

# CONTRACT FOR FINANCIAL ADVISORY SERVICES

This Contract for Financial Advisory Services (hereinafter "Contract") is entered into as of the Effective Date as defined below by and between Greenhill & Co., LLC (hereinafter "Greenhill" or "Contractor") and the Commonwealth of Pennsylvania, acting by and through the Office of the Budget (hereinafter "Commonwealth" or "OB").

*WHEREAS*, in his budget address in March 2011 Governor Corbett said he would create a new Governor's Advisory Council on Privatization and Innovation (hereinafter "Council") to evaluate where the Commonwealth can provide better services to the citizens at an efficient cost; and,

*WHEREAS*, the Governor created the Council on September 29, 2011 and named 24 private Pennsylvania citizens to serve as the voluntary, uncompensated members of the Council; and,

*WHEREAS*, the Council's mission is to help the Commonwealth conduct a thorough examination of state government functions and services to determine whether the state is providing the most cost-efficient and transparent government that taxpayers deserve; and,

*WHEREAS*, the Council will evaluate potential privatization, public-private partnerships, or managed-competition opportunities with the ultimate goal of streamlining Commonwealth government and saving taxpayers' dollars; and,

*WHEREAS*, the Council will also examine roadblocks to sensible privatization, drawing on the experiences of past privatization efforts; and,

**WHEREAS**, the Commonwealth desires to provide the Council with expert assistance and advice to help facilitate and direct the Council's work; and,

**WHEREAS**, the Commonwealth issued a Request for Expressions of Interest (RFEI) to seek private-sector firms who have experience in privatizing governmental operations, creating public-private partnerships, and arranging managed-competition opportunities to assist the Council in its work; and,

**WHEREAS**, Greenhill & Co., LLC (hereinafter "Greenhill") was one of the private consulting firms that submitted an expression of interest in response to the RFEI; and,

**WHEREAS**, Greenhill's expression of interest was determined to be the most appropriate expression of interest; and,

**WHEREAS**, the Office of the Budget desires to contract with Greenhill to procure Greenhill's knowledge and experience to aid the Council and the Commonwealth in identifying potential projects for privatization, public-private partnerships, and managed competition, and then successfully privatizing those identified projects,

**NOW, THEREFORE**, OB and Greenhill, with the intention of being legally bound, hereby agree as follows:

**1. Services.**

- a. Greenhill is engaged by the Commonwealth as a financial advisor in connection with evaluating and, at the option of the Commonwealth, executing potential privatization, public-private partnerships, or managed-competition opportunities.
- b. Greenhill shall perform the services described in Appendix A of this Contract for OB (hereinafter "Services") during the term of this Contract

and any extensions of this Contract. Appendix A is incorporated into this Contract by reference.

- c. OB and Greenhill may from time to time agree to expand the scope of this Contract. Any such agreement shall be in writing.
- d. Greenhill shall complete the Services in two phases. During the Assessment Phase, Greenhill shall work with the Council to identify those parts of Pennsylvania state government that have the potential for privatization, public-private partnership, or managed-competition opportunities. In the Implementation Phase, Greenhill shall, at OB's option and direction, assist the Commonwealth in privatizing, or creating public-private partnership or managed-competition transactions, for those identified opportunities as the Commonwealth deems appropriate.

**2. Compensation.** Greenhill shall be compensated by OB for its services provided under this Contract in accordance with the provisions of Appendices B and C of this Contract, which Appendices are incorporated into this Contract by reference.

**3. Term of Contract.**

- a. Initial Term. The term of this Contract shall commence on the Effective Date and shall end on that date that is two (2) years from the Effective Date, unless it is terminated earlier pursuant to the terms of this Contract.
- b. Extensions. The term of this Contract may be extended by, and at the exclusive option of, OB for two (2) additional periods of one (1) year each, provided that there is a continued need for Greenhill's services and provided that this Contract has not been terminated pursuant to its terms. Notice of OB's election to Greenhill that OB has exercised each of these extensions shall be given to Greenhill in writing at least ninety (90) days prior to the expiration of the then current term, provided, however, that OB's right to exercise any such extension hereunder shall not expire unless and until Greenhill has given OB written notice of OB's failure to timely exercise its extension option, and provided that OB shall then have fifteen (15) days from OB's receipt of Greenhill's notice to cure the failure. No further writing or instrument shall be required to extend the term of this Contract. Greenhill agrees that any extension of this Contract

pursuant to this section shall be on the same terms and conditions as the original Contract.

**4. Notice to Proceed – Purchase Order; Commonwealth not liable for costs incurred before issuance of Purchase Order; Purchase Order Subordinate to Contract.**

- a. The Contractor shall not commence the performance of any work pursuant to, or to be performed under, this Contract unless and until it receives a written Purchase Order from OB, which Purchase Order shall constitute OB's notice to the Contractor to proceed with the work described in the Purchase Order in accordance with the terms and conditions of this Contract. This Contract contemplates the issuance of more than one Purchase Order for the work described herein.
- b. No Commonwealth or OB official or employee has any authority to verbally direct Greenhill to start any work in accordance with, or required by, this Contract. Except for the Contractor's post-termination rights to fees for Asset Monetization Projects as set forth in Section 14 (Termination Provisions) and Appendix B hereof, the Commonwealth of Pennsylvania, including OB, shall not compensate the Contractor for any services or work performed or expenses incurred by the Contractor before the date on which OB issues a Purchase Order, which Purchase Order issuance date may or may not be the same date as the Effective Date of this Contract, and which Purchase Order issuance date shall not be before the Effective Date of this Contract.
- c. The terms and conditions of this Contract completely supersede, fully supplant, and totally abrogate any and all terms or conditions that may be included in the purchase order that OB or the Commonwealth must issue pursuant to this Contract, including, but not limited to, the standard terms and conditions of Commonwealth purchase orders. OB and the Contractor understand and agree that (i) any purchase order is completely subordinate to this Contract, (ii) the terms and conditions of this Contract, and only the terms and conditions of this Contract, set out their complete agreement, and (iii) any terms or conditions included in any purchase order cannot and do not, amend, change, add to, subtract from, alter, or modify in any way the terms and conditions of their agreement as set out in this Contract.

