



## Office of the Auditor General

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### MEMORANDUM

**DATE:** June 9, 2023  
**TO:** Honorable Council President Mary Sheffield  
**FROM:** Laura Goodspeed, CPA *LG*  
Auditor General  
**RE:** Request For Opinion On The Correct Interpretation Of The Usage And The Assessment Of Executive Order Compliance Fees  
**CC:** Honorable City Council Members  
David Whitaker, Director, Legislative Policy Division

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The Office of the Auditor General (OAG) conducted a Performance Audit of the Department of Civil Rights, Inclusion, and Opportunity Compliance Fee Dollars. The audit focuses on the related activities performed by the following entities and agencies:

- The Department of Civil Rights, Inclusion, and Opportunity (CRIO);
- Detroit Employment Solutions Corporation (DESC);
- Divisions within the City of Detroit Office of the Chief Financial Officer (OCFO).

The purpose of this memorandum is to request the Legislative Policy Division (through City Council) to opine on the following questions relating to the correct interpretation of the usage and the assessment of Executive Order compliance fees:

**Question #1:** Should The City Of Detroit's Executive Order Compliance Fee Dollars Be 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?

**Question #2:** Should The City Of Detroit's Executive Order Compliance Fees Be Assessed On Total Payroll (i.e., Average Hourly Wage x Total Work-Hours?)

This request is based on audit work performed in conjunction with the Office of the Auditor General's Audit of the Department of Civil Rights, Inclusion, and Opportunity (CRIO) Compliance Fee Dollars.



**Question #1: Should The City Of Detroit's Executive Order Compliance Fee Dollars Be 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?**

**Background**

During the course of our audit, 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<sup>1</sup>.

**Workforce Training Agreement and Compliance Fee Dollars**

Effective July 2017, the City memorialized an agreement between Detroit Employment Solutions Corporation (DESC) and CRIO governing the administration/use of Compliance Fee dollars. The "Agreement for Administration and Operation of Programs Funded through the City of Detroit Workforce Training Fund"<sup>2</sup> (Agreement) was created:

To achieve the economic revitalization of Detroit by increasing employment of Detroit residents by maximizing the utilization of those residents on publicly funded construction projects.

The Agreement established the "Workforce Training Fund" for the receipt of financial penalties imposed under Executive Order 2016-1 on non-compliant developers, general contractors, prime contractors, and sub-contractors engaged in publicly-funded construction projects, pre-payments received from engaged contractors, and other purpose-driven deposits. According to the Agreement:

- The City desires to use financial penalties received into the 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.
- The City desires to have DESC administer and operate programs for the foregoing purposes.
- The Agreement does not mention employment in any other industries such as information technology, medical, hospitality, etc. Instead, it specifically calls for programs, training, and support services related to employment in the skilled construction trades.

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<sup>1</sup> Audit Of The Civil Rights, Inclusion, And Opportunity Department Second Interim Report On Compliance Fee Dollars – Detroit Employment Solutions Corporation (May 2021), Finding #1 pp 13-22; Attachment B pp. 1-5, 8; <https://www.detroitmi.gov/government/auditor-general>.

<sup>2</sup> Appendix A: Workforce Training Fund Agreement, pp 11.

**OAG Finding and DESC's Current Practices**

Compliance Fee Dollars administered through the City's Workforce Training Fund Agreement were used for training programs in other non-construction related industries and activities such as:

- Training related to Information Technology;
- Jobs related to the medical industry;
- Jobs related to the hospitality industry;
- Staffing and facility related services;
- Employment, foundational skills, and "wrap-around" services for individuals.

While training in these "other" programs may have led to some permanent jobs, the specific jobs in the "other" industries cannot be directly attributed to the new construction developments. As an example, training was provided to participants to obtain a Certified Nursing Assistant certification. However, we could not associate the training with the construction of a new hospital or any new development in the medical industry. And we could not associate this type of training with the types of construction from the pool of contractors who were assessed and paid compliance fees under EO2016-1 (during the audit period).

**DESC's Response**

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. According to DESC:

- Exhibit C of the Agreement expressly states that DESC should utilize Compliance Fee funds "to increase the pool of qualified Detroit applicants for jobs resulting from economic development activity in the City.
- It goes on to specify that the Mayor's Workforce Development Board and DESC are responsible for identifying target sectors for training.
- The Agreement seems to explicitly call for training across multiple in-demand, high-growth sectors/industries including but not limited to construction and the skilled trades.

