exceeds the total number of projects.*

**7. CRIO's Administrative Guidelines And/Or Policies Governing Compliance Fees Activities Did Not Cover All Related Activities.**

Our review of CRIO's administrative guidelines and/or policies governing compliance fees activities revealed some design deficiencies and did not cover all related activities. There are no written policies and/or procedures that:

- a. Ensure that contractors are providing complete information which identifies all sub-entities that should be monitored on a given project. For example, CRIO does not have any procedures to identify unreported contractors, sub-contractors, and/or day-laborers.
- b. Determine or set measurement period of compliance evaluation.
- c. State how to assess compliance fees.
- d. Govern compliance fees credit adjustments.
- e. Govern site visits for all EO construction projects.
- f. Document how projects are closed out once completed.

*Note: We followed up with CRIO in October 2021 and March 2022, to see if any administrative guidelines were updated or made to coordinate with change of the Executive Order. We have not received any documentation from CRIO indicating if they have issued supplemental guidelines for the new Executive Orders (EO 2020-5 and EO 2021-02.)*

## NOTEWORTHY ACCOMPLISHMENTS

During our audit, the Civil Rights, Inclusion, and Opportunity Department (CRIO) made impressive improvements in their operations both on a day-to-day level and on a broader scale. We commend CRIO for their efforts to increase the effectiveness of the Department and highlight some operational deficiencies that were either resolved or significantly improved during the audit:

1. Deficiencies In Compliance Fees Reporting And Data Management Have Been Significantly Improved.
2. A Double-counting Error In CRIO's Method Of Calculating And Assessing Compliance Fees Has Been Resolved Thereby Reducing The Risk Of Additional Potential Loss Of Revenues To The City.
3. A Significant Weakness In CRIO's Monitoring Of Construction Projects Subject To Executive Order 2016-1 Has Been Resolved Whereby All Projects Subject To The Executive Order Are Monitored Through Project Completion.
4. Deficiencies In Compliance Fees Billing And Cash Receipts Handling Processes Have Been Resolved. The Risk Of Inefficiency Billing And Cash Fraud Have Been Reduced.

### **1. Deficiencies In Compliance Fees Reporting And Data Management Have Been Significantly Improved.**

**Background** We noted that the major report of Executive Order 2016-1 (EO 2016-1) activities and compliance fees - "Executive Order 2016-1 Summary Construction Inclusion Report" – that CRIO published contained errors and could not be reconcile to actual amounts of compliance fees collected and/or its supporting documents. We also noted that there were "timing" issues with the information included in the report not matching cut-off dates, nor were the reports published timely.

Based on statements from CRIO's management and our observation, this problem was due to lack of effective data management and insufficient record retention practices in CRIO. No one in the Department was responsible for checking the accuracy of the reports prior to them being published on CRIO's website. Also, no one was responsible for cleaning and reconciling data from the master files to the actual reports.

#### **Management Corrective Action**

In June 2019, CRIO hired a "Data and Engagement Manager" and formed a data management team. Their significant accomplishments include:

- Designing project management tools and Smartsheet, data collection, cleaning, analysis, and reporting, developing process policies, and tracking performance for different teams within CRIO. Lead by the new Data and Engagement manager, CRIO adapted a geographic information system (GIS) and published EO compliance metrics in September 2019 to

replace static outdated reports. GIS is a system that creates, manages, analyzes, and maps all types of data. GIS connects data to a map, integrating location data (where things are) with all types of descriptive information (what things are like there).

- Creating external and internal dashboards enables users to easily monitor EO projects performance and be aware of noncompliant contractors. External Dashboard is a public-facing dashboard to present EO construction inclusion metrics such as, the status of projects including the number of hours worked by Detroiters, the number of Detroit Skilled Trades Employment Program (STEP) union members, and the amount of compliance fees paid.
  - External Dashboard displays the project's compliance, and it is updated monthly, and includes an annual performance report.
  - Internal Dashboard is built to show more detail compliance information and indicates any project that may need the Department director's attention and/or corrective action.
  - Reviewing data that was stored in different places and/or forms where appropriate linking them to each other and/or eliminating duplication and replication of data.
  - Adapting several new procedures and internal reports to enhance EO compliance fee data management (e.g., EO 2016-1 Summary Report Pull, EO 2016-1 Dashboard Update, and EO 2016-1 Payment Update).

In most organizations, management functions and makes decisions based on the internal reports it receives and reviews. Thus, reports should be timely, accurate, relevant, and economical. With recent efforts focused on enhanced data management and interactive reporting system, CRIO's management significantly enhanced their operational efficiency.

## **2. A Double-Counting Error In CRIO's Method Of Calculating And Assessing Compliance Fees Has Been Resolved Thereby Reducing The Risk Of Additional Potential Loss Of Revenues To The City.**

### **Background**

Executive Order 2016-1, section 7 specifies the following condition:

If a contractor contract for labor through a union which is meeting the goals set for it under the Detroit Skilled Trades Employment Program (STEP), that contractor will be deemed to have met the Workforce Target with respect to the employees for which it contracted through such a union.... For purposes of calculating a contractor's compliance with the Workforce Target, a union which, as of the date a contractor executes its publicly-funded construction contract or subcontract, is meeting its goals under the Program shall be deemed to have no less than 51% of the

hours worked by its members on the publicly-funded construction project worked by bona-fide Detroit residents. If bona-fide Detroit residents actually account for more than 51% of the hours worked by union members on a publicly-funded construction project, that actual percentage may be used for purposes of calculating compliance with the Workforce Target.

The work hours done by the employees for which it contracted through such a union will be deemed to have met the Workforce Target.

Any worker who qualifies as a STEP member, his or her working hours will be counted toward the contractor meeting the 51% local hiring requirement (i.e., the “Workforce Target”).)

However, when CRIO developed a report template for compliance evaluation (specifically “Monthly Contractor Summary Report”), they did not consider the hours performed by a worker who is a STEP member and a Detroit resident. The implemented report template tracked workhours either for Detroit residents only or for STEP members only, but not for a worker who qualified for both. The old report “double-counted” hours worked of such employees. Thereby overstating the hours towards the Workforce Target.

We reviewed thirty reports and estimated that at least 30% of them had “double counting” errors. Double counting errors in qualified working hours would result in a higher compliance rate and decrease compliance fees assessment, which resulted in additional loss of revenues to the City.

### **Management Corrective Action**

We followed up with CRIO in May 2021 and noticed that CRIO redesigned the “Monthly Contractor Summary Report” template. The new template was renamed as “EO 2016-1 Contribution Form.” It eliminated the potential risk of double-counting errors in hours worked, by adding separate fields to count work hours completed by workers classified as:

- a. “STEP” Only
- b. “Detroit” Only
- c. “Detroit and STEP”

CRIO also enhanced the report by adding informational fields to identify unions and skilled trades. Through drop-down selections, project fields were updated to include data validation, single select fields, and other enhancements to improve the accuracy of its data and reports.

**3. A Significant Weakness In CRIO's Monitoring Of Construction Projects Subject To Executive Order 2016-1 Has Been Resolved Whereby All Projects Subject To The Executive Order Are Monitored Through Project Completion.**

**Background**

CRIO was not monitoring the completion of EO 2016-1 construction projects. The monitoring of construction projects subject to the executive order was in place and appropriately started at the beginning of the projects. However, there was a gap in CRIO's monitoring process and projects were not monitored through construction close-out phase.

**Management Corrective Action**

In March 2021, CRIO started to monitor the close out of EO construction projects. The construction Outreach Manager had assigned new responsibilities with monitoring post construction of the projects. He worked collaboratively from CRIO with the unions, and now with Detroit at Work.

**4. Deficiencies in Compliance Fees Billing and Cash Receipts Handling Processes Have Been Resolved. The Risk of Inefficiency Billing and Cash Fraud Have Been Reduced.**

**Background**

Prior to March 2019, all invoicing, billings, and cash receipts for compliance fees were performed by CRIO in their accounting operations. The Department did not have adequate processes and procedures to safeguard cash receipts and they were not timely in making deposits and remitting cash receipts to the Office of the Chief Financial Officer, Office of the Treasury.

We identified other significant internal control weaknesses including inadequate segregation of duties over cash receipts, missing endorsements on checks received, late bank deposits, and late billings to non-compliant contractors.

**Management Corrective Action**

CRIO worked with staff in the Office of the Chief Financial Officer (OCFO) to implement new processes designed to resolve the significant risks in cash management activities:

- Effective March 2019, compliance fee billing and cash receipts handling were transitioned to the appropriate divisions and teams within the OCFO.
- The Oracle Invoicing Smartsheet was enhanced to provide "two-way" communication to and from CRIO and to and from the OCFO. For example, CRIO provides the information for the OCFO to complete the compliance fee billings, and the OCFO provides up-to-date cash receipts and payment information back to CRIO for their collection, monitoring, and follow-up activities.

