

**COMMONWEALTH PLAN OF ADJUSTMENT  
PENSION BENEFITS COUNCIL CORP**

**2023-00005 A**

**AMENDMENT**

**ELECTION ADMINISTRATOR CONTRACT**

**APPEAR**

**FIRST PARTY:** The Commonwealth Plan of Adjustment Pension Benefits Council Corp. (the "Benefits Council"), a non-profit corporation organized under the laws of the Commonwealth of Puerto Rico, with registration number 486630, represented in this act by Carmen Núñez Rodríguez, of legal age, President of the Benefits Council, single and resident of San Juan, Puerto Rico, hereinafter referred to as the "**BENEFITS COUNCIL**".

**THE SECOND PARTY:** Kroll Restructuring Administration LLC d/b/a Kroll Administrative Services ("**Kroll**"), a company organized under the laws of Delaware, represented in this act by Shira Weiner, of legal age, General Counsel and resident of New York, hereinafter referred to as the "**ELECTION ADMINISTRATOR**".

When the two parties are referred to together, they will be referred to as the "**PARTIES**".

The appearing parties **GUARANTEE** that they have the legal power for this agreement in the capacity that they claim to hold above, committing to accredit such power and capacity where and when necessary.

**LEGAL BASE**

On January eighteen (18), two thousand twenty-two (2022), the United States District Court for the District of Puerto Rico, in Civil Case No. 17-BK-3283 (the "Title III Case of the Commonwealth) issued an order (Docket No. 19813), approving and confirming the terms of the Eighth Amended Plan of Adjustment under Title III of the Commonwealth of Puerto Rico, et al., dated January fourteen (14), two thousand twenty-two (2022) (Docket No. 19784) (the "Plan"). The Plan incorporates certain documents presented as part of a Plan Supplement (Docket No. 20353) that includes the deed

creating the Pension Reserve Fund and the “Guidelines for the Governance and Administration of the Puerto Rico Plan of Adjustment Pension Reserve Trust and Monitoring of Plan of Adjustment Pension Benefits” (hereinafter the “**GUIDELINES**”).

### **PURPOSE**

On April 20, 2023 the **BENEFITS COUNCIL** and the **ELECTIONS ADMINISTRATOR** entered into a contract number 2023-000006 for the election of members to the **BENEFITS COUNCIL** pursuant to the **GUIDELINES**. The Contract between the parties and the cost structure was based on certain assumptions made part as Exhibit I of the agreement. As the election process was implemented by the **BENEFITS COUCIL**, certain changes to the assumptions were made and due to the turnout of voters, this contract will be amended to reflect the changes in costs. The presentation from the **ELECTIONS ADMINISTRATOR** of October 20, 2023, to the Executive Committee of the **BENEFITS COUNCIL** and approved by the **BENEFITS COUNCIL** on October 24, 2023 is made part of this contract as Exhibit II.

The agreement will be amended to increase the total amount of the Contract by **EIGHT HUNDRED FIVE THOUSAND SIXTY-FOUR DOLLARS (\$805,064.00)**.

### **CLAUSES AND CONDITIONS**

**FIRST:** To amend the **SECOND** clause of the Contract titled “Fees” to read as follows:

“**SECOND: FEES:** The **ELECTION ADMINISTRATOR** will invoice for the services offered based on the fees established on Exhibit I and pursuant to the changes of assumptions established on Exhibit II. The total amount of compensation to be paid by the **BENEFITS COUNCIL** to the **ELECTION ADMINISTRATOR** for services and expenses for this Contract shall not exceed **ONE MILLION THREE HUNDRED FORTY-FIVE THOUSAND SIXTY DOLLARS (\$1,345,064.00)**, comprised of: (a) **SIX HUNDRED FORTY-NINE THOUSAND ONE HUNDRED NINETY DOLLARS (\$649,190.00)** in fees, (b) **SIX HUNDRED SEVENTY THOUSAND EIGHT HUNDRED SEVENTY-FOUR DOLLARS (\$670,874.00)** in expenses and, (c) **TWENTY FIVE THOUSAND DOLLARS (\$25,000)** in fees for the participation in arbitration cases, excluding any fees or expenses