5. **Billing.** Greenhill shall submit invoices to OB for services performed at such times as are set forth in Appendices B and C of this Contract.
  - a. Each invoice shall substantially conform to the format appearing in Appendix D of this Contract.
  - b. OB will pay Greenhill in the normal course of its business, and agrees to use its best effort to make payments to Greenhill within 45 calendar days of OB's receipt of Greenhill's invoices, provided that the invoice conforms to the requirements of this Contract and is received by OB at the "Bill To" address.
  - c. All such invoices shall contain a statement that reads as follows:

"Greenhill & Co., LLC, hereby certifies that the services supplied and the expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Financial Advisory Services."
  - d. All such invoices or accompanying letters of transmittal shall be signed by one of Greenhill's managing directors, and shall contain Greenhill's federal employer identification number.
  - e. The amount of any offsets permitted under Pennsylvania law, or by this Contract, or both, shall be deducted from the amount due under the invoice.
6. **Consultation.** Greenhill shall consult with and keep OB fully informed as to the progress of all matters covered by this Contract. Greenhill shall consult and cooperate with, and shall be responsible directly to, the Secretary of the Budget and other administrative officials as designated by the Secretary of the Budget. The duty of Greenhill shall be to advise, counsel, and recommend actions to the Council, to OB through the Secretary of the Budget, and to other officials designated by the Secretary of the Budget.
7. **Assignment, Subcontracting, and Delegation Prohibited.** Greenhill is specifically and expressly prohibited from (i) assigning any of its rights under this Contract, (ii) subcontracting any of its obligations or responsibilities under

the Contract, and (iii) delegating any of its duties under this Contract, in each case, to any other person or entity without having first received prior written approval from the Secretary of the Budget for such assignment, subcontracting, or delegation before any such assignment, subcontracting, or delegation occurs.

If Greenhill attempts to assign any of its rights, subcontract any of its obligations or responsibilities, or delegate any of its duties under this Contract without having first received the Secretary of the Budget's prior written approval, this Contract and all of its terms and conditions shall be fully, completely, and irrevocably terminated and extinguished as of the moment that Greenhill makes any attempt to assign any of its rights, subcontract any of its obligations or responsibilities, or delegate any of its duties without having first received such written approval from the Secretary of the Budget.

In the event that the Secretary of the Budget approves an assignment, subcontracting, or delegation by Greenhill, Greenhill shall inform its assignee, subcontractor, or delegee of the existence of this Contract and shall bind its assignee, subcontractor, or delegee in writing to comply with all of the terms and conditions of this Contract and any extensions or amendments of this Contract.

Notwithstanding any other provision of this Contract, Greenhill may engage, at its sole expense, such experts and other entities or individuals that Greenhill believes are necessary to assist Greenhill in performing its duties or obligations under this Contract (i.e. legal, tax, accounting, regulatory, technical, political or other advisors); provided, however, that any such experts engaged at the specific direction of the Commonwealth and with the Commonwealth's agreement to pay the fees and expenses of such experts (such consent not to be unreasonably withheld) shall be at the expense of the Commonwealth.

Notwithstanding any other provision in this Contract, nothing in this Contract shall prohibit, restrict, or otherwise hinder or impede in any way the right and ability of the Commonwealth, or OB, or both, to assign any of their rights, to subcontract any of their obligations or responsibilities, or to delegate any of their duties under this Contract, provided, however, that the Commonwealth provide Greenhill with prior notice of any such assignment or subcontract.

- 8. Ownership Rights; Confidential Information.** The following terms and conditions shall apply to all documents, data, information, and records gathered, used, created, or produced in connection with this Contract:
- a. All documents, data, information, and records produced by Greenhill (including any produced by any experts or other persons or entities retained by Greenhill) and delivered to OB under this Contract, without limitation and whether preliminary or final, are and shall become and remain the sole property of OB.
  - b. OB shall have the right to use all such documents, data, information, and records without restriction or limitation and without additional compensation to Greenhill.
  - c. Upon completion of the services hereunder or at the termination of this Contract, all such documents, data, information, and records shall, at the option and upon the written request of OB, be appropriately arranged, indexed, and delivered to OB by Greenhill.
  - d. Any documents, data, and records given to, or prepared by, Greenhill under this Contract shall not be made available to any individual, entity, or organization by Greenhill without the prior written approval of the Secretary of the Budget or his designee, except to Greenhill's representatives and other advisors working on the matters contemplated by this Contract, and except as otherwise required by law or regulation. Any information secured by Greenhill from the Commonwealth, OB, or any other Commonwealth state department, agency, board, commission, or entity in connection with carrying out the services under this Contract shall be kept strictly confidential unless disclosure of such information is first approved in writing by the Secretary of the Budget or as directed by a court or other tribunal of competent jurisdiction or unless otherwise required by law or regulation.
  - e. Upon full and final payment, the Commonwealth shall have a perpetual, nontransferable, non-exclusive paid-up right and license for purposes of its internal business to use, copy, modify and prepare derivative works of the deliverables developed and provided to the Commonwealth in the course of the services hereunder, subject to any restrictions of any third-party materials embodied in the deliverables. Subject to any obligations

of confidentiality, the Commonwealth shall be free to use the concepts, techniques and know-how used and developed by Greenhill. Greenhill shall continue to be free to perform similar services and develop deliverables that may be similar or which may be competitive with those produced hereunder for itself or its other clients using its general knowledge, skills and experience that are acquired or used in the course of providing the services, but shall not use the concepts, techniques and know-how developed specifically for the Commonwealth without the expressed, written permission of the Commonwealth.

f. Notwithstanding the provisions of Paragraph 8 of this Contract, Greenhill may retain copies of documents or other deliverables that it submits or delivers to OB.

9. **Contract Modification or Changes.** Any modification or change to this Contract shall be incorporated in a written amendment to this Contract, signed by both parties and executed in the same manner as this original Contract and in accordance with applicable law.

10. **Conflict of Interest.** Greenhill, by signing this Contract, covenants that it has no undisclosed public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with the performance of the services or obligations under this Contract. Any such conflicts shall be promptly disclosed to the Secretary of the Budget and the Secretary of the Budget shall determine whether such conflict is cause for termination of this Contract.

11. **Independent Contractor.** In performing the services required by this Contract, Greenhill is, will act as, and shall at all times be, an independent contractor, with duties owing solely to the Commonwealth. Nothing in this Contract is intended to confer upon any other person any rights or remedies hereunder or by reason hereof. In the performance of its duties and obligations under this Contract, Greenhill and its employees and agents are not employees of the Commonwealth or OB.