- CRIO assigned dedicated personnel and set up new procedures to update and monitor the Oracle Invoicing Smartsheet.

This centralization of cash handling and billing processes enhances CRIO's overall control environment and allows the Department more time to focus on improving the efficiency and effectiveness of its operations.

## APPENDIX A

### Generally Accepted Government Auditing Standards for Performance Audits

The following excerpt is related to Generally Accepted Government Auditing Standards as compiled by the United States Government Accountability Office (GAO) for Performance Audits. According to the GAO and GAGAS<sup>12</sup>:

§1.21: Performance audits are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The term “program” is used in GAGAS to include government entities, organizations, programs, activities, and functions.

§1.22 Performance audit objectives vary widely and include assessments of program effectiveness, economy, and efficiency; internal control; compliance; and prospective analyses. Audit objectives may also pertain to the status or condition of a program. These overall objectives are not mutually exclusive. For example, a performance audit with an objective of determining or evaluating program effectiveness may also involve an additional objective of evaluating the program’s internal controls. Key categories of performance audit objectives include the following:

- a. Program effectiveness and results audit objectives. These are frequently interrelated with economy and efficiency objectives. Audit objectives that focus on program effectiveness and results typically measure the extent to which a program is achieving its goals and objectives. Audit objectives that focus on economy and efficiency address the costs and resources used to achieve program results.
- b. Internal control audit objectives. These relate to an assessment of one or more aspects of an entity’s system of internal control that is designed to provide reasonable assurance of achieving effective and efficient operations, reliability of reporting for internal and external use, or compliance with provisions of applicable laws and regulations. Internal control objectives also may be relevant when determining the cause of unsatisfactory program performance. Internal control is a process effected by an entity’s oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity.
- c. Compliance audit objectives. These relate to an assessment of compliance with criteria established by provisions of laws,

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<sup>12</sup> Government Auditing Standards (Yellow Book) 2018 Revision; [www.gao.gov/yellowbook](http://www.gao.gov/yellowbook).



## Generally Accepted Government Auditing Standards for Performance Audits

- d. regulations, contracts, or grant agreements, or other requirements that could affect the acquisition, protection, use, and disposition of the entity's resources and the quantity, quality, timeliness, and cost of services the entity produces and delivers. Compliance requirements can be either financial or nonfinancial.
- e. Prospective analysis audit objectives. These provide analysis or conclusions about information that is based on assumptions about events that may occur in the future, along with possible actions that the entity may take in response to the future events.

There are four "Elements of a Finding" in a Performance Audit. The following excerpt(s) from GAGAS describe how auditors develop Findings:

§8.116 As part of a performance audit, when auditors identify findings, they should plan and perform procedures to develop the criteria, condition, cause, and effect of the findings to the extent that these elements are relevant and necessary to achieve the audit objectives.

§8.125 **Condition:** Condition is a situation that exists. The condition is determined and documented during the audit.

§8.124 **Criteria:** To develop findings, criteria may include the laws, regulations, contracts, grant agreements, standards, measures, expected performance, defined business practices, and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to the program or operation. The term program includes processes, projects, studies, policies, operations, activities, entities, and functions. Criteria provide a context for evaluating evidence and understanding the findings, conclusions, and recommendations in the report.

§8.126 **Cause:** The cause is the factor or factors responsible for the difference between the condition and the criteria, and may also serve as a basis for recommendations for corrective actions. Common factors include poorly designed policies, procedures, or criteria; inconsistent, incomplete, or incorrect implementation; or factors beyond the control of program management. Auditors may assess whether the evidence provides a reasonable and convincing argument for why the stated cause is the key factor contributing to the difference between the condition and the criteria.

§8.127 **Effect** or potential effect: The effect or potential effect is the outcome or consequence resulting from the difference between the condition and the criteria. When the audit objectives include identifying the actual or potential consequences of a condition that varies (either positively or negatively) from the criteria identified in the audit, effect is a measure of those consequences. Effect or potential effect may be used to demonstrate the need for corrective action in response to identified

**APPENDIX A**

**Generally Accepted Government Auditing Standards for Performance Audits**

problems or relevant risks.

GAGAS, also provides the following “Reporting Standards for Performance Audits”:

§9.27 **Conclusions:** Report conclusions are logical inferences about the program based on the auditors’ findings, not merely a summary of the findings. The strength of the auditors’ conclusions depends on the persuasiveness of the evidence supporting the findings and the soundness of the logic used to formulate the conclusions. Conclusions are more compelling if they lead to the auditors’ recommendations and convince the knowledgeable user of the report that action is necessary.

§9.23 **Recommendations:** When feasible, auditors should recommend actions to correct deficiencies and other findings identified during the audit and to improve programs and operations when the potential for improvement in programs, operations, and performance is substantiated by the reported findings and conclusions. Auditors should make recommendations that flow logically from the findings and conclusions, are directed at resolving the cause of identified deficiencies and findings, and clearly state the actions recommended.

§9.28 Effective recommendations encourage improvements in the conduct of government programs and operations. Recommendations are effective when they are addressed to parties that have the authority to act and when the recommended actions are specific, feasible, cost effective, and measurable.

**Overview of the City of Detroit Executive Orders 2014-4 through 2021-02**

On August 22, 2014, Mayor Michael E. Duggan issued the first executive order to promote maximizing utilization of Detroit residents on publicly funded construction projects. Contractors or developers who entered publicly funded construction projects but failed to meet the Detroit resident workforce requirement will result in monthly financial penalties (recognized as “compliance fees”). CRIO is the designated agency to enforce the execution of the related Executive Order (EO). The initial EO was superseded three times during the period 2014 to 2021. The following table summarizes the revisions to the initial EO that were enacted to ensure that Detroit residents’ makeup a majority percentage (at least 51%) of the workforce on publicly funded construction projects.

<b>Revisions to Initial Executive Order (EO) Governing Compliance Fee Dollars</b>				
<b>Mayor's Executive Order</b>	<b>Subject</b>	<b>Effective Date</b>	<b>Validation</b>	<b>Major Revisions</b>
EO 2014-4	Utilization of Detroit Residents on Publicly-Funded Construction Projects	8/22/2014	Superseded by Executive Order 2016-1	<ul style="list-style-type: none"> <li>• Original EO to ensure that Detroit residents’ makeup a majority percentage (at least 51%) of the workforce on publicly funded construction projects. CRIO is designated as enforcement agency.</li> </ul>
EO 2016-1	Utilization of Detroit Residents on Publicly-Funded Construction Projects	12/16/2016	Superseded by Executive Order 2020-5	<ul style="list-style-type: none"> <li>• First revision to the original EO.</li> <li>• Specifies the threshold for a “publicly-funded construction project” subject to the EO.</li> <li>• Added definitive languages for a “bona-fide Detroit resident”, Workforce Target, Measurement Period, Monetary Contributions, and laborers through unions.</li> <li>• Added the escalation process in challenging CRIO’s finding.</li> </ul>

**APPENDIX B**

**Overview of the City of Detroit Executive Orders 2014-4 through 2021-02**

<b>Revisions to Initial Executive Order (EO) Governing Compliance Fee Dollars</b>				
<b>Mayor's Executive Order</b>	<b>Subject</b>	<b>Effective Date</b>	<b>Validation</b>	<b>Major Revisions</b>
EO 2020-5	Utilization of Detroit Residents on Publicly-Funded Construction Projects	11/20/2020	Superseded by Executive Order 2021-02	<ul style="list-style-type: none"> <li>• Second revision to the original EO.</li> <li>• Added demolition projects contracted under the Proposal N Neighborhood Improvement Plan into the EO.</li> <li>• The Proposal N demolition projects are subject to meet the “at least 51% local hiring requirements.”</li> </ul>
EO 2021-02	Utilization of Detroit Residents on Publicly-Funded Construction and Demolition/Rehab Projects	4/14/2021	In Effect	<ul style="list-style-type: none"> <li>• Third revision to the original EO.</li> <li>• Emphasizes the inclusion of publicly-funded demolition/ rehabilitation projects and clarifies the exclusion of publicly-funded projects funded by a grant awarded by a governmental entity.</li> <li>• Maintains the original EO procedures for assessing compliance fees.</li> </ul>

**1. Executive Order 2014-4 (EO 2014-4)**

Enacted on August 22, 2014. The Executive Order:

- Directed specific residency requirements on all construction projects funded, in whole or in part, by the City, and applies to those funded by state or federal funds to the extent permitted by law;
- Required all City of Detroit project construction contracts shall provide that at least fifty-one percent (51%) of the workforce must be bona-fide Detroit residents;
- Required Detroit residents to perform fifty-one percent (51%) of the hours worked on the project;

**Overview of the City of Detroit Executive Orders 2014-4 through 2021-02**

- Imposed monthly financial penalties (e.g. – Compliance Fees) for failure to meet the Detroit resident workforce requirement.