for any print publication or other media notice (newspaper, magazine, radio, or otherwise). Budgeting for travel expenses for participation in arbitration cases, shipping ballots to Puerto Rico and monthly storage of materials after arbitration deadline shall be at cost and subject to additional negotiations between the parties. The **BENEFITS COUNCIL** shall pay any fees and expenses for services relating to, arising out of or resulting from any error or omission made by the **BENEFITS COUNCIL**. If the **BENEFITS COUNCIL** determines to modify its budget, with the result that the amounts available to pay for the services covered by this Contract are reduced, it shall notify the **ELECTION ADMINISTRATOR** in writing of such determination and said new amount available shall be the maximum amount of the Contract. As a result, the **ELECTION ADMINISTRATOR** may submit to the **BENEFITS COUNCIL** a proposal for the reduction of the services described in this Contract, and if the **BENEFITS COUNCIL** accepts such proposal, the **PARTIES** must sign an amendment to this Contract formalizing the changes. If the **BENEFITS COUNCIL** does not accept the **ELECTION ADMINISTRATOR's** proposal, the **BENEFITS COUUNCIL** expressly acknowledges that the **ELECTION ADMINISTRATOR** may terminate the Contract and the **BENEFITS COUNCIL** must pay the **ELECTION ADMINISTRATOR** the amount accrued until the date of cancellation.

...”

**SECOND:** Aside from the aforementioned changes, all other sections of the Contract, with all the terms and conditions expressed in them, are to remain the same as the original. It is further understood and agreed by all parties hereto, that this amendment is not in any way to affect any of the terms or conditions the Contract, except as specifically set forth above.

**THIRD:** If any clause or provision contained in this Amendment is declared (for any reason) invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired.

**NOTICE:** No payment or consideration under this Contract may be required until presented for registration before the Office of the Comptroller in accordance with the provisions of Law No. 18 of October 30, 1975, according to amended.

**FOURTH: VALIDITY AND ACCEPTANCE:**

This amendment is effective immediately.


Today October 25, 2023.

The **PARTIES** accept all the clauses and conditions of this Contract and thus confirm it by signing the last page.

**Commonwealth Plan of Adjustment  
Pension Benefits Council Corp.  
EIN 66-1009098**

  
Carmen Núñez Rodríguez

**Kroll Restructuring Administration LLC  
Election Administrator  
EIN 82-3588071**

  
Shira Weiner



# **Presentation to PBC Executive Committee**

October 20, 2023





## Where Are We Right Now?

- **Exciting Time:** Kroll will be ready to report the final results on Tuesday, 24 October.
- **Fantastic Turn-Out:** We received approximately 250% more ballots than originally expected.
- Ballot Processing required significant time
  - Kroll processed ballots at the rate of 1,500 – 2,000 ballots per day (i.e., 20 business days)
  - Ballot processing of paper ballots is a labor-intensive undertaking
    - Manual review and cross reference of last four digits of social security number
    - Manual input of the vote
    - Careful “quality assurance” of the processed ballots
- To achieve these results, Kroll
  - Coordinated closely with the PBC and its professionals to design and implement a comprehensive, secure, reliable, accessible, and user-friendly voting process
  - Provided professional, responsive, collaborative, and creative services



## Original Budget Estimate


Incorporated into the Engagement Agreement

- Fees
    - \$25,000 Stage 1
    - \$160,000 Stage 2
    - \$130,000 Stage 3
    - **\$315,000 Subtotal**
  
  - Expenses
    - \$40,000 printing ( $\$0.20 \times 200,000$ )
    - \$115,000 postage ( $\$.575 \times 200,000$ )
    - \$70,000 leases and equipment
    - **\$225,000 Subtotal**
  
  - **Total Fees and Expenses = \$540,000**
- 



## Assumptions Kroll Used to Arrive at Estimate

### Assumptions Underlying Original Estimate

- 200,000 Eligible Voters
  - 5% Voter Turnout (approximately 10,000 voters)
  - 75% voting by mail / 25% voting by E-Ballot
  - Ballot and instruction on 1 sheet of paper (front and back) – *total of 2 images*
  
