CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

ADDENDUM IN TERMS OF SECTION 116(3) OF MUNICIPAL FINANCE MANAGEMENT ACT, 56 OF 2003

IN RESPECT OF TENDER CONTRACT NO. 269S/2020/21

SERVICING, DIAGNOSTIC TESTING, FAULT FINDING AND REPAIRS (HYDRAULIC AND STRUCTURAL) OF AERIAL PLATFORMS, CRANES, TAIL LIFT, FORKLIFTS, WASTE COMPACTORS AND MISCELLANEOUS ASSET TYPES FOR THE CITY OF CAPE TOWN`S FLEET

(hereinafter the "**Tender**")

Concluded between

THE CITY OF CAPE TOWN

Represented herein by

[redacted]
In his capacity as

[redacted]
Being duly authorised thereto

(hereinafter referred to as the **"City")**

AND

[redacted]

[redacted]

duly represented by

[redacted]

He warranting that he is duly authorised thereto

(hereinafter referred to as the **"Contractor"**)

1. PREAMBLE

1.1. **WHEREAS** on 7 and 14 February 2022 the City's Bid Adjudication Committee resolved in terms of resolution SCMB 14/02/22 and SCMB 37/02/22 respectively, to award the Tender for the contract period for 96 months from 1 July 2022 and will terminate on 30 June 2030;

1.2. **AND WHEREAS** on 20 June 2022 the City's Bid Adjudication Committee resolved in terms of resolution SCMB 93/06/22 to correct the contract period to 72 months from date of commencement until 30 June 2028;

1.3. **AND WHEREAS** the Tender concerns SERVICING, DIAGNOSTIC TESTING, FAULT FINDING AND REPAIRS (HYDRAULIC AND STRUCTURAL) OF AERIAL PLATFORMS, CRANES, TAIL LIFT, FORKLIFTS, WASTE COMPACTORS AND MISCELLANEOUS ASSET TYPES FOR THE CITY OF CAPE TOWN`S FLEET;

1.4. **AND WHEREAS** the City awarded a contract to [redacted] in terms of the Tender, from 8 November 2022, with a completion date of 30 June 2028 (the 'Contract');

1.5. **AND WHEREAS** the purpose of this addendum is to amend Schedule 8: Contract Price Adjustment and/or Rate of Exchange Variation to include the applicability of CPA to year 4, 5 and 6 of the contract;

1.6. **AND WHEREAS** the Parties intend to amend the Contract to the extent set out in this Addendum and wish to record the terms and conditions of that amendment in writing.

This Addendum shall be read subject to and in context of the provisions of the Agreement and shall only amend and add to the Original Contract as is expressly provided for in this Addendum.

NOW THEREFORE THE PARTIES AGREE TO AMEND THE CONTRACT AS SET OUT IN THIS ADDENDUM

2. INTERPRETATION AND DEFINITIONS

2.1. Words and phrases defined in the Tender or in the annexures to the Tender will bear the same meanings herein.

2.2. The headings in this Addendum are inserted for reference purpose only and shall in no way govern or effect the interpretation of this Addendum nor modify or amplify the terms of this Addendum or any clause hereof.

2.3. Unless the context otherwise requires, reference to the singular shall include a reference to the plural, and vice versa, reference to any gender shall a reference to all other genders, and vice versa, and words importing natural persons shall include legal persons, and vice versa.

2.4. Any reference to "the Parties" or "a Party" will mean a reference to the City, the Contractor or both, depending on the context.

2.5. Unless inconsistent with the context, the expressions set forth in this Addendum shall bear the following meanings:

2.5.1.	"the Tender"	means Tender No. 269S/2020/21: SERVICING, DIAGNOSTIC TESTING, FAULT FINDING AND REPAIRS (HYDRAULIC AND STRUCTURAL) OF AERIAL PLATFORMS, CRANES, TAIL LIFT, FORKLIFTS, WASTE COMPACTORS AND MISCELLANEOUS ASSET TYPES FOR THE CITY OF CAPE TOWN`S FLEET
2.5.2.	"the Contract"	Means the contract concluded between the City and the Contractor as per Clause 1.4.
2.5.3.	"Addendum"	Means this addendum to the Tender entered into between the City and the Contractor.

3. CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT

3.1. This Addendum must be read together with the clauses, terms, specifications agreed to by the parties in the Contract. Should there be any conflict between any clause, term and/or specification of the Addendum and the Contract, the clause, term, specification or condition of the Addendum shall take precedence.

4. CONTRACT AMENDMENT

4.1. The Parties agree and record herein that the Contract currently contains the following Clause 8.7 in Schedule 8: Contract Price Adjustment and/or Rate of Exchange Variation:

8.7 CLAIMS:

1st Year:	12 months from date of commencement of contract Firm – no request for price increases shall be entertained.
2nd Year:	Subject to the Consumer Price Index The base month for the price adjustment shall be the month of commencement of the 1st year and the end date shall be the 12th month of the 1st year.
3rd Year:	Subject to the Consumer Price Index The base month for the price adjustment shall be the month of commencement of the 2nd year and the end date shall be the 12th month of the 2nd year.

4.2. The Parties agree and record herein to amend the Clause stated in 4.1 above to include the application of CPA to year 4, 5 and 6 of the Contract and to read as follows:

4th Year:	Subject to the Consumer Price Index The base month for the price adjustment shall be the month of commencement of the 3rd year and the end date shall be the 12th month of the 3rd year.
5th Year:	Subject to the Consumer Price Index The base month for the price adjustment shall be the month of commencement of the 4th year and the end date shall be the 12th month of the 4th year.
6th Year:	Subject to the Consumer Price Index

The base month for the price adjustment shall be the month of commencement of the 5th year and the end date shall be the 12th month of the 5th year.

5. LIMITATION OF THE CITY'S LIABILITY AND INDEMNITY, REGARDING THIS ADDENDUM

5.1. Without detracting from, and in addition to, any of the other indemnities in this Addendum, the Contractor shall be solely liable for and hereby indemnifies and holds the City harmless against all claims, charges, damages, costs, actions, liability, demands and/or proceedings and expense in connection with or arising from the amendment of the Contract in terms of this Addendum.

5.2. The Contractor and/or its employees, agents, concessionaires, suppliers, contractors or customers shall not have any claim of any nature against the City for any loss, damage, injury, loss of profit or death which any of them may directly or indirectly suffer in connection with or arising from the amendment of the Contract in terms of this Addendum. The Contractor also hereby waives any such claim it may have.

6. WHOLE AGREEMENT, WAIVER AND VARIATION

6.1. This Addendum embodies the whole Addendum between the Parties. No other Addendum, whether oral, implied or otherwise, will be of any force and effect unless it is reduced to writing and signed by the Contractor and the City, or their duly appointed representatives. There has been no representation which forms part of this Addendum which has not been included herein.

6.2. Any relaxation, indulgence or waiver which the City may grant to the Contractor or any condonation by the City of any breach of the terms of this Addendum will not become binding on the City. The City will at all times be entitled to claim due and prompt performance by the Contractor of all of the Contractor's obligations in terms of this Addendum.

6.3. No variation of the terms of this Addendum will be of any force or effect unless reduced to writing and signed by the Contractor and the City, or their duly appointed representatives.

7. COSTS

7.1. Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Addendum.

8. SIGNATURES

8.1. This Addendum may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Addendum as at the date of signature of the Party last signing one of the counterparts.

8.2. The Parties record that it is not required for this Addendum to be valid and enforceable that a Party have its signature of this Addendum verified by a witness.

THE CITY OF CAPE TOWN	[redacted]
Signature:	Signature:
Name: [redacted]	Name: [redacted]
Title: [redacted]	Title: [redacted]
Date:	Date:
Place:	Place:
Witness 1:	Witness 1:
Witness 2:	Witness 2;