**2. Executive Order 2016-1 (EO 2016-1)**

Issued on December 16, 2016 and supersedes EO 2014-4. The updated Executive Order:

- Clarified the meaning of “publicly funded construction projects” to mean: (a) any construction contract for more than \$3,000,000 (Three Million Dollars) made by the City with any person or entity; and (b) are subject to implement specific residency targets for its workforce.
- Consistent to EO2014-4, the developers and contractors contracting with the City are required to have at least 51% of bona-fide Detroit residents to meet the “Workforce Target.” EO 2016-1 added specific definitive language regarding the “Workforce Target”, including requirements, how targets are calculated, and the penalty for non-compliance.
- Added language specific to the City’s “Workforce Training Fund” and that it is used to support development-related job training and placement efforts. All collected compliance fees from noncompliant developers and contractors is the primary source of funds for the City’s Workforce Training Fund.

**3. Executive Order 2020-5 (EO 2020-5)**

Went into effect November 20, 2020 and supersedes EO 2016-1. The significant change between EO2016-1 and EO2020-5 is the addition of “publicly funded demolition/rehabilitation” projects in excess of \$50,000.”

For purposes of this executive order, this means any contract for the demolition or rehabilitation of residential buildings under the Proposal N Neighborhood Improvement Plan. It requires demolition contractors to obtain the same residency requirements as its predecessors (i.e. – 51% of the workforce to be bona-fide Detroit residents) to avoid paying compliance fees.

**4. Executive Order 2021-02 (EO 2021-02)**

Went into effect April 14, 2021 and supersedes EO 2020-5. The updated executive order, EO 2021-02:

- Emphasizes the inclusion of publicly funded demolition/rehabilitation projects and makes “publicly funded demolition/rehabilitation project” more clearly “made by the City with any person or entity.” The redefined term is as:

*“Any demolition or rehabilitation of one or more residential buildings performed under the Proposal N Neighborhood Improvement Plan, under a contract, the value of which is more than \$50,000 (Fifty Thousand Dollars), made by the City with any person or entity.”*

**Overview of the City of Detroit Executive Orders 2014-4 through 2021-02**

- Expands the requirement of “Workforce Target” of EO traditional construction projects to demolition/rehabilitation projects. The Workforce Target shall be measured by the hours worked by bona-fide Detroit residents on the publicly funded construction project or publicly-funded demolition/rehab project.
- Emphasizes that non-compliance is a material breach-of-contract.
- Clarifies the exclusion of publicly funded projects funded by a grant or by a government entity. EO 2021-02 paragraph 12 states:

*“Notwithstanding anything to the contrary set forth herein, the requirement set forth in Paragraphs 4 through 11 of this Executive Order shall not apply to any publicly- funded construction contract or publicly funded demolition/rehab contract, or part thereof, that is funded by a grant awarded by a federal, state, or other governmental entity, the terms of which prohibit the implementation of any such requirements.”*
- Keeps the assessment of compliance fees of EO traditional construction projects and demolition/rehab projects as same as EO 2020-5.

**EXECUTIVE ORDER 2016-1**

**TO: ALL BOARDS, COMMISSIONS, DEPARTMENT DIRECTORS, CITY COUNCIL MEMBERS, CITY CLERK, DEVELOPERS, CONTRACTORS, AND DETROIT ECONOMIC GROWTH CORPORATION (DEGC).**

**FROM: MICHAEL E. DUGGAN, MAYOR**

**SUBJECT: UTILIZATION OF DETROIT RESIDENTS ON PUBLICLY-FUNDED CONSTRUCTION PROJECTS**

**DATE: December 16, 2016**

**WHEREAS**, it is the policy of this Administration to encourage and maximize the utilization of Detroit residents on all City contracts and all projects benefited by City subsidies. An important component of the economic revitalization of Detroit is the employment of Detroit residents. Accordingly, this Executive Order directs any entity entering into a publicly-funded construction project to implement specific residency targets for its workforce, as follows:

1. A “publicly-funded construction project,” for purposes of this Executive Order, means (a) any construction contract for more than \$3,000,000.00 (Three Million Dollars) made by the City with any person or entity; and (b) any construction project for which the City, affiliated public or quasi-public entities of the City, or any of their agents or contractors provides funds or financial assistance via any of the following methods, where total assistance from the City or its affiliated entities is over \$3,000,000.00 (Three Million Dollars):

- (1) The sale or transfer of land below its appraised value;
- (2) Direct monetary support;
- (3) Public contributions originated by the State of Michigan or its agencies, the United States government or its agencies, or any other non-City government entity, and for which City approval is required and obtained; or
- (4) Tax increment financing. For purposes of calculating the total assistance directly provided through tax increment financing, tax revenue that would have accrued to all government entities shall be counted.

Other persons or entities doing business with the City, but not covered by this section, may voluntarily agree to be bound by some or all of the substantive requirements of this Executive Order.



2. A “bona-fide Detroit resident,” for purposes of this Executive order, means an individual who can demonstrate residency in the City of Detroit as of a date at least thirty (30) days prior to the date the person seeks to be employed for work on a publicly-funded construction project. Residency shall be established by the address listed on (a) any one of the following: State of Michigan identification card, State of Michigan driver’s license, or Detroit municipal ID; plus (b) any one of the following: Voter Registration Card, Motor Vehicle Registration, most recent federal, state, or City of Detroit tax returns, Lease/Rental agreement, the most recent utility bill (or utility affidavit signed by a landlord with respect to a leased residence), or most recent municipal water bill. Other forms of proof-of-residence may be accepted under certain circumstances.

3. All publicly-funded construction contracts shall include a provision providing that at least 51% of the workforce on the publicly-funded construction project shall be bona-fide Detroit residents. This requirement shall be referred to as the “Workforce Target.” The Workforce Target shall be measured by the hours worked by bona-fide Detroit residents on the publicly-funded construction project.

4. Developers, general contractors, prime contractors and subcontractors are all required to comply with the terms of this Executive Order. Collectively, these entities are hereinafter referred to as “contractors.” It is, however, the sole responsibility of the person or entity contracting with the City of Detroit to require all of its subcontractors either to (a) meet the Workforce Target; or (b) make the required contribution to the City’s Workforce Training Fund, as provided in Paragraph 6 of this Executive Order. Contractors may utilize local unions, Detroit Employment Solutions Corporation, or other entities to help meet the Workforce Target. Failure to satisfy the requirements of this Executive Order shall constitute a breach of contract and may result in the immediate termination of the contract.

5. Upon execution of a publicly-funded construction contract, the City of Detroit’s Civil Rights, Inclusion and Opportunity Department (“CRIO”) shall determine whether the Workforce Target in the contract shall be measured periodically either (a) monthly or (b) quarterly. This period shall be referred to as the “measurement period.” Thereafter, for the duration of the construction project, the contractor shall, at the end of each measurement period, submit to CRIO a report indicating:

- (1) The total hours worked on the project during the preceding measurement period (“total work-hours”);
- (2) The total hours worked on the project by bona-fide Detroit residents during the preceding measurement period; and
- (3) If applicable, the amount by which the contractor fell short of meeting the Workforce Target. A contractor falling short of the Workforce Target shall report both (a) the raw number of total work-hours by which the contractor fell short of the Workforce Target; and (b) the percentage of total work-hours by which the contractor fell short of the Workforce Target.



**APPENDIX C**  
**City of Detroit Executive Order 2016-1**

6. A contractor who does not meet the Workforce Target in any measurement period shall help strengthen Detroit's workforce by making a monetary contribution to the City's CRIO-administered Workforce Training Fund, thereby supporting the skill development of Detroit residents. The required contribution for any contractor who does not meet the Workforce Target shall be the sum of the following:

- (1) For each work-hour comprising the first 0-10% of total work-hours by which the contractor fell short of the Workforce Target, 5% of the average hourly wage paid by the contractor on the publicly-funded construction project during the preceding measurement period.
- (2) For each work-hour comprising the second 0-10% of total work-hours by which the contractor fell short of the Workforce Target (if applicable), 10% of the average hourly wage paid by the contractor on the publicly-funded construction project during the preceding measurement period.
- (3) For each work-hour comprising the remaining 0-31% of total work-hours by which the contractor fell short of the Workforce Target (if applicable), 15% of the average hourly wage paid by the contractor on the publicly-funded construction project during the preceding measurement period.<sup>1</sup>

7. If a contractor contracts for labor through a union which is meeting the goals set for it under the Detroit Skilled Trades Employment Program, that contractor will be deemed to have met the Workforce Target with respect to the employees for which it contracted through such a union.