  - No prepaid business reply envelope
  - Modest amount of returned mail (10 boxes or less)
  - Kroll expected to respond to technical questions only
- 

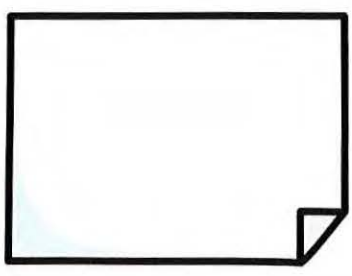
### Actual Facts Arising during Event

- 206,352 Eligible Voters
- 15% Voter Turnout (more than 35,000 voters)
- 90% voted by mail / 10% voted by E-Ballot
- 1-page standalone ballot, 1-page instruction and collection site, 1-page PBC message, and 1 reply envelope (3 sheets of paper and 1-page reply envelope) – *total of 7 images*
- Prepaid business reply envelope
- 56 boxes of returned mail
- Kroll responded to technical questions but was also pressed to make sure replacement E-Ballot requests were handled within 48 hours of receipt.

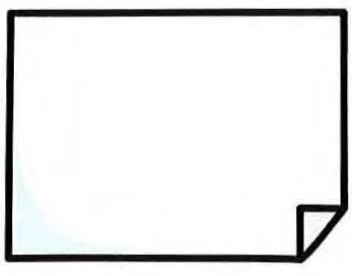


# Difference between Original and Actual Ballot

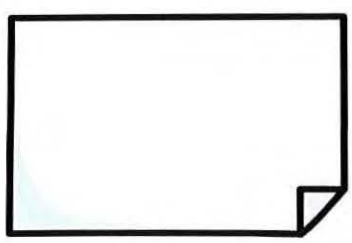
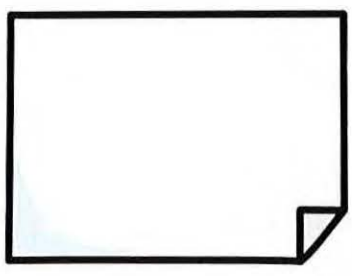
Original