12. **Default.**

a. The Commonwealth may, subject to the provisions of Paragraph 13, Force Majeure, and in addition to its other rights under this Contract,

declare Greenhill in default by written notice thereof to Greenhill, and terminate (as provided in Paragraph 14, Termination Provisions) the whole or any part of this Contract for any of the following reasons:

- I. Failure to begin work within the time specified in this Contract or as otherwise specified;
  - II. Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract terms;
  - III. Unsatisfactory performance of the work;
  - IV. Failure or refusal to remove material, or remove and replace any work, rejected as defective or unsatisfactory;
  - V. Discontinuance of work without approval;
  - VI. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
  - VII. Insolvency or bankruptcy;
  - VIII. Assignment made for the benefit of creditors;
- or
- IX. Material breach of any provision of this Contract.

- b. If the Contract is terminated as provided in Subparagraph 12.a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require Greenhill to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Secretary of the Budget or his designee, such partially completed work, including, where applicable, reports, working papers and other documentation, as Greenhill has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as

provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by Greenhill and the Secretary of the Budget or his designee.

- c. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- d. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- e. Following exhaustion of Greenhill's administrative remedies as set forth in Paragraph 24 (Contract Controversies), Greenhill's exclusive remedy shall be to seek damages in the Board of Claims.

- 13. Force Majeure.** Neither party to this Contract will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

Greenhill shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which Greenhill becomes aware, or should have reasonably become aware, that any such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed, and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. Greenhill shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect either to cancel the Contract (pursuant to

subparagraph 14.a below (Termination for Convenience) or to extend the time for performance as reasonably necessary to compensate for Greenhill's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to Greenhill, may suspend all or a portion of the Contract.

**14. Termination Provisions.** The Commonwealth has the right to terminate this Contract for any of the following reasons. Except as otherwise provided herein, termination shall be effective upon the sending of written notice to Greenhill.

a. Termination for Convenience. The Commonwealth shall have the right to terminate this Contract for its convenience if the Commonwealth determines termination to be in its best interest. Greenhill shall be paid for work satisfactorily completed prior to the effective date of the termination and for any Asset Monetization Projects that are entered into within 18 months after such termination (as described below), but in no event shall Greenhill be entitled to recover loss of profits.

b. Non-appropriation. The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate this Contract. Greenhill shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services delivered under this Contract and for any fees that have accrued or may accrue under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose. At the beginning of each fiscal year, the Commonwealth shall make a representation, in writing, to Greenhill that funds are available and appropriated to cover any payment obligations to Greenhill under this Contract.

c. Termination for Cause. The Commonwealth shall have the right to terminate this Contract as provided for in Paragraph 12 (Default) for Greenhill's default upon the sending of written notice to Greenhill. Upon

receipt of such notice, Greenhill shall have a period of 30 days to cure any such default. Any termination shall become effective upon the failure of Greenhill to cure such default with such 30 day period. The Commonwealth shall also have the right, upon the sending of written notice to Greenhill, to terminate the Contract for other cause as specified in this Contract (subject to written notice and opportunity to cure as provided for herein) or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 14.a.

In the event of any termination by the Commonwealth for Greenhill's default as set forth in Subparagraph 14.c. above, Greenhill shall not be entitled to any fees (including Milestone Fees and Success Fees (as defined in Appendix B to this Contract)) that accrue after such termination. In the event of any termination by the Commonwealth for any reason other than for Greenhill's default as set forth in Subparagraph 14.c. above, Greenhill shall remain entitled to any fees (including Milestone Fees and Success Fees (as defined in Appendix B to this Contract)) for any Asset Monetization Projects for which definitive documentation is executed within 18 months of the date of such termination, as set forth in Appendix B to this Contract (whether or not a Purchase Order has been issued with respect thereto).

Greenhill shall have the right to terminate this Contract as a result of default by the Commonwealth hereunder upon 30 days written notice to the Commonwealth, provided that the Commonwealth shall have the opportunity to cure any such default within said 30 day period in which case the termination shall not be effective. Greenhill shall have the right to terminate this Contract for convenience upon 60 days written notice to the Commonwealth. In the event of any termination by Greenhill without cause, Greenhill shall not be entitled to any fees (including Milestone Fees and Success Fees (as defined in Appendix B to this Contract)) that accrue after such termination. In the event of any termination by Greenhill for cause, Greenhill shall remain entitled to any fees (including Milestone Fees and Success Fees (as defined in Appendix B to this Contract)) for any Asset Monetization Projects for which definitive documentation is executed within 18 months of the date of such termination, as set forth in Appendix B to this Contract (whether or not a Purchase Order has been issued with respect thereto).

15. **Integration Clause.** This Contract constitutes the entire agreement between the parties. No agent, representative, employee, or officer of the Commonwealth, or of OB, or of Greenhill has authority to make, or has made, any statement, agreement, or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment executed by the parties pursuant to paragraph 9 (Contract Modification or Changes) of this Contract.
16. **Inability to Perform.** Greenhill agrees that if, because of death or any other occurrence beyond the control of Greenhill, it becomes impossible for any principal or principals and in particular the principals or Key Employee assigned to this project to render the Services set forth in this Contract, neither Greenhill nor the surviving principals shall be relieved of their obligations to complete their performance of this Contract. Greenhill shall, with respect to any replacement principal proposed to be assigned to this matter, consult with OB. OB's consent to the proposed replacement is required, and may not be withheld unreasonably.
17. **Nondiscrimination/Sexual Harassment.** Greenhill shall comply with all applicable provisions of state and federal constitutions, laws, regulations, and judicial orders pertaining to nondiscrimination, sexual harassment, and equal employment opportunity, including the provisions of the Nondiscrimination/Sexual Harassment Clause, which is attached hereto as Appendix E and incorporated by reference.
18. **Integrity Provisions.** Greenhill agrees to comply with the Integrity Provisions, which are attached hereto as Appendix F and incorporated by reference.
19. **Responsibility Provisions.** Greenhill agrees to comply with the Responsibility Provisions, which are attached hereto as Appendix G and incorporated by reference.
20. **The Americans With Disabilities Act.** Greenhill agrees to comply with *The Americans With Disabilities Act* provisions, which are attached hereto as Appendix H and incorporated by reference.

21. **Audit Provision.** The Commonwealth (including but not limited to OB, the Auditor General, outside auditors engaged by the Commonwealth or federal government auditors if federal funds are disbursed under this Contract) shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of Greenhill to the extent that the books, documents, and records relate to work performed by Greenhill pursuant to this Contract. Greenhill agrees to maintain records that will support the charges shown on its invoices submitted to OB for payment pursuant to this Contract.

Greenhill shall preserve books, documents, and records that relate to hours worked, work performed, costs, or pricing data for this Contract for a period of three years from date of final payment. Greenhill shall give full and free access to all such records to the Commonwealth, or its authorized representatives, or both, at reasonable times upon reasonable advance notice.