Specifically: CRIO will make a periodic determination whether a union participating in the Detroit Skilled Trades Employment Program is meeting its established goals under that Program. For purposes of calculating a contractor's compliance with the Workforce Target, a union which, as of the date a contractor executes its publicly-funded construction contract or subcontract, is meeting its goals under the Program shall be deemed to have no less than 51% of the hours worked by its members on the publicly-funded construction project worked by bona-fide Detroit residents. If bona-fide Detroit residents actually account for more than 51% of the hours worked by union members on a publicly-funded construction project, that actual percentage may be used for purposes of calculating compliance with the Workforce Target.

8. If CRIO determines a contractor is in non-compliance with the requirements of this Order, CRIO will notify the contractor, in writing, of the contractor's non-compliance.

If a contractor wishes to challenge a finding of non-compliance, the contractor may, within fifteen (15) days of the notice of non-compliance, file with CRIO a written notice challenging the finding of non-compliance, and detailing the reasons for that challenge. The challenge will then

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<sup>1</sup> Thus, for example, if 25% of the total work-hours performed on a publicly-funded construction project were performed by bona-fide Detroit residents, the contractor will have fallen short of the Workforce Target by 26% of the total work-hours. That contractor's minimum required contribution would be the sum of (1) 5% of the average hourly wage for 10% of the total work-hours; (2) 10% of the average hourly wage for 10% of the total work-hours; and (3) 15% of the average hourly wage for 6% of the total work-hours.

**APPENDIX C**  
**City of Detroit Executive Order 2016-1**

be forwarded to a panel comprising of (1) the City's Corporation Counsel or his or her designee; (2) the head of the Department of Administrative Hearings or his or her designee; and (3) the Director of the Buildings, Safety, Engineering, and Environment Department, or his or her designee. The panel shall adjudicate the challenge and issue a written decision. The panel may, but need not, schedule an oral hearing on the challenge.

If, following written notice of non-compliance and the adjudication of any challenge, the contractor fails or refuses to take corrective actions within thirty (30) days, the City of Detroit may do any of the following:

- (1) withhold from the contractor all future payments under the construction contract until it is determined that the contractor is in compliance;
- (2) refuse all future bids on city projects or applications for financial assistance in any form from the city or any of its departments, until such time as the contractor demonstrates that it has cured its previous non-compliance;
- (3) debar the contractor from doing business with the City of Detroit for a period of up to one year.

In addition, the City of Detroit reserves the right to re-bid the contract, in whole or in part, or hire its own workforce to complete the work.

9. All applicable construction contracts, construction contract amendments, change orders and extensions shall include the terms of this Executive Order. CRIO shall have the responsibility for preparing administrative guidelines related to this Executive Order, and for monitoring and enforcing the provisions of this Executive Order.

\* \* \*

Pursuant to the powers vested in me by the 1963 Michigan Constitution and by the 2012 Detroit City Charter, I, Michael E. Duggan, Mayor of the City of Detroit, issue this Executive Order. This Executive Order is effective upon its execution and filing with the City Clerk and supersedes Executive Order No. 2014-4 issued by me on August 22, 2014. Provided, however, that this Executive Order shall not supersede the operation of any prior Executive Order with respect to any publicly-funded construction project on which construction activities have commenced as of the date of this Executive Order.

  
Michael E. Duggan  
Mayor, City of Detroit



**APPENDIX D**

**Agreement for Administration and Operation of Programs  
Funded through the Detroit Workforce Training Fund and Exhibit C**

**AGREEMENT FOR ADMINISTRATION AND OPERATION OF PROGRAMS  
FUNDED THROUGH THE DETROIT WORKFORCE TRAINING FUND**

THIS AGREEMENT FOR ADMINISTRATION AND OPERATION OF PROGRAMS FUNDED THROUGH THE CITY OF DETROIT WORKFORCE TRAINING FUND ("Agreement") is entered into as of the Effective Date by and between the City of Detroit, a Michigan Municipal Corporation ("City of Detroit" or "City"), acting through the Civil Rights, Inclusion and Opportunity Department ("CRIO"), and Detroit Employment Solutions Corporation ("DESC"), a Michigan non-profit corporation. DESC and City of Detroit may each be referred to herein as a "Party" or collectively as the "Parties" to this Agreement, as applicable.

**RECITALS**

Whereas, DESC is an IRS §501(c)(3) entity and is the fiduciary designated by the Mayor's Workforce Development Board to carry out the Detroit workforce area's strategic plan, and the goals and objectives of the local workforce development board for the City of Detroit, as described in the Workforce Innovation and Opportunity Act of 2014 ("WIOA") and pursuant to MCL 408.123; and

Whereas, an important component of the economic revitalization of Detroit is the employment of Detroit residents and it is the policy of the City to encourage and maximize the utilization of Detroit Residents on publicly-funded construction projects; and

Whereas, Executive Order 2014-4, effective August 22, 2014 (Exhibit A) directed City departments and agencies to implement specific residency requirements on all construction projects funded, in whole or in part, by the City, and applies to projects funded by state or federal funds to the extent permitted by law; and

Whereas, Executive Order 2016-1, effective December 16, 2016 (Exhibit B) supersedes Executive Order 2014-4 with respect to publicly funded construction projects on which construction activities commence after December 16, 2016; and

Whereas, Executive Orders 2014-4 and 2016-1 impose monthly financial penalties on non-compliant developers, general contractors, prime contractors and sub-contractors engaged to service all construction projects funded, in whole or in part, by the City; and

Whereas, the City has collected such financial penalties and expects to collect such penalties and pre-payments of such penalties on an ongoing basis; and

Whereas, such penalties and pre-payments are deposited into the City of Detroit Workforce Training Fund which also receives other Purpose Driven Deposits as set forth in certain Policies and Procedures established by the City (Exhibit C);

**APPENDIX D**

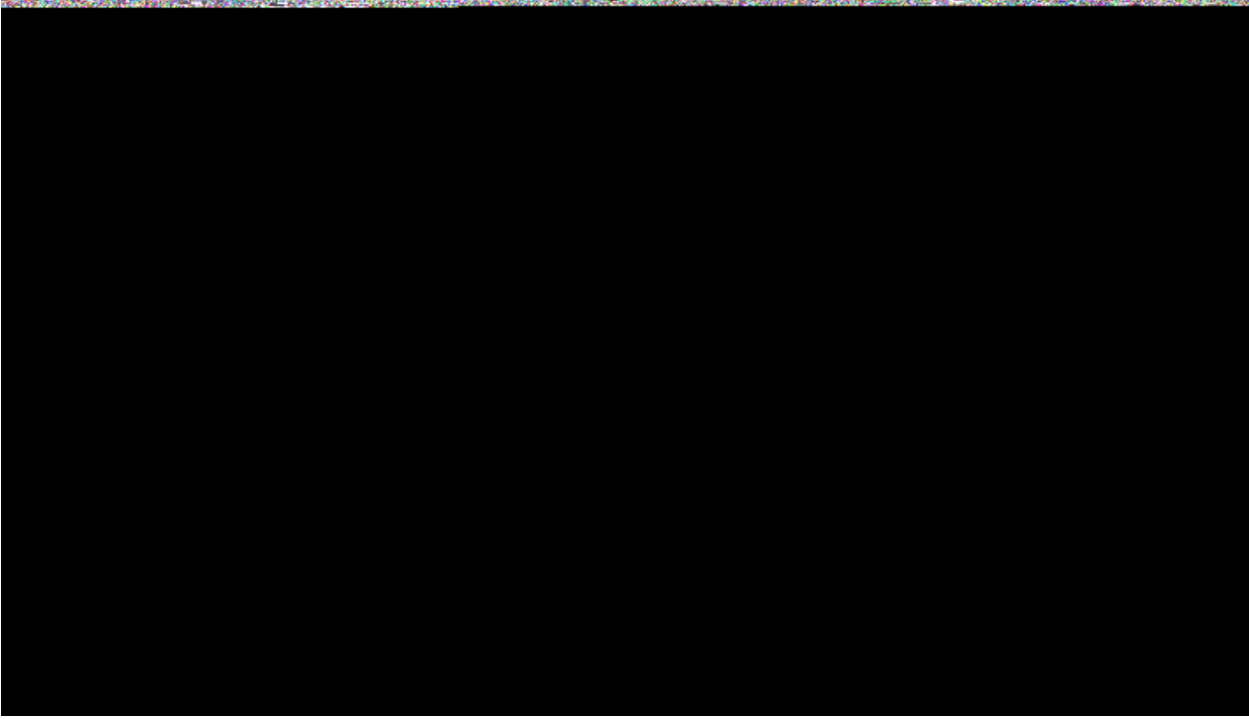
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Whereas, the City desires to use financial penalties received into the City of Detroit Workforce Training Fund for purposes of programming designed to increase the pool of qualified Detroit applicants for jobs in the skilled construction trades and jobs resulting from new development in the City; and