**OAG's Position**

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 do agree that the Agreement allows for providing support services to job seekers. However, nowhere in the Agreement does it provide for training other than in skilled construction and/or construction related trades.

We feel that more effort must be made to match training programs funded through the Workforce Training Agreement (whose source of funds are EO-2016-1 Compliance Fee Dollars,) with the collective training needs of the contractors who are assessed and pay



these fees. DESC should consider ways to leverage “other funds” with Compliance Fee dollars and increase training opportunities for Detroit Residents in skilled construction trades and construction-related industries.

We recognize that DESC has a much broader mandate to provide workforce training to Detroit residents which encompasses a wide spectrum of needs and services to accomplish their goals. We understand the challenges of ensuring that there is adequate funding to provide those services across this spectrum. Hence DESC’s need to leverage funds while “blending and braiding” to maximize program training that meets the needs of the individual participant, as well as the employers who need a skilled workforce.

### **Conflict was Created between the Agreement and Its Exhibit C**

Exhibit C: Workforce Training Fund Policies and Procedures was drafted by CRIO, on July 12, 2017, to clarify the sources of fund allocations, fund disbursements, and monitoring the fund usage. However, Exhibit C created a conflict between it and the Workforce Training Fund Agreement with respect to the use of fund. This conflict of usage is addressed in Finding 1 and OAG’s Rebuttal in the Audit of the Civil Rights, Inclusion, And Opportunity Department Second Interim Report on Compliance Fee Dollars - Detroit Employment Solutions Corporation (May 2021)<sup>3</sup>.

To our understanding:

- 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. 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.**
- The specific purpose contract clause as established by Corporation Counsel takes precedence over conflicting or unclear language in supporting schedules or exhibits.

The conflict between the Workforce Training Fund Agreement and Exhibit C is not resolved nor clarified. To ensure the appropriate use of workforce training funds resulting from EO compliance fees, we are seeking your legal opinion for the resolution of the existing “conflict” and whether the City of Detroit’s Executive Order Compliance Fee Dollars be 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?

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<sup>3</sup> The Office of the Auditor General’s Rebuttal To The Agency Response To The Audit Of The Civil Rights, Inclusion, And Opportunity Department Third Report On Compliance Fee Dollars – Operations (April 2023): <https://www.detroitmi.gov/government/auditor-general>.

**Question #2: Should The City Of Detroit's Executive Order Compliance Fees Be Assessed On Total Payroll (i.e., Average Hourly Wage x Total Work-Hours?)****Background**

During the course of our audit, we found that CRIO did not assess compliance fees in accordance with Executive Order 2016-1 resulting in \$819,125 potential revenue losses to the City<sup>4</sup>.

**Executive Orders and Compliance Fee Dollars**

Effective December 2016, Mayor Michael E. Duggan issued the Executive Order 2016-1<sup>5</sup> (EO 2016-1) (superseded Executive Order 2014-4) 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 (51% is enacted as Workforce Target) will result in financial penalties (recognized as "compliance fees").
- CRIO is the designated agency to enforce the execution of the related Executive Order.
- The initial Executive Order was superseded three times during the period 2014 to 2021.

As stated in EO 2016-1:

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.

**OAG's Finding and CRIO's Current Practices**

CRIO's calculation and assessment of compliance fees were not in accordance with EO 2016-1. The formula that was developed and used by CRIO resulted in inaccurate calculations of compliance fees and a potential revenue loss (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:

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<sup>4</sup> Audit Of The Civil Rights, Inclusion, And Opportunity Department Third Report On Compliance Fee Dollars – Operations (April 2023); pp 12-16; <https://www.detroitmi.gov/government/auditor-general>.

<sup>5</sup> Appendix B: Executive Order 2016-1 , pp 25.



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

**Notes:** (A) *Average Hourly Wage × Total Workhours = “Total Payroll”*  
*Compliance Fees are assessed based on the contractor’s “measurement period.” According to CRIO, “[They] generally [monitor] within a monthly measurement period. There is currently only one contractor that reports quarterly, in which the reason of this determination is unknown, as it is prior to the compliance team employees and leadership staff.”*

(B) *“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 the Total Payroll and 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.

CRIO’s use of “Nonqualified Workhours” instead of “Total Workhours” (to arrive at total payroll) as required by EO 2016-1 has effectively reduced the amount of total compliance fees assessed. We estimate \$819,125 total potential loss of compliance fees as of June 2019.