22. **Offset Provision.** Greenhill agrees that the Commonwealth may set off the amount of any past due state tax liability, or assessed liquidated damages, or other obligation that Greenhill owes to the Commonwealth against any payments due Greenhill under any contract with the Commonwealth; provided that the Commonwealth shall first provide written notice of its intention to do so.

23. **Hold Harmless Provision.** Greenhill shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands, and actions based upon or arising out of any activities performed by Greenhill or any person or entity acting on its behalf under this Contract, to the extent such claims, demands or actions are attributable to Greenhill's gross negligence or willful misconduct in performing the Services under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands; provided, however, Greenhill's indemnity obligation shall be limited to an amount equal to fees under the Contract actually received by Greenhill.

24. **Notice.** Any written notice to OB under this Contract shall be sufficient if mailed by certified mail to:

The Honorable Charles B. Zogby  
Secretary of the Budget  
Main Capitol Building, Room 238  
Harrisburg, PA 17120

*with a copy to:*

James D. Neilson  
Chief Counsel  
Office of the Budget Legal Office  
Office of General Counsel  
Commonwealth of Pennsylvania  
Verizon Tower, 7<sup>th</sup> Floor  
303 Walnut Street  
Harrisburg, PA 17101-1825

Any written notice to Greenhill under this Contract shall be sufficient if mailed by certified mail to:

Robert K. Collins  
Managing Director  
Greenhill & Co., LLC  
155 N. Wacker Drive, Suite 4550  
Chicago, IL 60606

*with a copy to:*

General Counsel  
Greenhill & Co., LLC  
300 Park Avenue, 23<sup>rd</sup> Floor  
New York, NY 10022

25. **Contract Controversies.** In the event of a controversy or claim arising from this Contract, the Contractor must, within six months after the cause of action accrues, file a claim for a determination with the Contracting Officer named by

OB in its Purchase Order. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. A claim shall state all grounds upon which the Contractor asserts a controversy exists. The Contracting Officer shall review a claim and issue a final determination in writing regarding the claim within 120 days of the receipt of the claim unless extended by consent of the Contracting Officer and the Contractor. If the Contracting Officer fails to issue a final determination within 120 days unless extended by consent of the parties, the claim shall be deemed denied. The determination of the Contracting Officer shall be a final order of the Office of the Budget. Within 15 days of the mailing date of a final determination denying a claim or within 135 days of filing of a claim (if no extension is agreed to by the parties), whichever occurs first, the Contractor may file a statement of claim with the Board of Claims. Within 30 days of a final order being entered by the Board of Claims, a party may file an appeal with the Commonwealth Court. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of this Contract in a manner consistent with the interpretation of the Office of the Budget, and the Commonwealth shall compensate the Contractor pursuant to the terms of this Contract.

26. **Applicable Law.** This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. Greenhill consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal court in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. Greenhill agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania or federal law.
27. **Compliance with Law; Environmental Provision.** Greenhill shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this Contract. In the performance of the Contract, Greenhill, shall use its reasonable efforts to minimize pollution in connection with its services hereunder and shall strictly comply with all applicable environmental laws and regulations.
28. **Effective Date.** This Contract shall be binding upon the parties as of the date that the last signatory has affixed his or her signature on the signature page of

this Contract (the "Effective Date"). As of the Effective Date, this Contract, and the terms and conditions set out herein, shall be binding upon and shall inure to the benefit of the parties to this Contract, and to their respective heirs, executors, administrators, successors, and permitted assigns.

**29. Headings.** The headings preceding the paragraphs of this Contract have been inserted only for convenience and shall not modify, restrict, or be used to interpret, and shall not have any effect on the understanding, interpretation, or application of, any provision in this Contract.

**30. Right to Know Law.**

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
  - I. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - II. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, in the event the Contractor does not prevail in such legal challenge. As

between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

**31. Services and Materials to be Furnished by Commonwealth.** The Commonwealth shall furnish Greenhill with all available necessary information, data, and materials pertinent to the Services to be performed under this Contract. The Commonwealth agrees and represents that, to the best of its knowledge, all information furnished to Greenhill pursuant to this Contract shall be accurate and complete in all material respects at the time provided, and that if the Commonwealth becomes aware that such information becomes inaccurate, incomplete or misleading thereafter, the Commonwealth shall notify Greenhill in writing. In performing its Services hereunder, Greenhill shall be entitled to rely upon and assume, without assuming any responsibility for independent verification, the accuracy and completeness of all information that is publicly available and of all information that has been furnished to it by the Commonwealth in connection therewith and Greenhill shall not assume any responsibility or have any liability therefor. Greenhill shall have no obligation to conduct any valuation or appraisal of any assets or liabilities. The Commonwealth shall cooperate with Greenhill in carrying out the work herein and shall provide adequate staff for liaison with Greenhill and other agencies of Commonwealth state government.

The Commonwealth agrees that none of Greenhill, its affiliates and their respective officers, directors, employees, agents and each other entity or person, if any, controlling Greenhill or any of its affiliates shall have any liability (whether direct or indirect, in contract or tort or otherwise) (each, a "Greenhill Party") to the Commonwealth or any of its affiliates or creditors for or in connection with Greenhill's engagement hereunder or the transactions contemplated by this Contract except for losses, claims, damages, liabilities or expenses that a court of competent jurisdiction shall have determined by final nonappealable judgment resulted solely from the gross negligence or willful misconduct of such Greenhill Party.

The Commonwealth agrees that, prior to entering into any Project, each potential concessionaire, lessee, manager, counterparty, purchaser or other such party will be required (unless the Commonwealth and Greenhill mutually agree otherwise) to indemnify and hold the Greenhill Parties harmless from and against any losses, claims, damages, demands and liabilities (or actions or proceedings in respect thereof), joint or several, related to or arising in any manner out of any activities performed or services furnished pursuant to this Contract.

In addition, the Commonwealth agrees that it shall require any bidder upon a Project to acknowledge that no Greenhill Party shall have any liability to such bidder or any of its affiliates related to or arising in any manner out of any activities performed or services furnished pursuant to this Contract.