Whereas, the City desires to have DESC administer and operate programs for the foregoing purposes;

**NOW THEREFORE**, in consideration of the foregoing premises and agreements, the Parties agree as follows:

**Section 1. Definitions.**

- 1.1 "Detroit Resident" shall have the meaning set forth in Executive Order 2016-1. Specifically, a Detroit Resident is an individual who can demonstrate residency in the City of Detroit as of a date at least thirty (30) days prior to the date the person seeks to be employed for work on a publicly-funded construction project or other permanent job resulting from new
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**Section 2. Effective Date, Term and Termination.**

- 2.1 The Effective Date of this Agreement is the date on which each of the following has occurred: (i) execution of the Agreement by the Chief Executive Officer of DESC, (ii) execution of this Agreement by an authorized representative(s) of the City of Detroit, and (iii) approval of this Agreement by resolution of the Detroit City Council;
- 2.2 The Term of this Agreement commences on the Effective Date and expires on June 30, 2022. Thereafter, this Agreement shall be renewed annually for successive one year Terms unless either party provides the other party with notice of termination at least 90 days in advance of June 30. Notwithstanding the foregoing, this Agreement may be terminated by either Party, with or without cause, upon 90 days written notice by the terminating Party to the non-terminating Party.

**Section 3. Establishment of Workforce Training Fund Program.**

- 3.1 The Parties establish a Workforce Training Program funded by the City and administered by DESC. The Workforce Training Program shall be funded through payments, pre-payments and other deposits received by the City into the Workforce Training Fund and disbursed to DESC as set forth more fully in this Agreement. The purpose of the Program is to support initiatives undertaken by DESC to provide training, support and placement for Detroiters seeking jobs in the skilled construction trades and/or the permanent jobs resulting from new development.

**Section 4. Scope of Services.**

- 4.1 In consultation and cooperation with the Mayor's Workforce Development Board, DESC shall:
- 4.1.1 Work with employers (including developers, general contractors, prime contractors and subcontractors, and unions), educational institutions and other community stakeholders to identify the current and expected needs of employers in the City of Detroit for qualified workers;
  - 4.1.2 Work with employers, educational institutions and other community stakeholders to identify the current and expected skills gaps of Detroit Residents seeking employment;
  - 4.1.3 Develop and implement specific initiatives aimed at preparing Detroit Residents for employment in the skilled construction trades and permanent jobs resulting from new developments. Examples of such initiatives undertaken to date by DESC which may be supported under this Agreement include DESC's partnership with the Detroit Public Schools Community District to operate a skilled trades training facility and programs at the A. Phillip Randolph Career and Technical Center, Detroit Environmental Employment Program (asbestos and lead abatement training) conducted at the Detroit Reentry Center and Macomb Correctional Facility, and Construction Basic Skills courses to build contextualized literacy and numeracy skills;

**APPENDIX D**

**Agreement for Administration and Operation of Programs  
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- 4.1.4 Use Workforce Training Program funds to develop, administer, market and implement training or education programs and to provide support services to Detroit Residents seeking employment. Implementation costs may include facility costs or capital improvements to training facilities as necessary. Subject to the terms of this Agreement and its Governance Agreement with the City, DESC may select and enter into agreement(s) with third-parties to operate the program(s) contemplated herein, if DESC does not operate the program(s) directly;
  - 4.1.5 Develop and approve an annual budget for the expenditure and disbursement of funds received from the City under this Agreement;
  - 4.1.6 Monitor and evaluate the performance of all programs and initiatives supported by funds received from the City under this Agreement, and shall be accountable to the Mayor's Workforce Development Board for such performance;
  - 4.1.7 Provide CRIO with performance reports on a quarterly basis.
- 4.2 CRIO shall:
- 4.2.1 Monitor performance and outcomes of the Workforce Training Program on a quarterly basis and provide updates to City Council, including an annual report;
  - 4.2.2 Develop and implement a policy to define the collection and use of pre-payments of financial penalties owed to the City under Executive Orders 2014-4 and 2016-1. The current draft of these guidelines "Policy and Guidelines Regarding Pre-Payment Into The Workforce Training Fund," attached hereto as Exhibit C.

**Section 5. Budget and Funding Disbursements.**

- 5.1 The Workforce Training Program shall be funded through payments, pre-payments and other Purpose Driven Deposits received by the City into the Workforce Training Fund. Upon execution and approval of this Agreement by all parties, these funds shall be released to DESC for use in the Workforce Training Program.
- 5.2 On an annual basis in succeeding years of this Agreement, CRIO shall determine the expected balance of the Workforce Training Fund based on payments, pre-payments and other Purpose Driven Deposits received by the City into the Fund. As part of the City's annual budget approval process, including the Revenue Conference, CRIO shall include in its annual proposed budget an amount to be paid to DESC in support of the Workforce Training Program for the upcoming fiscal year. Upon final approval of CRIO's annual budget by City Council, the City shall pay to DESC the funds included in CRIO's final, approved budget for the Workforce Training Program.



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**Agreement for Administration and Operation of Programs  
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- 5.3 The Parties agree that from time to time during the Term of this Agreement, the City may, in its sole discretion, amend CRIO's budget during an ongoing fiscal year to disburse to DESC additional and/or unanticipated payments, pre-payments and other Purpose Driven Deposits received by the City into the Workforce Training Fund. This process will follow the City's existing appropriation process and require City Council approval. Any additional funds so received by DESC shall be subject to all of the terms and conditions of this Agreement.
- 5.4 The individual responsible for accepting performance under this Agreement and to whom invoices should be sent is: Group Executive City of Detroit Civil Rights, Inclusion and Opportunity, who may be reached at 2 Woodward Ave., Suite 1240, Detroit, MI 48226. (313) 224-4950.

**Section 6. Recordkeeping.**

- 6.1 Each Party will maintain, and shall require its contractors who perform any services hereunder, to maintain, all source documents, records, and other information pertinent to its operation of the City Program under this Agreement for a minimum of three (3) years following the conclusion or earlier termination of this Agreement, but in no case for less time than may be required to maintain compliance with applicable laws or funding source requirements.

**Section 7. Indemnification.**

- 7.1 Except as otherwise provided herein, there shall be no indemnification of either Party by the other as regards to liabilities arising out of the functions covered by this Agreement. Each Party shall be responsible for its own liabilities and defenses as determined by law.

**Section 8. Amendments.**

- 8.1 No amendment to this Agreement will be effective and binding upon the Parties unless it is in writing, expressly makes reference to this Agreement, is executed by a duly authorized representative of each Party, and is approved by resolution of the Detroit City Council.

**Section 9. Notices.**

- 9.1 All notices, consents, approvals, requests, notifications, and other communications (collectively, "Notices") related to this Agreement shall be given by a Party in writing, signed by an authorized representative of the Party, and hand delivered, mailed by first-class mail, or mailed by overnight courier, and addressed as follows:

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If to DESC:     Detroit Employment Solutions Corporation  
                    440 E. Congress, 4th Floor  
                    Detroit, MI 48202  
                    Attention: Chief Executive Officer

If to the City:   City of Detroit Detroit Civil Rights, Inclusion and Opportunity  
                    2 Woodward Avenue, Suite 1240  
                    Detroit, MI 48226  
                    Attention: Group Executive, Detroit Civil Rights, Inclusion and  
                    Opportunity

- 9.2 All Notices shall be deemed given on the date of hand delivery or of mailing. Either Party may change the name of the individual designated to receive Notices or the address for the receipt of Notices at any time by giving notice thereof to the other Party as herein provided.

**Section 10. Consideration.**

- 10.1 Both Parties acknowledge and agree that the duties, benefits, and obligations of each Party set forth in this Agreement shall constitute valid consideration for this Agreement.

**Section 11. Independent Parties.**

- 11.1 The Parties acknowledge and agree that DESC and the City are independent of each other and do not intend, as a result of this Agreement or otherwise, to become a joint venture, partners, joint employer, servants, agents, representatives, or any type of related business entities to one another.

**Section 12. No Third-Party Rights.**

- 12.1 The Parties agree that neither Party intends to create any legal or equitable rights or benefits in any third-party or any other person as a result of this Agreement. The Parties acknowledge and agree that the enforcement of the terms and conditions of this Agreement, and all rights of action related to such enforcement, shall be strictly reserved to DESC and the City, or their successors and assigns, and nothing in this Agreement shall give or allow any such claim or right of action by any third party whatsoever on such Agreement.

