



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

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

**IN RESPECT OF CONTRACT NO: 370C/2020/21 PROVISION OF PROFESSIONAL SERVICES:
THE APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS FOR THE PROVISION OF LEGAL
SERVICES FOR THE COLLECTION OF DEBTS OWED TO THE CITY OF CAPE TOWN–
AMENDMENT TO TENDER**

(hereinafter the "**the Contract**")

Concluded between

THE CITY OF CAPE TOWN

Represented herein by

Eloise de Villiers
In her capacity as

Director: Revenue

Being duly authorised thereto

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

AND

[Redacted signature block]

DULY REPRESENTED BY

[Redacted signature block]

he warranting that he is duly authorised by resolution of the aforementioned
corporation to enter into this addendum and to bind the aforementioned corporation
accordingly

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

1. PREAMBLE

- 1.1. **WHEREAS** on **06 December 2021** the Supply Chain Management Bid Adjudication Committee, in terms of resolution number SCMB 09/12/21 resolved to award tender 370C/2020/21 - PROVISION OF PROFESSIONAL SERVICES: THE APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS FOR THE PROVISION OF LEGAL SERVICES FOR THE COLLECTION OF DEBTS OWED TO THE CITY OF CAPE TOWN from date of commencement until 30 June 2028;
- 1.2. **AND WHEREAS** the tender concerns PROVISION OF PROFESSIONAL SERVICES: THE APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS FOR THE PROVISION OF LEGAL SERVICES FOR THE COLLECTION OF DEBTS OWED TO THE CITY OF CAPE TOWN;
- 1.3. **AND WHEREAS** the City appointed [REDACTED] in respect of PROVISION OF PROFESSIONAL SERVICES: THE APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS FOR THE PROVISION OF LEGAL SERVICES FOR THE COLLECTION OF DEBTS OWED TO THE CITY OF CAPE TOWN from **8 September 2022 until 30 June 2028** ("the Contract");
- 1.4. **AND WHEREAS** the purpose of this Addendum is to amend PART 5: PRICE SCHEDULE and expand the disbursements list to include Advocate and correspondent attorney fees for both Magistrate and High Courts;
- 1.5. **AND WHEREAS** the further purpose of this Addendum is to define the term disbursements as per the definition in the table in 2.5.4;
- 1.6. **AND WHEREAS** the further purpose of the addendum is to amend Clause 17.4 (a) and 8.3 of the SCCs, and Part 7 as outlined in Clause 5 below;
- 1.7. **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.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

2. INTERPRETATION AND DEFINITIONS

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

- 2.2. The headings in this Addendum are inserted for reference purposes only and shall in no way govern or affect 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 include 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 Supplier 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 370C/2020/21 PROVISION OF PROFESSIONAL SERVICES: THE APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS FOR THE PROVISION OF LEGAL SERVICES FOR THE COLLECTION OF DEBTS OWED TO THE CITY OF CAPE TOWN– AMENDMENT TO TENDER
2.5.2	"the Contract"	Means the contract concluded and entered into between parties, as per paragraph 1.3.
2.5.3	"Addendum"	Means this Addendum to the Contract entered into between the City and the Supplier.
2.5.4	"disbursements"	Means all necessary expenses incurred by the Supplier to render the service in accordance with the terms and conditions of the Contract.

3. CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT

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

4. PART 5: PRICE SCHEDULE AND DISBURSEMENTS

- 4.1. The **Parties** agree and record herein that "Disbursements" as referred to in paragraph 5.3 Part 5: Price Schedule of Contract No: 370C/2020/21 currently reads:

All prices tendered must include all expenses, disbursements and costs (e.g. transport, accommodation etc.) that may be required for the execution of the tenderer's obligations in terms of the Contract, and shall cover the cost of all general risks, liabilities and obligations set forth or implied in the Contract as well as overhead charges and profit (in the event that the tender is successful). All prices tendered will be final and binding.

- 4.2. The parties agree and record herein that the Contract be amended to now read:

All prices tendered must include all expenses, disbursements and costs (e.g. transport, accommodation, **advocate fees where applicable, correspondent attorneys' fees**, etc.....

- 4.3. The parties agree and record herein that paragraph 5.9 Part 5: Price Schedule of Contract No: 370C/2020/21 currently reads:

"When a successful tenderer appoints a correspondent attorney, the approved tariffs for this tender shall apply to the correspondent attorney."

- 4.4. The parties agree and record herein that the Contract be amended to now read:

"When a successful tenderer requires to appoint a correspondent attorney, such appointment, the allocation of work to that correspondent attorney and the correspondent's tariff for performing the work, will be subject to the approval and written consent of the City."