32. **Information and Reports.** In addition to the reports and documents specifically required to be produced, Greenhill shall, at such time and in such form as the Commonwealth or OB may reasonably require, furnish such reports concerning the status of the project, such statements, certificates, approvals, and copies of documents, reports, data and other information relative to the project as may be requested by the Commonwealth. Greenhill shall furnish the Commonwealth, upon request, with copies of all documents and other materials prepared or developed in relation with or as part of the project. Working papers prepared in conjunction with this Contract may be turned over to the Commonwealth for safekeeping.
33. **Accomplishment of Project.** Greenhill shall commence, carry on, and complete the project with all practicable dispatch, in a sound economical and efficient manner, in accordance with the provisions thereof and all applicable laws. In accomplishing the project, the Consultant shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on in the Commonwealth.
34. **When Rights and Remedies Not Waived.** In no event shall the making by the Commonwealth of any payment to Greenhill constitute or be construed as a waiver by the Commonwealth of any breach or covenant, or any default which may then exist, on the part of Greenhill, and the making of any such payment by the Commonwealth while any such breach or default shall exist in no way impair or prejudice any right or remedy available to the Commonwealth in respect to such breach or default.

**35. Personnel; Change in Business Circumstances.**

- a. Greenhill represents that it has secured, or will secure, at its own expense, all personnel that in Greenhill's opinion are required in performing the services under this Contract. All of the services required hereunder shall be performed by Greenhill, or under its supervision, and all personnel engaged in the work shall be fully qualified to perform such services.
- b. Mergers, acquisitions, dissolution, or other circumstances resulting in Greenhill's ceasing to exist, or personnel no longer being available to perform the services provided for hereunder, or both, shall provide the Commonwealth with the right to terminate this Contract pursuant to the provisions of Paragraph 14 of this Contract, provided that the Commonwealth shall first meet with Greenhill and discuss the circumstances of any such event prior to any such termination.
- c. Greenhill shall promptly provide the Commonwealth with written notice of any contemplated or existing circumstance described in subparagraphs (a) and (b) of this Paragraph 35.
- d. OB may request, and upon OB's request, Greenhill shall remove and replace any Greenhill personnel from participation in and performance of Greenhill's services or tasks under this Contract.
- e. Key Employee shall mean Robert Collins. The Key Employee shall be assigned to perform the Services in the absence of death, retirement, resignation or termination from Greenhill or other unavoidable circumstance. All replacements of the Key Employee shall be subject to the prior written approval of OB. In the event the Key Employee is not available to perform the Services hereunder, the Commonwealth shall have the right to terminate this Agreement pursuant to the provisions of Paragraph 14(a) hereof.

**36. Greenhill Warranty of Its Services.** Greenhill warrants that the Services performed by it in furtherance of its duties and responsibilities under this Contract will be performed in a good and workmanlike manner. Greenhill shall re-perform any work not in compliance with this warranty brought to its

attention within a reasonable time (not to exceed 30 days) after that work is performed.

- 37. Patent, Copyright, and Trademark Warranty.** Greenhill warrants that it is the sole owner or author of, or, if applicable, has entered into a suitable legal agreement concerning: (i) any design or process provided or to be used in the performance of the Services that is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law; or, (ii) any copyrighted matter in any report, document or other material provided to OB; or, (iii) the use of any software by Greenhill in the performance of the Services. After receiving the consent of OB, which shall not be unreasonably withheld, Greenhill shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any items provided or used in the performance of the Services. This is upon condition that OB shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If the Commonwealth furnishes information and assistance at Greenhill's written request, it shall be at the Greenhill's expense, but the responsibility for such expense shall be only that within Greenhill's written authorization. The obligations of Greenhill under this paragraph survive the termination or expiration of this Contract and continue without time limit.

**38. Indemnities.**

- a. Greenhill shall also indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that Greenhill or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Services. If any of the products provided by Greenhill in such suit or proceeding are held to constitute infringement and use thereof is enjoined, Greenhill shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer

infringing. The obligations of Greenhill under this paragraph survive termination or expiration of this Contract and continue without time limit. No costs or expenses shall be incurred for the account of Greenhill without its written consent. Notwithstanding any of the foregoing, Greenhill's indemnity obligation under this Section 38 shall be limited to an amount equal to fees under the Contract actually received by Greenhill.

39. **Limitation of Liability.** Neither party shall be liable to the other hereunder or in relation hereto (whether in contract, tort, strict liability or otherwise) for consequential, incidental, indirect, or punitive loss, damage or expenses (including lost profits). This paragraph shall survive the termination, or expiration of the term, of this Contract.
40. **Communication with the Media.** Greenhill, its officers, employees, agents, and contractors, shall have no communication with any form of public media – newspaper, television, radio, internet-based, or any other form – concerning this Contract or its performance hereunder, except with the prior written approval of the Commonwealth.
41. **Funds Commitment.** Notwithstanding any provisions of this contract to the contrary, OB may elect to use a funds commitment for services to be performed hereunder in lieu of a purchase order. In such case all references herein to the purchase order shall be deemed to refer to the funds commitment document.

*(This Contract continues on the next page.)*

**IN WITNESS WHEREOF**, in consideration of the mutual agreements made herein, and intending to be legally bound hereby, the authorized officers for the Commonwealth of Pennsylvania, Office of the Budget, and for Greenhill have executed this Contract as of the Effective Date.

**FOR GREENHILL & CO., LLC:**

**FOR OFFICE OF THE BUDGET:**

By: 

By: 

Print Name: ROBERT K. COLLINS

HON. CHARLES B. ZOGBY  
SECRETARY OF THE BUDGET

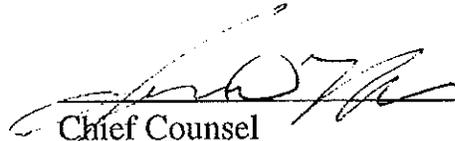
Title: MANAGING DIRECTOR

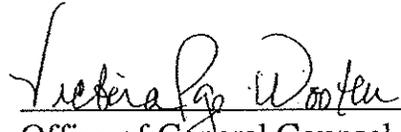
Date: 11.17.11

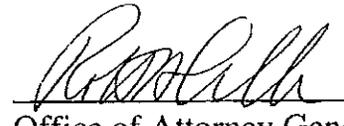
Date: 11/10/11

**APPROVED AS TO FORM AND LEGALITY:**

Federal Employer ID #. ~~13-8867900~~

 11/10/11  
Chief Counsel Date  
Office of the Budget

 11/17/11  
Office of General Counsel Date

 11/28/11  
Office of Attorney General Date

**CERTIFICATION AS TO AVAILABILITY OF FUNDS**

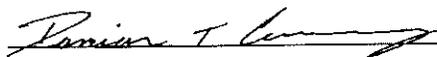
I certify that funds are available in the amount of \$150,000.00 under the following coding:

4000016471

GL Account: 6341100

SAP Fund: 1062211000

Cost Center: 8121001000

  
Comptroller

12/6/11  
Date

## FINANCIAL SERVICES CONTRACT CERTIFICATION

This is a contract for financial advisory services selected as a sole source by the Secretary of the Budget pursuant to the terms of Section 515 of the Commonwealth Procurement Code.