### CRIO’s Response

CRIO argued the reason CRIO uses nonqualified workhours is based on the qualifying statement in the language, “...total work hours by which the contract fell short...” CRIO believes the formula it has historically used to calculate the Compliance Fee’s accurately reflects the language in Executive Order 2021-2, Section 7.





- EO 2021-2<sup>6</sup>, Section 6., requires the following to be submitted by the contractor:
  - a. Total work hours
  - b. Total work hours by Detroiters
  - c. If applicable, for a contractor that fell short of the Workforce Target
    - 1. “Raw number of total work-hours by which the contractor fell short of the Workforce Target”
    - 2. “Percentage of total work-hours by which the contractor fell short of the Workforce Target.”
- Section 7. method of calculation states, “For each work-hour comprising the first 10% of the total workhours by which the contractor fell short of the Workforce Target, 5% of the average hourly wage paid by the contractor during the preceding measurement period.”
- Section 6. distinguishes a difference between “total work hours” (used by OAG) and “total work hours by which the contractor fell short” (used by CRIO).
- Formulas used by CRIO, for a 26% shortfall:
  - $5\% \times \text{Avg. Hourly Wage} \times \text{Fell Short Hours} \times 10\%$
  - $10\% \times \text{Avg. Hourly Wage} \times \text{Fell Short Hours} \times 10\%$
  - $15\% \times \text{Avg. Hourly Wage} \times \text{Fell Short Hours} \times 6\%$

Mr. Zander stated that CRIO will continue to use their “historical” interpretation of the language in the Executive Order.

### **OAG’s Position**

First, we disagree with CRIO’s “historical” interpretation of the term “fell short” as written in Sections 6 and 7 of the Executive Order. In these references, it is clear that the term “fell short” represents a category within the calculation and refers to those contractors who did not meet the workforce target (at each step) as prescribed by the EO. In essence, the term “fell short” describes the violation that occurred.

We also contend that CRIO’s substitution of “non-qualified” work-hours instead of total work hours to arrive at total payroll represents “double-dipping” of the hours worked by Detroiters and reduces the amount of the assessment of compliance fees.

The Executive Order defines “fell short” as total work hours minus work by bona-fide Detroiters. According to CRIO, this is also their definition of “non-qualified” workhours.

We contend that the “fell-short percentage” used to calculate the assessment is derived in the same way, and it is a percentage representation of “non-qualified” workhours.

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<sup>6</sup> EO2021-2 effective 4/21/2021, the third revision superseded EO2016-1 and EO 2020-5. It 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. It maintains the original procedures for calculating and assessing compliance fees.



The “fell short percentage” or “non-qualified work hours percentage” is based on total work hours (i.e., 100%) minus the percentage of hours that bona-fide Detroiters worked on the project. Therefore, the resulting “fell-short percentage” used in the formula, has already considered the percentage amount of work performed by Detroiters versus the percentage of work performed by non-Detroiters.

We contend that CRIO’s practice of substituting “non-qualified” hours into the formula essentially double counts the hours worked by Detroiters:

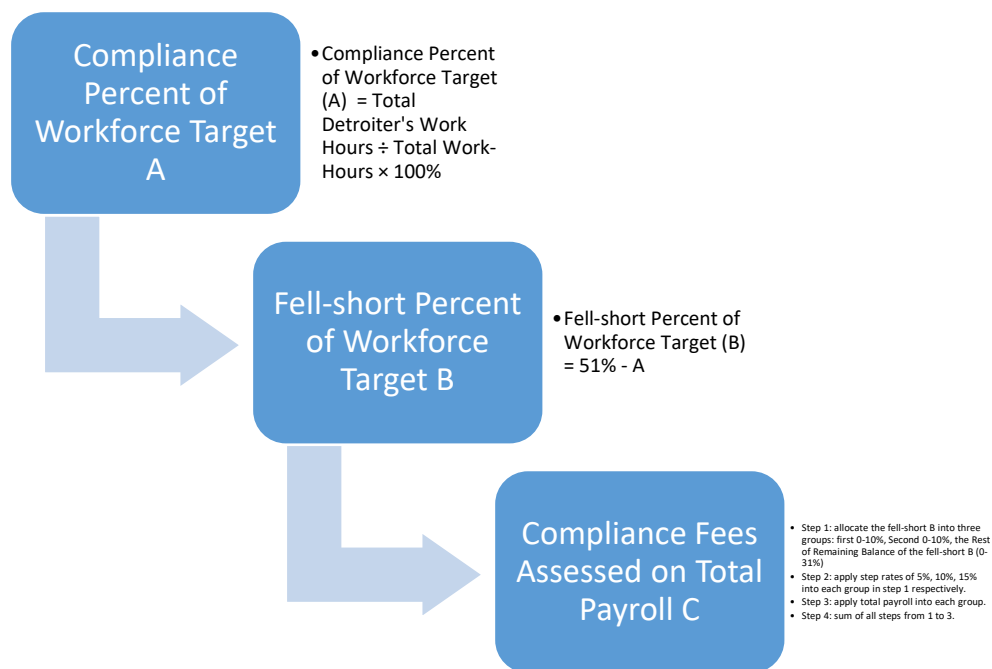
- By first, reducing the total work hours to arrive at the non-qualified hours and percentage, or “fell-short” percentage;
- Then applying this fell short percentage (or non-qualified hours percentage) to non-qualified hours.