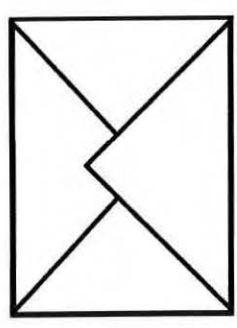
Versus



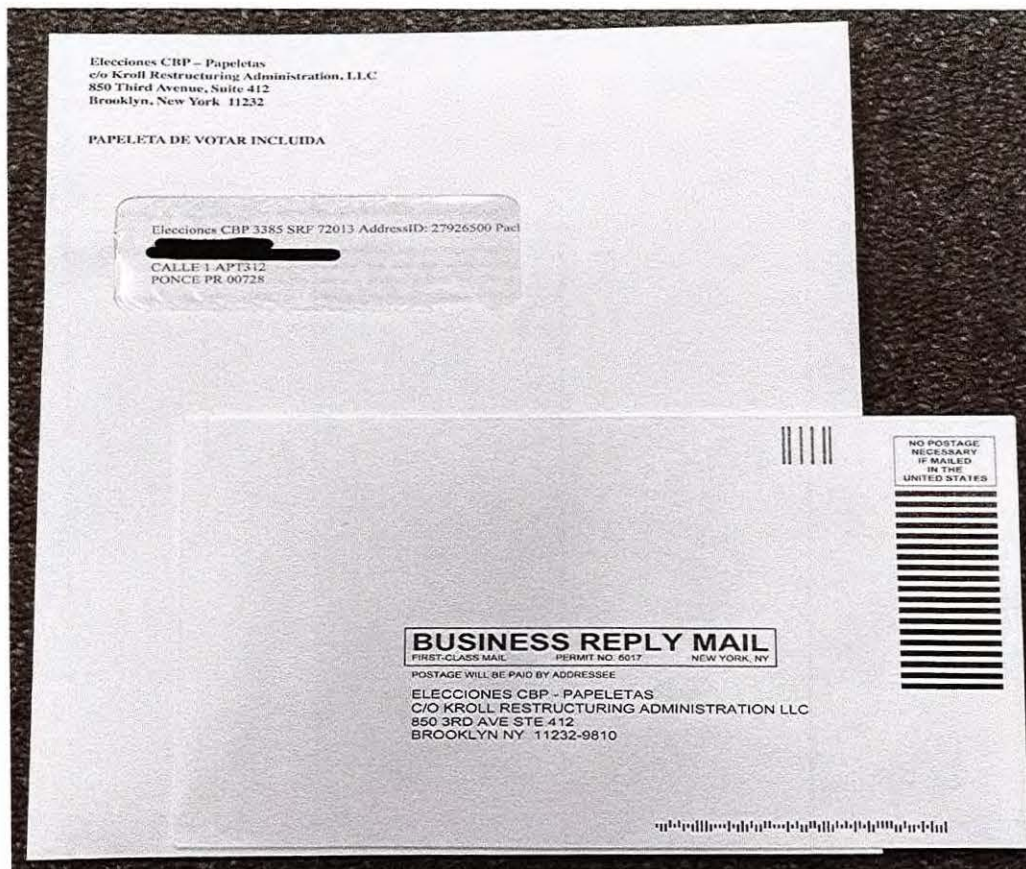
Actual



+



# Prepaid Business Reply Envelope



# Returned Mail





## Actual Fees and Expenses Incurred to Date

- Kroll's fees and expenses to date are nearing \$1.7 million
- Kroll willing to waive \$400,000 in fees (about 40% of the total fees we have incurred)

## What Accounts for Increased Expenses

- **Printing** (\$0.10 per page)
  - $\$0.20 \times 200,000 = \$40,000$
  - $\$0.70 \times 206,352 = \$144,446$
  - Difference **\$104,446**
- **Larger Envelope** - \$0.05 surcharge for larger envelope
  - $(\$0.50 \times 206,352) = \$10,318$
- **Outbound Postage**
  - Larger/heavier solicitation package cost \$1.59 per package (total \$328,000) vs. \$0.575 per package (Total \$115,00)
  - $\$328,100 - \$115,000 = \$213,100$
- **Prepaid BRE**
  - \$1.71 per returned envelope
  - $\$1.71 \times 31,000 \text{ returned envelopes} = \$53,010$
- **Additional Expenses** (additional on-island pass through expenses, shipping charges, etc.)
  - **\$65,000**
- **Total Added Expenses**
  - $\$104,446 + \$10,318 + \$214,100 + \$53,010 + \$65,000 = \$445,874$



## What Accounts for Increased Fees

- **35,276 Ballots** (Proposal and Contract Allot for \$10 per each ballot over 10,000)
  - $(35,276 - 10,000) \times \$10 = \mathbf{\$252,760}$
- **Higher Percentage of Paper Ballots**
  - 25% of 35,276 = 8,819, which should have been E-Ballot
  - We received 3,176 E-Ballot submissions
  - Therefore, we were required to process 5,643 more paper ballots at the rate of \$10, equaling **\$56,430**
- **Higher Percentage of Returned Mail**
  - We estimate that the extra boxes of returned mail contributed to an additional **\$25,000**
- **Total Additional Fees**
  - $\mathbf{\$252,760 + \$56,430 + \$25,000 = \$334,190}$



## Total Fees and Expenses Kroll Seeks

### Summary of Presentation

- Factoring Kroll's voluntary waiver of \$400,000 of fees
  - Kroll seeks additional fees in the amount of \$334,190, which when added to the original \$315,000 under the contract equals \$649,190
  - Kroll seeks reimbursement of additional expenses in the amount of \$445,874, which when added to the original \$225,000 under the contact equals \$670,874
  - Total: \$1,320,064
  - PBC's Needs after 24 October Certification:
    - Budgeting hourly time for Kroll's participation in arbitration: \$25,000
    - Budgeting travel expenses to participation in arbitration: At cost
    - Shipping ballots to Puerto Rico: At cost
    - Monthly storage of materials after arbitration deadline: At cost
- 