  
\_\_\_\_\_  
James D. Neilson                      Date  
Chief Counsel  
Office of the Budget

## APPENDIX A DESCRIPTION OF SERVICES

Greenhill shall perform the following services, or provide the following items, to the Office of the Budget as described in this Appendix A.

1. **Governor's Privatization Advisory Council.** The Governor's Privatization Advisory Council will conduct a thorough examination of Pennsylvania state government functions and services to determine whether Pennsylvania is providing the most cost-efficient and transparent government that Pennsylvania's taxpayers deserve. The Advisory Council will review Pennsylvania state government operations to identify privatization opportunities that will achieve a combination of quality, cost savings, expertise, effectiveness and innovation for Pennsylvania's citizens. The Advisory Council will also examine impediments to the privatization of Commonwealth services and operations. In performing its work, the Advisory Council will set clear privatization goals and policies, and will engage Pennsylvania citizens and stakeholders.
  
2. **Greenhill's Tasks and Deliverables.** Under this Contract, Greenhill will perform its work under this Contract in two (2) phases.
  - a. Advisory Council Assessment Phase. The Advisory Council Assessment Phase (the "Assessment Phase") shall be a period of time, not less than three (3) months and not more than nine (9) months, or such other period as may be mutually agreed, agreed to and acknowledged in writing by OB and Greenhill prior to the issuance of a Purchase Order for the Assessment Phase. During the Assessment Phase, Greenhill shall, with the input and approval of the Advisory Council, develop a framework for identifying potential privatization, public-private partnership, and managed competition opportunities, which framework shall include methods for determining the cost savings, service or quality improvements, innovation, management, or transfer of risk associated with each potential privatization, public-private partnership, or managed competition opportunity.
    - I. During this phase, Greenhill shall, with the input and approval of the Advisory Council:

1. Assist in identifying the Council's goals.
2. Create a prioritized inventory of potential privatization, public-private partnership or managed competition opportunities that will be recommended to the Governor of Pennsylvania and the Secretary of the Budget, along with a framework for executing and implementing that inventory.
3. Assist the Council in preparing monthly reports to the Secretary of the Budget of the Advisory Council's work, basis and work with the Advisory Council to prepare such other reports of the Council's work as the Secretary of the Budget may specifically request.
4. Coordinate and facilitate Advisory Council meetings, including, but not limited to, assisting the chairperson of the Council in preparing meeting agendas, coordinate the production and distribution to Council members of the agenda and all other necessary documents and materials for each meeting.

II. During this phase, Greenhill shall complete the following tasks:

1. Identify and provide relevant examples of privatization and managed competition programs domestically and internationally.
2. Identify opportunities for privatization, public-private partnerships, and managed competition across sectors and within Pennsylvania agencies, departments, boards, and commissions, including, without limitation, lease, management, partnership, joint venture or concession arrangements or sale or disposition transactions.
3. Research current impediments to privatization in Pennsylvania from a financial perspective and present those impediments to the Council.
4. Conduct initial market research.

5. Review available funding, financing tools, payment mechanisms, and delivery methods of current services.

III. Greenhill shall produce three (3) deliverables by the end of the Advisory Council Assessment Phase:

1. Framework. Create and present to the Advisory Council for review and input a proposed framework for the Advisory Council that includes but is not limited to: service and quality improvements, cost savings, management improvements, innovation, and transfer of risk.
2. Create an implementation plan to be carried out by each department or agency head. The implementation plan shall include: force field analysis (projects of initiatives), cost benefit analysis, a suggested advocacy or communication strategy, high level action plan, comment on public-private partnership or other legislation necessary to implement plan, and identify best use of proceeds from the privatization.
3. Comprehensive Report of Privatization Projects. Greenhill shall prepare for the Council a Comprehensive Report of Privatization Projects for privatization, public-private partnerships, and managed competition projects, which shall include a discussion of impediments to privatization in Pennsylvania. The report will include an inventory of potential projects for the Advisory Council to review. Greenhill shall set out for the Council the timing, key metrics, savings projections, market timing and pricing strategy to be considered in relation to each of the potential projects. Greenhill will rank the potential projects in order of savings opportunity and ease of implementation, and will identify for the Council the three to five potential projects that have the highest savings opportunities combined with the greatest ease of implementation, and shall set out an expedited process for executing and implementing those three to five projects. The report will conclude with a Business Case that sets out for the Council the expected

cumulative benefits that can be achieved by the Commonwealth from privatization, public-private partnerships, and other identified opportunities, including the time and expense needed to achieve those cumulative benefits.

- b. Implementation Phase. During this phase, Greenhill will develop for the Commonwealth in-depth procurement and public strategies for the Commonwealth to use to implement the top three to five projects for privatization, public-private partnerships, and managed competition selected by the Advisory Council (the "Projects"), and will assist the Commonwealth with that implementation. Greenhill shall produce the following deliverables during the Implementation Phase:
- I. At the start of the Implementation Phase, the Commonwealth, with input and assistance from Greenhill, will determine the order and schedule by which the Projects will be undertaken.
  - II. Greenhill shall assist the Department of General Services or other purchasing agency, as well as the department or agency in which each project is located, to create a recommended procurement strategy and public strategy (including strategy for effective stakeholder relations) to plan for the successful negotiation and implementation of each of the Projects. The strategy will include timelines for each project, and shall establish a clear path to implementation, and define the actions that must be taken by the Commonwealth to achieve the implementation, and shall include financial models and other analysis.
  - III. Greenhill shall assist Commonwealth agencies in identifying potential purchasers or partners and defining the critical factors that will guide the qualitative aspects of the purchaser or partner selection criteria.
  - IV. Greenhill shall assist the Department of General Services or other purchasing agency in the preparation and issuance of procurement documents such as invitations for bids, request for proposals, request for quotes, bidding terms and conditions, contract terms and conditions and other procurement documents. Greenhill shall

also develop and provide the use of analytical tools to evaluate vendors and their responses from a financial perspective. Greenhill shall work with the Department of General Services to confirm that the process is executed according to best practices and design to deliver anticipated savings.

- V. After a potential purchaser or partner has been selected, Greenhill shall assist and support the Department of General Services or other purchasing agency in negotiating the final contractual arrangement. Greenhill shall prepare for fact-based negotiations and rehearse with the Commonwealth negotiators. Greenhill shall assist the Commonwealth negotiators are in preparations to execute optimal negotiations.
  