**Section 13. Choice of Law and Venue.**

- 13.1 This Agreement shall be governed by the laws of the State of Michigan, excluding its choice of laws rules. Any legal suit, action or proceeding arising out of this Agreement shall be instituted in the Third Judicial Circuit Court of the State of Michigan, County of Wayne, and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding.



**APPENDIX D**

**Agreement for Administration and Operation of Programs  
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**Section 14. Merger.**

- 14.1 This Agreement constitutes the entire agreement between the Parties, and all prior discussions, negotiations, communications, understandings, and agreements, whether written or verbal, are hereby merged into this Agreement. Neither Party nor its agents have made any representations except those expressly set forth herein, and no rights or remedies are or shall be acquired by the Parties by implication or otherwise unless expressly set forth herein.

**Section 15. Severability.**

- 15.1 In the event that any provision in this Agreement is found by a court to be impermissible or illegal, then that provision shall be stricken from the Agreement and shall be replaced by a provision that is permissible and legal and by mutual agreement of the Parties comes closest to expressing the intent of the stricken provision. The remainder of the Agreement shall remain in full force and effect in accordance with its original overall intent.

**Section 16. Counterparts.**

- 16.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

**Section 17. Force Majeure.**

- 17.1 No failure or delay in performance of this Agreement, by either Party, will be deemed to be a breach thereof when such failure or delay is caused by a force majeure event, including but not limited to any Act of God, fire, flood, hurricane, blizzard, earthquake, epidemic, strike, lockout, embargo, act of war, invasion, act of a foreign enemy, act of terrorism, riot, act of civil disobedience, sabotage, explosion, the binding order of any court or governmental authority, or any other cause not within the control of the Party.

**Section 18. Waiver.**

- 18.1 Neither Party shall be deemed to have waived any of its respective rights under this Agreement unless such waiver is in writing and signed by such waiving Party. A waiver on any one (1) occasion shall not be construed as a waiver of any right on any future occasion. No failure by either Party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition.

**APPENDIX D**

**Agreement for Administration and Operation of Programs  
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**Section 19. Compliance with Laws.**

19.1 Each Party shall be individually responsible for maintaining compliance in all respects with all applicable federal, state, and local laws, rules, regulations, and orders having the binding effect of law. Except as otherwise provided for herein, neither Party will be responsible for ensuring the other Party's compliance with applicable laws at any time, unless so required under applicable laws.


(Signatures appear on next page.)

**APPENDIX D**

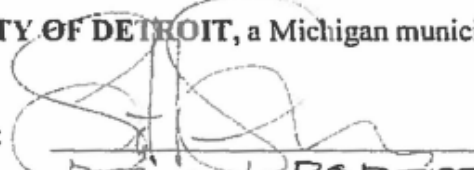
**Agreement for Administration and Operation of Programs  
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**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the dates shown below, to be effective as of the Effective Date.

**DETROIT EMPLOYMENT SOLUTION CORPORATION,**  
a Michigan non-profit corporation

By:   
Name: NICOLE A. SHERMAN-FREEMAN  
Its: Chief Executive Officer  
Date: 7.13.17

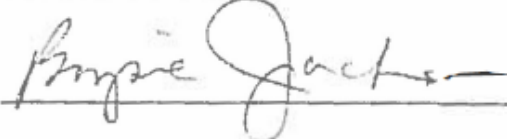
**CITY OF DETROIT**, a Michigan municipal corporation

By:   
Name: PORTIA L. ROBERSON  
Its: GROUP EXECUTIVE  
Date: 7.14.17

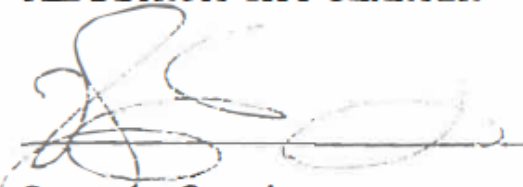
**APPROVED BY DETROIT CITY COUNCIL**

\_\_\_\_\_

**OFFICE OF CONTRACTS AND PROCUREMENT**

 7/14/17

**APPROVED BY LAW DEPARTMENT  
PURSUANT TO SECTION 7.5-206 OF  
THE DETROIT CITY CHARTER**

  
Corporation Counsel  
Date: 7/14/17

**APPENDIX D**

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**EXHIBIT C: Workforce Training Fund Policies and Procedures**

**APPENDIX D**

**Agreement for Administration and Operation of Programs  
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**Workforce Training Fund**

**Policies and Procedures**

**Administration:**

The Workforce Training Fund (the "Fund") was created by the City of Detroit's Office of Civil Rights, Inclusion and Opportunity (CRIO) for the purpose of providing funding to programs that educate and train the Detroit workforce for jobs and career advancement opportunities. In collaboration with the City of Detroit's Workforce Development Board, CRIO is authorized to allocate resources on an annual basis from the Fund to ensure that Detroit businesses have employees with the talent they need to compete and grow, and that individuals have the skills they need for in-demand jobs.

**Fund Structure:**

The Workforce Training Fund will receive purpose driven deposits, pre-payments and funds from financial penalties that are specifically designated to increase the pool of qualified Detroit applicants for jobs resulting from economic development activity in the City. The funds are held in an appropriation account established and managed by CRIO.

On an annual basis, during the City's standard budgetary process, the Detroit City Council shall appropriate collected and anticipated funds to the Workforce Training Fund. CRIO shall provide the City Council with a quarterly account of all funds received and anticipated to be received, as well as an annual report on the outcomes of the programs that received funding from the Workforce Training Fund. CRIO will use a collaborative and proactive approach to working with the City Council to provide ongoing input on workforce training and community outreach strategies.

**Use of Funds:**

Allowable uses of funds include, but are not limited to, the cost to develop, administer, market and implement training or education programs and to provide support services to Detroit applicants seeking employment. Implementation costs may include infrastructure and facility costs, capital improvements to training facilities, training manuals, brochures, hardware and software for trainings and assessments, and intellectual property license renewals and software upgrades as necessary.

**Allowable Training Programs:**

Training programs funded by the Workforce Training Fund must fill a demonstrated talent need as determined by the Workforce Development Board. The classroom or online training must lead to a credential for a skill that is transferable and recognized by industry. The individual must



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obtain a credential that will allow them to retain employment, or in the case they become unemployed, gain employment in a shorter timeframe. Examples of this could be a certificate in welding or on-site training for a specific job such as robotics technician.

**Workforce Training Fund Policy Direction:**

1. Workforce Training Fund resources should be used to support efforts that create an “inventory” of targets and opportunities on both the demand and supply side of the market. On the demand side, the Workforce Development Board should use available labor market information to identify the key sectors with likely unmet demands for skilled or semiskilled labor that are not likely to be filled by employers on their own. On the supply side, it would identify the various sources of education and training for these jobs and potential funding sources available.
2. Workforce Training Fund resource allocations should recognize that “one size does not fit all.” What works for in-school youth might differ from that for out-of-school youth, and what works for adults with some labor force attachment is quite different than for the hard-to-employ. Those most at risk and with the greatest educational and employment deficits need more intensive training. Workforce Training Funds should be allocated to meet the varying needs of Detroit applicants.
3. Workforce Training Fund allocations should seek to enhance the workings of the private-sector labor market, but not replace them.
4. Workforce Training Fund resources should recognize that for any given sector, a range of pathways should be developed that would enable employed and unemployed workers of different education levels to obtain jobs, including adults with or without diplomas, with stronger or weaker basic skills, and with two- or four-year college degrees.
5. Workforce Training Fund resources should be used to address the comprehensive needs to Detroit applicants. For low-income parents—especially single parents—supports such as stipends, child care, and transportation are needed to make it possible to enter and remain in training programs.
6. Workforce Training Fund resource allocations should be reviewed and evaluated to ensure they are leveraged for maximum results. Performance measures should ensure cost-effectiveness.

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**Agreement for Administration and Operation of Programs  
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7. Workforce Training Fund resources should be used in conjunction with other funding mechanism. Even the best education and training programs will leave many workers facing only low-wage opportunities. A package of publicly-funded supports (including tax credits, child care, and parental/sick leave) will still be needed to supplement private sector earnings for many workers.

**Pre-payment Policy:**

It is the policy of the City of Detroit to encourage and maximize the utilization of Detroit residents on all city contracts and all construction projects benefitted by City subsidies. An important component of the 51% (fifty-one percent) workforce target for such projects is to ensure that Detroit residents have the skills and training necessary to ensure employment. In order to build the pipeline of Detroiters in construction and the skilled trades and the jobs related to increased development, the City of Detroit will work with its workforce agency, Detroit Employment Solutions Corporation, to increase the pool of qualified Detroit applicants for jobs.