#### Calculation of Compliance Fees Assessed on Total Payroll

We believe that compliance fees are assessed and calculated by applying the “fell-short percentage” to the total payroll in a three-step process. The contractor’s total payroll is calculated by:

$$\text{Average Hourly Wage} \times \text{Total Workhours} = \text{Total Payroll}$$

The three-step process to assess compliance fees is depicted below:



Moreover, the authors of EO-2016-1 provided the following specific example of the calculation. The compliance fees are required to be assessed on total payroll (i.e., average hourly wage x total work-hours).





“Thus, for example, if 25% of the total-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 workhours. 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**.

Again, we contend that CRIO’s practice of substituting “non-qualified” hours to arrive at the total payroll represents “double-dipping” of the hours worked by Detroiters.

The effect of using non-qualified hours to arrive at BOTH the “fell short percentage” AND the calculation of the fees (applying the fell-short percentage to non-qualified hours to arrive at total payroll), decreases the amount of the assessment and gives the incorrect appearance of a higher rate of compliance for the contractor. The effect of CRIO’s past and current practices represents a reduction in compliance fees.

We asked Mr. Zander about the origins of CRIO’s “historical” interpretation, and he could not provide any definitive answers or historical documentation regarding the matter. Our finding is based on the original Executive Order, in which the calculation of compliance fees has remained unchanged throughout its subsequent iterations and makes no reference to “non-qualified” work hours.

Since Mr. Zander stated that CRIO will continue to use their “historical” interpretation of the Executive Order, we are concerned with the ongoing potential revenue losses to the City.

For your reference and convenience, we have included the following Appendices:

Appendix	Description	Page Number
A	Agreement for Administration and Operation of Programs Funded through the City of Detroit’s Workforce Training Fund and Exhibit C	11
B	Executive Order 2016-1	25

To ensure the accurate assessment of compliance fees, we are seeking your legal opinion on should the City of Detroit’s Executive Order Compliance Fees be assessed on Total Payroll (i.e., Average Hourly Wage x Total Work-Hours?)



### **Closing**

In closing, we are requesting the Legislative Policy Division (through City Council) to opine on the following questions relating to the correct interpretation of the usage and the assessment of the Executive Order compliance fees:

1. Should The City Of Detroit's Executive Order Compliance Fee Dollars Be 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?
2. Should The City Of Detroit's Executive Order Compliance Fees Be Assessed On Total Payroll (i.e., Average Hourly Wage x Total Work-Hours?)

We appreciate your consideration of this matter and look forward to your response.



## APPENDIX A

### 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);



**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 development 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.
- 1.2 “Workforce Training Fund” is the fund established by the City of Detroit to receive financial penalties imposed under Executive Orders 2014-4 and 2016-1 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. The Workforce Training Fund may also receive certain pre-payments and other Purpose Driven Deposits which may be disbursed pursuant to this Agreement, as defined by the City of Detroit Department of Civil Rights, Inclusion and Opportunity “Workforce Training Fund Policies and Procedures,” attached hereto as Exhibit C.
- 1.3 “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.





**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;



- 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.



- 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:





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.



**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.



**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.)



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: [Signature]

Name: NICOLE A. SHKARD-FREEMAN

Its: Chief Executive Officer

Date: 7.13.17

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

By: [Signature]

Name: PORTIA L. ROBERSON

Its: GROUP EXECUTIVE

Date: 7.14.17

**APPROVED BY DETROIT CITY COUNCIL**

**OFFICE OF CONTRACTS AND PROCUREMENT**

[Signature] 7/14/17

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

[Signature]  
Corporation Counsel

Date: 7/14/17



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





## **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



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.





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.



**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 B

### 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.



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.