- VI. Each of the Projects shall be considered to have been privatized, put into a public-private partnership, or into managed competition on the date on which the Commonwealth has completed all of the steps and work necessary to complete all parts of the transaction, no more work remains to be completed, payment, if required, has been made to the Commonwealth and the project is fully operating its new legal status.

For the avoidance of doubt, Greenhill does not provide accounting, tax, legal or regulatory advice.

## APPENDIX B CONTRACT PRICE AND COMPENSATION

In return for the services provided by Greenhill pursuant to this Contract, the Commonwealth of Pennsylvania, Office of the Budget, shall compensate Greenhill as set out in this Appendix B.

1. **Assessment Phase; Fixed Fee.** During the Assessment Phase, OB shall pay to Greenhill an aggregate fixed fee of \$150,000.00 for Greenhill's Assessment phase work. The total amount paid for work performed by Greenhill for the Assessment phase shall not exceed a total of \$150,000.00. Payment shall be made: (i) one-third (1/3) upon completion of and written acceptance by the Commonwealth of the Framework, as described in Section 2(a)(III)(1) of Appendix A; (ii) one-third (1/3) upon completion of and written acceptance by the Commonwealth of the Implementation Plan described in Section 2(a)(III)(2) of Appendix A; and one-third (1/3) upon completion and written acceptance by the Commonwealth of all deliverables required to be delivered by Greenhill during the Assessment Phase. The Commonwealth's payment of the fixed fee to Greenhill shall constitute the total amount to be paid by the Commonwealth to Greenhill for any and all work performed by Greenhill during the Assessment Phase of this Contract. The Commonwealth shall not pay Greenhill for any expenses or costs, including but not limited to travel, per diem, subsistence, overhead, office expenses or hourly fees, incurred by Greenhill in the performance of any work during the Assessment Phase of this Contract.

### 2. **Implementation Phase.**

- a. Fees for Asset Monetization Projects. During the Implementation Phase, OB shall pay to Greenhill the following additional compensation for each Asset Monetization Project (as defined below):

Milestone Fees. A fee or fees, to be mutually agreed at the time of issuance of a Purchase Order with respect to any such project, which fees may include, without limitation, a fee upon the issuance of an RFQ (Request for Qualifications) or an RFP (Request for Proposal) or similar document with

respect to any such project or other appropriate milestone fees (collectively, "Milestone Fees").

Success Fees. Greenhill shall earn an additional success fee for each Asset Monetization Project (a "Success Fee") in accordance with the table below:

<u>Transaction Value</u>	<u>Success Fee</u>
Less than \$1 billion	0.60% (subject to a \$3 million minimum success fee) = "Base Success Fee"
Between \$1 billion and \$2 billion	0.40% on the incremental value above \$1 billion, if any (plus the "Base Success Fee") = "Incremental Success Fee"
More than \$2 billion	0.30% on the incremental value above \$2 billion, if any (plus the "Incremental Success Fee")

The Success Fee may be either a fixed fee or a value based fee, with compensation to be paid to Greenhill computed in accordance with the table above as a percentage of the Transaction Value (as defined below) of Asset Monetization Projects identified by Greenhill which are actually accomplished or implemented by the Commonwealth and its agencies, departments, boards, or commissions. Such fee shall be payable if, during the term of the Contract, within 18 months thereafter or, if the Contract is terminated prior to the end of its stated term, within 18 months of such termination, an Asset Monetization Project is consummated or a definitive agreement is entered into that subsequently results in the consummation of an Asset Monetization Project. Notwithstanding the foregoing, no fee for any such Asset Monetization Project shall be payable to Greenhill if the Contract is in effect and Greenhill elects not to participate in such Asset Monetization Project. Failure of the parties to reach

an agreement on a fee for such a Project shall not be deemed an election by Greenhill not to participate.

“Transaction Value” shall mean the sum of (x) the aggregate value of all proceeds and other consideration paid or to be paid to the Commonwealth or any of its affiliates by an outside party at the closing of any Asset Monetization Project, plus the principal amount of any outstanding indebtedness assumed by such outside party in connection with such Asset Monetization Project, and (y) the net present value, as of closing, of all deferred, contingent, guaranteed or future payments to be made by an outside party in connection with an Asset Monetization Project, including, without limitation, royalty payments, capital expenditures, noncontingent payments over the period of a lease or concession, and net profit guarantees, such present value to be calculated in good faith by the Commonwealth and Greenhill using a discount rate of 4.0% applied to the present value of the number of years of such deferred, contingent, guaranteed or future payments to be made. Such computation shall not include any taxes or future taxes to be collected by the Commonwealth or any direct costs of the Commonwealth reimbursed by the buyer.

“Asset Monetization Project” shall mean any Project where the Commonwealth or any of its affiliates sells, leases or monetizes an asset or otherwise receives Transaction Value at the closing of a Project.

- b. Fees for Other Projects. In the case of any other Project that does not constitute an Asset Monetization Project, such as an outsourcing or general cost saving Project, the Milestone Fees and Success Fees payable to Greenhill for such Project shall be mutually agreed by the Commonwealth and Greenhill at the time of entering into a Purchase Order for such Project.
- c. Time of payment. The Commonwealth’s obligation to make payment to Greenhill as a result of a particular contracted Project shall accrue:
  - I. For privatization, public-private partnership, and managed competition sale projects, when the Commonwealth, or one of its agencies, departments, boards, or commissions actually receives payment in full of funds from an outside party in a contracted privatization, public-private partnership, or managed competition transaction. The Commonwealth shall use its best efforts to pay Greenhill within in 60 days of the date on which the

Commonwealth receives full and final payment from the outside party.

II. For non-sale Projects, upon successful completion of the Project as determined by the Commonwealth.

d. Commonwealth's responsibility for payment. The Commonwealth is not, under any circumstances or at any time, required by this Contract to award a contract, or to award a contract to a lowest bidder, in a privatization, public-private partnership, or managed competition transaction. The Commonwealth expects to award a contract for a Project after it is approved for implementation by the Commonwealth and after an invitation for bid, request for proposals, or other Pennsylvania procurement process has been released to the general public. If the Commonwealth, for any reason, determines not to enter, or is unable for any reason to enter, into a contract for a privatization, public-private partnership, or managed competition transaction then the Commonwealth shall not owe or pay to Greenhill any compensation for that Project. If the Commonwealth decides to re-bid, re-issue, or otherwise institute a contracting process for that contracting opportunity utilizing the work product of Greenhill, then the Commonwealth will pay Greenhill pursuant to the applicable terms and conditions of this Contract based upon that new contracting process.

e. The Commonwealth's payment of the fees set forth above for successfully completed Projects to Greenhill shall constitute the total amount to be paid by the Commonwealth to Greenhill for any and all work performed by Greenhill during the Implementation Phase of this Contract. The Commonwealth shall not pay Greenhill for any expenses or costs, including but not limited to travel, per diem, subsistence, overhead, office expenses or hourly fees, incurred by Greenhill in the performance of any work during the Implementation Phase of this Contract.