To achieve the goal, monetary investments in the Workforce Training Fund will be accepted as pre-payments from developers who are subject to Executive Order 2016-1. These investments will be credited against future fees under Executive Order 2016-1 for designated development projects under the following guidelines:

- All projects will still be subject to auditing and enforcement of the Executive Order Workforce Target of fifty-one percent (51%).
- Any developer making such investments must create programs that incentivize their contractors to employ Detroiters, including apprentices.
- All investments must be approved by the Civil Rights, Inclusion and Opportunity department.
- The minimum amount allowed for early investment is \$100,000.00. The credit will be maintained through the length of the project or until the credit reaches zero.
- The developer must specify the project(s) early investment should be applied to at the time of payment. If the developer begins another project that was not designated at the time of payment, the investment will not be credited towards the subsequent project.

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**Definitions:**

1. **"Detroit Applicant"** shall mean a Detroit Resident who can demonstrate residency in the City of Detroit as of a date at least thirty (30) days prior to the date the person seeks to be employed for work on a publicly-funded construction project or other permanent job resulting from new economic development activity in the City. Residency shall be established by the address listed on (a) any one of the following: State of Michigan identification card, State of Michigan driver's license, or Detroit municipal ID; plus (b) any one of the following: Voter Registration Card, Motor Vehicle Registration, most recent federal, state, or City of Detroit tax returns, Lease/Rental agreement, the most recent utility bill (or utility affidavit signed by a landlord with respect to a leased residence), or most recent municipal water bill. Other forms of proof-of-residence may be accepted under certain circumstances.
2. **"Purpose Driven Deposits"** are funds received by the City of Detroit for the specific purpose of increasing the employability of Detroit Residents. Such Funds can be used for programs that educate and train the Detroit workforce for jobs and career advancement opportunities.



## APPENDIX E

### Executive Order 2016-1 Compliance Fees Calculation Explained

The following is an excerpt from Executive Order 2016-1 and describes the “Workforce Target” requirement:

All publicly funded construction contracts shall include a provision providing that at least 51% of the workforce on the publicly funded construction project shall be bona-fide Detroit residents. This requirement shall be referred to as the “Workforce Target.” The Workforce Target shall be measured by the hours worked by bona-fide Detroit residents on the publicly- funded construction project.<sup>13</sup>

#### Executive Order 2016-1 Compliance Fees Calculation Explained

The required contribution for any contractor who does not meet the Workforce Target shall be the sum of the following:

1. For each workhour comprising the first 0-10% of total workhours by which the contractor fell short of the Workforce Target, 5% of the average hourly wage paid by the contractor on the publicly funded construction project during the preceding measurement period.
2. For each workhour comprising the second 0-10% of total workhours by which the contractor fell short of the Workforce Target (if applicable), 10% of the average hourly wage paid by the contractor on the publicly funded construction project during the preceding measurement period.
3. For each workhour comprising the remaining 0-31% of total workhours by which the contractor fell short of the Workforce Target (if applicable), 15% of the average hourly wage paid by the contractor on the publicly funded construction project during the preceding measurement period.

Thus, for example, if 25% of the total workhours performed on a publicly funded construction project were performed by bona-fide Detroit residents, the contractor will have fallen short of the Workforce Target by 26% of the total workhours. That contractor’s minimum required contribution would be the **sum of (A+B+C)** below:

<b>A.</b>	5% of the average hourly wage for 10% of the total workhours
<b>B.</b>	10% of the average hourly wage for 10% of the total workhours
<b>C.</b>	15% of the average hourly wage for 6% of the total work hours

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<sup>13</sup> City of Detroit Executive Order 2016-1, see Appendix C, page 43 of this report.

## APPENDIX E

### Executive Order 2016-1 Compliance Fees Calculation Explained

The relationship among Qualified Detroiters Workhours, Workforce Target, and the Workforce Target Shortfall is illustrated in the table below:

Relationship among Qualified Detroiters Workhours, Workforce Target, and Workforce Target Shortfall			
EO 2016-1	Qualified Detroiters Workhours	Workforce Target	Workforce Target Shortfall
	100%	Meet	N/A
	99% - 52%	Meet	N/A
	51%	Meet	N/A
<b>Compliance Fees Threshold</b>	50%	Short	1%
	49%	Short	2%
	48%	Short	3%
	47% - 26%	Short	4% - 25%; For each 1% decrease in Qualified Detroiters Workhours, the Workforce Target Shortfall will have 1% incremental increase.
<b>EO 2016-1 Example</b>	25%	Short	26%
	24%	Short	27%
	23% - 2%	Short	26% - 49%; For each 1% decrease in Qualified Detroiters Workhours, the Workforce Target Shortfall will have 1% incremental increase.
	1%	Short	50%
<b>No Qualified Detroiters</b>	0%	Short	51%

#### **CRIO Compliance Fees Calculation Comparison**

It should be noted that when the Workforce Target Shortfall reaches 51%, this indicates that the number of qualified Detroiters working on the project is below the minimum threshold. Therefore, the Qualified Detroiters' Workhours will be zero. In these instances, the amount(s) of assessed compliance fees will be same either under the EO 2016-1 legislated formula or under CRIO's adapted formula. The table below illustrates a calculation comparison for this special scenario:

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**Executive Order 2016-1 Compliance Fees Calculation Explained**

<b>Compliance Fees Calculation Comparison</b> <i>When the Workforce Target Shortfall Reach to <b>51%</b></i>		
<b>Steps</b>	<b>Formula Legislated in EO 2016-1 Section 6</b>	<b>Formula Developed and Implemented by CRIO</b>
<b>Step 1</b>	5% × Average Hourly Wage × Total Workhours × 10%	5% × Average Hourly Wage × (Total Work-Hours – Zero Qualified Detroiters' Workhours) × 10%
<b>Step 2</b>	10% × Average Hourly Wage × Total Workhours × 10%	10% × Average Hourly Wage × (Total Work-Hours – Zero Qualified Detroiters' Workhours) × 10%
<b>Step 3</b>	15% × Average Hourly Wage × Total Workhours × 31%	15% × Average Hourly Wage × (Total Work-Hours – Zero Qualified Detroiters' Workhours) × 31%
<b>Step 4</b>	Sum of Steps 1, 2, and 3	Sum of Steps 1, 2, and 3

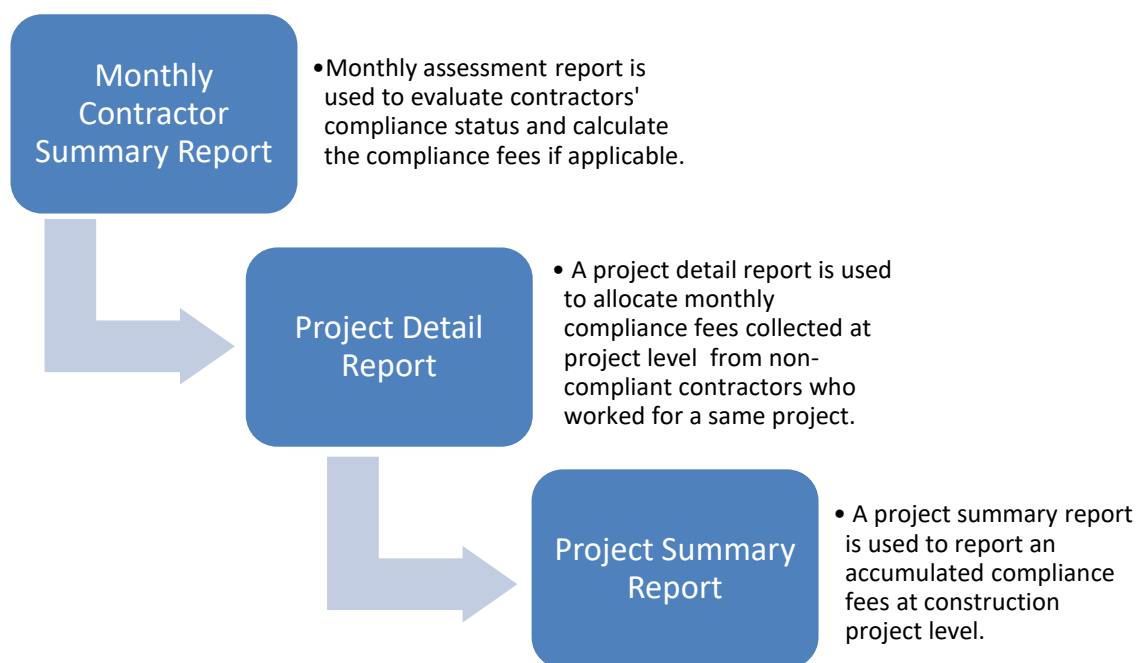
## CRIO'S Compliance Fees Reporting Process and Sample Reports Justification

### CRIO's Compliance Fees Reporting Process

During our audit, CRIO uses a tiered approach and three major reports to calculate/assess compliance fees:

- A. **EO Project Summary Report** - used to present compliance fees collected at EO project level;
- B. **EO Project Detail Report** - breaks down compliance fees collected from an EO project into each month (i. e. - the Measurement Period);
- C. **Monthly Contractor Summary Report** - is an essential report, which is used by CRIO to assess EO compliance fees; It should be updated monthly.