3. **Invoice Bill-To Address.** Greenhill shall submit its invoices to OB by mailing them to the address set out in the purchase order.

## **APPENDIX C COMPENSATION**

Greenhill shall receive full payment for its services under this Contract and reimbursement of its eligible costs as described in this Appendix C. Payments of additional amounts may be made only by preparation of an amendment to this Contract which is executed by Greenhill, and by OB, and by all other required Commonwealth signatories.

1. Greenhill shall be compensated by OB for its work to fulfill the terms of this Contract in accordance with the rate set out in Appendix B of this Contract.

**APPENDIX D  
INVOICE FORMAT  
(SUMMARY)**

Greenhill & Co., LLC

X

Phone: X

---

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE BUDGET

x

Harrisburg, PA 17101-1825

ATTN: X

REGARDING: Contract for Financial Advisory Services

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM  
(DATE) THROUGH (DATE)

\$(TOTAL FEES)

TOTAL EXPENSE ADVANCES MADE TO YOUR ACCOUNT FROM  
(DATE) THROUGH (DATE)

\$(TOTAL EXPENSE ADVANCES)

BALANCE DUE: \$(GRAND TOTAL)

FEDERAL EMPLOYER I.D. NO. (FEDERAL I.D. NUMBER)

Greenhill & Co., LLC, hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Financial Advisory Services.

---

For Greenhill & Co., LLC

Date

**APPENDIX D  
INVOICE FORMAT  
(DATE DETAIL)**

Greenhill & Co., LLC

x

Phone: x

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COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE BUDGET

x

Harrisburg, PA 17101-1825

ATTN: x

REGARDING: Contract for Financial Advisory Services

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH  
(DATE)

**APPENDIX D  
INVOICE FORMAT  
(COSTS)**

Greenhill & Co., LLC

x

Phone: x

---

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE BUDGET

x

Harrisburg, PA 17101-1825

ATTN: x

REGARDING: Contract for Financial Advisory Services

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH  
(DATE)

DATE	DESCRIPTION OF COSTS	AMOUNT
	<b>TOTAL:</b>	

**APPENDIX E**  
**NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

During the term of this Contract, Greenhill agrees as follows:

1. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Contract or any subcontract, Greenhill or any person or entity acting on behalf of Greenhill or subcontractor, shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither Greenhill nor any person or entity on its behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this Contract on account of gender, race, creed, or color.
3. Greenhill and any person or entity on its behalf shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. Greenhill shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. Greenhill and any person or entity on its behalf shall, within the time periods reasonably requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.

6. Greenhill shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate this Contract, and all money due or to become due under this Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, OB may proceed with debarment or suspension and may place Greenhill in the Contractor Responsibility File.

## APPENDIX F CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements that govern contracting with the Commonwealth.
2. Contractor has established or shall establish and implement a written business integrity policy, which addresses, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 *et seq.*; the State Adverse Interest Act, 71 P.S. §776.1 *et seq.*; and the Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 *et seq.*, or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 *et seq.* or any statute,

regulation, statement of policy, management directive or any other published standard of the Commonwealth.

6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
  - a. Approved in writing by the Commonwealth prior to its disclosure; or
  - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or

- c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - d. Necessary for purposes of Contractor's internal assessment and review; or
  - e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  - g. Otherwise required by law or regulation.
10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - (i) obtaining;
    - (ii) attempting to obtain; or
    - (iii) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the Act of June 2, 1915 (P.L.736, No. 338), known as the Workers' Compensation Act, 77 P.S. 1 et seq.
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by Section 1641 of the Pennsylvania Election Code) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. Contractor shall comply with requirements of the Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 *et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
14. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.
15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or

request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.

16. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
17. For purposes of these Contractor Integrity Provisions in Appendix F, the following terms shall have the following meanings:
  - a. "Confidential information" means information that (i) is not already in the public domain; (ii) is not available to the public upon request; (iii) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; (iv) has not become generally known to the public through an act or omission of Contractor; or (v) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
  - b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
  - c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.

- d. "Financial interest" means:
- (i) Ownership of more than a five percent interest in any business; or
  - (ii) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- e. "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.153(b), shall apply.
- f. "Immediate family" means a spouse and any unemancipated child.
- g. "Non-bid basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- h. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

## APPENDIX G RESPONSIBILITY PROVISIONS

1. Greenhill certifies, for itself and all its subcontractors, that as of the date of its execution of this Contract, that neither Greenhill, nor any of its subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if Greenhill cannot so certify, then it agrees to submit a written explanation of why such certification cannot be made.
2. Greenhill also certifies, that as of the date of its execution of this Contract, it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. Greenhill's obligations pursuant to these provisions are ongoing from and after the effective date of this Contract through the termination date thereof. Accordingly, Greenhill shall have an obligation to inform the Commonwealth if, at any time during the term of this Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of Greenhill to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of this Contract with the Commonwealth.
5. Greenhill agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of Greenhill's compliance with the terms of this or any other Contract between Greenhill and the Commonwealth, which results in the suspension or debarment of Greenhill. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime, travel, and lodging expenses; and expert witness and documentary fees. Greenhill shall not be responsible for investigative costs for investigations that do not result in Greenhill's suspension or debarment.

6. Greenhill may obtain a current list of suspended and debarred Commonwealth contractors is available from the Commonwealth's Department of General Services at

<http://www.dgs.state.pa.us/>

or by contacting the Department of General Services at:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Tel: 717-783-6472  
Fax: 717-787-9138

**APPENDIX H**  
***THE AMERICANS WITH DISABILITIES ACT PROVISIONS***

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, Greenhill understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract, or from activities provided for under this Contract, on the basis of the disability. As a condition of accepting this Contract, Greenhill agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
  
2. Greenhill shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of Greenhill's failure to comply with the provisions of Paragraph 1 of this Appendix H.

## CONTRACTOR RESPONSIBILITY VERIFICATION

Document No. \_\_\_\_\_

Greenhill & Co., LLC

This Contract has been reviewed and Greenhill has been determined to be responsible in accordance with the procedures outlined in Management Directive 215.9 Amended.

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Designated Senior Manager      Date  
Office of the Budget