The reporting of CRIO's compliance fees starts from the Monthly Contractor Summary Report. Generally, contractors who work for the same EO project are reported in one Monthly Contractor Summary Report. From here, the EO Project Detail Report is updated, and those dollar amounts are reflected in the EO Summary Report accordingly. The tiered approach and reconciliations are depicted in the following diagram:



CRIO Compliance Fees Reports From Summary Level to Detail Reports		
	Type of CRIO Reports	Name of CRIO Reports
<b>A</b>	Project Summary Report	Executive Order Project Summary Report
<b>B</b>	Project Detail Report	Project Detailed Summary Report
<b>C</b>	Monthly Contractor Summary Report (Assessment Report)	Monthly Contractor Summary Report (or "EO 2016-1 Contribution Form")

## CRIO'S Compliance Fees Reporting Process and Sample Reports Justification

**Compliance Fees Sample Reports Justification**

By the end of June 2019, CRIO reported \$6.8 million compliance fees. The population and sample size for each tier of reports are explained below:

## A. Project Summary Report Sample

<b>A. Project Summary Report</b>				
	\$ Amount in Millions	% of Total Compliance Fees	# of Reports	% of Total Reports
<b>Population</b>				
Total	\$ 6.8		1	
<b>Not available</b>				
Available	6.8	100.0%	1	100.0%
<b>Sample</b>				
Sample based on available	\$ 6.8	100.0%	1	
Sample % <sup>1</sup>	100.0%		100.0%	
<sup>1</sup> The Project Summary Report was tested 100%. Compliance fees were reconciled from the project summary report to G/L.				

## B. Project Detail Report Sample

<b>B. Project Detail Report</b>				
	\$ Amount in Millions	% of Total Compliance Fees	# of Reports	% of Total Reports
<b>Population</b>				
Total	\$ 6.8		38	
<b>Not available</b>				
Available	6.8	100.0%	38	100.0%
<b>Sample</b>				
Sample based on available	\$ 6.8	100.0%	38	
Sample % <sup>2</sup>	100.0%		100.0%	
<sup>2</sup> Project detail reports were tested 100%. Compliance fees were reconciled from project detail reports to the Project Summary Report.				

## CRIO'S Compliance Fees Reporting Process and Sample Reports Justification

## C. Monthly Contractor Summary Report Sample

<b>C. Monthly Contractor Summary Report (Assessment Report)</b>				
	\$ Amount in Millions	% of Total Compliance Fees	# of Reports	% of Total Reports
<b>Population</b>				
<b>Total</b>	<b>\$ 6.8</b>		<b>280</b>	
<b>Not available</b>	<b>6.4</b>	<b>94.1%</b>	<b>156</b>	<b>55.7%</b>
<b>Available</b>	<b>0.4</b>	<b>5.9%</b>	<b>124</b>	<b>44.3%</b>
<b>Sample</b>				
<b>Sample based on available</b>	<b>\$ 0.1</b>	<b>1.5%</b>	<b>30</b>	
<b>Sample %</b>	<b>25.0%</b>		<b>24.2%</b>	

All the Project Summary Reports and Project Detail Reports totaling the \$6.8 million were made available to us. We tested 100% for the EO Project Summary Report and Project Detail Reports. However, as noted in C. Monthly Contractor Summary Report Sample, the \$6.8 million compliance fees should be assessed upon at least 280 monthly contractor summary reports. During our audit, 156 or 55.7% monthly contractor summary reports that associated with \$6.4 million collected compliance fees were not provided by CRIO to OAG. Monthly Contractor Summary Reports were tested based on the available reports. The dollar value of those available Monthly Contractor Summary Reports amounted to only \$0.4 million of the \$6.8 million total fees reported, but the random sample size (\$0.1 million dollar value) presents 24.2% of available monthly contractor summary reports.

The large amount of “missing reports” would have normally amounted to a finding for the lack of good records retention. However, we noted that this was not an ongoing issue, and it was resolved by the following changes to CRIO's processes:

- Customer Billings and Accounts Receivable were transferred to the Office of Chief Financial Officer (OCFO). New job aids between CRIO and the special projects team of the Office of Departmental Financial Services (ODFS) within the OCFO, requires CRIO to provide and upload all Monthly Contractor Summary Report's through Smartsheets, which should result in more timely billings;
- CRIO changed their reporting procedures. Old, static reporting was replaced by an online dashboard which is maintained and updated by CRIO with EO projects metrics, including project information, total work hours, work hours done by qualified workers, and compliance fees paid. Also, internal dashboard and smartsheets were used to collect and pull information to help CRIO's management quickly catch any unusual activity or circumstances.

**Note From the Auditor General**

On April 13, 2023, the Office of the Auditor General provided Anthony Zander, Director, Civil Rights, Inclusion, and Opportunity Department, a draft copy of this report with a two-week notice to publish. We also provided Mr. Zander with instructions and an “Implementation Tracking of Departmental Responses” template (see below) to provide the Agency’s responses.

On May 1, 2023, Mr. Zander advised the Office of the Auditor General, that he will submit the Agency Responses directly to the City Clerk, City Council, and the Mayor under separate cover.

Despite extensions requested and given to Mr. Zander, he was not able to provide the responses in a timely manner such that they could be attached and submitted with this report.

**OFFICE OF THE AUDITOR GENERAL**  
**AUDIT OF CIVIL RIGHTS, INCLUSION, AND OPPORTUNITY DEPARTMENT THIRD REPORT ON COMPLIANCE FEE DOLLARS**  
**OPERATIONS**  
**April 2023**

**Implementation Tracking of Departmental Responses**

FINDING #	AUDIT FINDING	RECOMMENDATIONS		RESPONSIBLE DEPARTMENT	DEPARTMENT RESPONSE(S)	ESTIMATED/ PLANNED IMPLEMENTATION DATE	CONTACT PERSON	CONTACT PERSON NUMBER/EMAIL
		REF.	SPECIFIC RECOMMENDATION					
1.	CRIO Did Not Assess Compliance Fees In Accordance With Executive Order 2016-1 Resulting In Potential Loss Of Revenues To The City	A	Correct the formula set in their assessment template (the template of “Monthly Contractor Summary Report”) and adopt an appropriate formula to assess compliance fees.					
		B	Review the assessment template (the template of “Monthly Contractor Summary Report”) and any associated forms annually, to ensure the template is accurate and updated according to the revisions to the City’s executive orders.					
		C	Implement procedures to safeguard sensitive fields (i.e., locking the formulas for calculation of compliance status and compliance fees) of the assessment template. Ensure that any editing or updating of the assessment template is only allowed by authorized personnel.					
		D	Define and document accountabilities of the compliance fees assessment reports in CRIO’s administrative policies. (i.e., responsibilities for maintaining, updating, and revising of the assessment template)					
2.	CRIO Did Not Comply With	A	Develop and document the measurement period determination.					



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		REF.	SPECIFIC RECOMMENDATION					
	<b>Executive Order 2016-1 Regarding Timely Contractor Compliance Evaluations And Monthly Reporting For Billings</b>	B	Evaluate contractors' compliance either monthly or quarterly in accordance with the requirement of the executive order. Complete compliance evaluation for each contractor who is subject to the executive order.					
		C	Ensure to submit the Monthly Contractor Summary Reports timely. Continue to maintain and develop the compliance fees master dataset and sufficiently document the compliance fees metrics whereby the compliance fees can be fully tracked, analyzed, and reported Establish a mechanism by which the inclusion performance can be measured.					
		D	Develop procedures to ensure the compliance fees billing information is communicated timely to the ODFS special projects team within the OCFO.					
3.	<b>CRIO Does Not Have A Process That Ensures They Capture And Monitor All Projects Subject To Executive Order 2016-1</b>	A	Expand and create definitive communication channels with all potential stakeholders who are sources of information relating to projects subject to the executive order. Develop a mechanism to proactively capture and monitor this data.					

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		REF.	SPECIFIC RECOMMENDATION					
		B	Collect and document sufficient project information (i.e., project contract value, project site, project life, project start date and end date, labor cost estimates, project status, etc.) and establish a mechanism to determine compliance fees to be expected. Develop a procedure to ensure that the projects information is updated timely, accordingly, and completely.					
		C	Design and implement applicable procedures to ensure that the projects are monitored from start to the end, and continuously monitor the project's close-out.					