- 4.5. The parties agree and record herein that paragraph 5.14 of Part 5: Price Schedule of Contract No: 370C/2020/21 currently reads:

"Tenderers to note that sheriff tariffs will be paid as per the invoice submitted by the Sheriff of the Court."

- 4.6. The parties agree and record herein that the Contract be amended to now read:

"Tenderers to note that disbursements regarding advocates, Sheriffs, and correspondent attorneys will be paid as per the invoice of the advocate, Sheriffs and correspondent attorney."

- 4.7. The **Parties** agree the heading of *Part 5: Pricing Schedule, Legal Services, Section B* of Contract No: 370C/2020/21 currently reads:

"Section B: Government Gazette & Postal Rates – the percentage required under mark-up column, may be equal or above the gazetted amount or South African Post Office rates"

- 4.8. The **Parties** agree and record herein that the Contract be amended that the heading of *Part 5: Pricing Schedule, Legal Services, Section B* now reads:

"Section B: Amount per Invoice Submitted (evidencing the cost of the disbursement), Government Gazette & Postal Rates – the percentage required under mark-up column, may be equal to the amount per Invoice submitted or equal or above the gazetted amount or South African Post Office rates"

- 4.9. The **Parties** agree and record herein that *Item 7 in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal Rates* of Contract No: 370C/2020/21 currently reads:

7.	Government Gazette publishing of sale in executions	Per Advert	0%
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- 4.10. The **Parties** agree and record herein that the Contract be amended that *Item 7 in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal* of Contract No: 370C/2020/21 now read:

7.	Government Gazette <u>and local newspaper</u> publishing of sale in executions	Cost of Advert Per Invoice Submitted	0%
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4.11. The **Parties** agree and record herein that *Item 8 in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal Rates of Contract No: 370C/2020/21* currently reads:

8.	Deeds Offices Search	Per Search	0%
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4.12. The **Parties** agree and record herein that the Contract be amended that *Item 8 in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal of Contract No: 370C/2020/21* now read:

8.	Deeds Offices Searches (either at a Deeds Office or on a Deeds Office Search engine)	Cost of Search Per Invoice Submitted	0%
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4.13. The **Parties** agree and record herein that *Item 9 in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal Rates of Contract No: 370C/2020/21* currently reads:

9.	Government Gazette publishing of re-registration of a business organisation	Per Advert	0%
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4.14. The **Parties** agree and record herein that the Contract be amended that *Item*

9 in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal of Contract No: 370C/2020/21 now read:

9.	Government Gazette and Local Newspaper publishing of re-registration of a business organisation	Cost of Advert Per Invoice Submitted	0%
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4.15. The **Parties** agree and record herein that Item 11 in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal Rates of Contract No: 370C/2020/21 currently reads:

11.	Government Gazette publishing of re-registration of a business organisation	Per Advert in terms of the government gazette	0%
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4.16. The **Parties** agree and record herein that the Contract be amended that Item 11 in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal of Contract No: 370C/2020/21 now read:

11.	Government Gazette and Local Newspaper publishing of sequestration or liquidation	Cost of Advert Per Invoice Submitted	0%
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4.17. The **Parties** agree and record herein that in Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal Rates there is currently no Item 14.

- 4.18. The **Parties** agree and record herein that the Contract be amended to now include the additional Item 14 in *Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal Rates*, which reads:

14.	Advocates and Correspondent Attorneys' Costs	Cost Per Invoice submitted by the Advocate or Correspondent Attorney	0%
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- 4.19. The **Parties** agree and record herein that the Items numbers in *Part 5: Pricing Schedule, Legal Services, Section C: Housing Debtors of Contract No: 370C/2020/21* is currently 14 to 25 and that *Part 5: Pricing Schedule, Legal Services, Section D: Deceased Estates* is currently 25 to 26.
- 4.20. The **Parties** agree and record that the Contract be amended to reflect the Items numbers in *Part 5: Pricing Schedule, Legal Services, Section C: Housing Debtors of Contract No: 370C/2020/21* as numbers 15 to 26 (the item descriptions to remain unchanged), and *Part 5: Pricing Schedule, Legal Services, Section D: Deceased Estates of Contract No: 370C/2020/21* as numbers 27 to 28 (the item descriptions to remain unchanged) to correctly follow upon the items numbers 7 to 14 as listed in *Part 5: Pricing Schedule, Legal Services, Section B: Government Gazette & Postal Rates*.

5. AMENDMENT TO THE CONTRACT PRICE ADJUSTMENT CLAUSE

- 5.1. The **Parties** agree and record herein that Clause 17: Pricing, subsection 17.4 (a) and 8.3 currently reads:

17.4 (a) Prices as tendered for Section A will be firm for the first 12 months of the contract and thereafter will be subject to the percentage price increase as stated below:

The Contract Price/s shall be fixed for the first 12-months of the contract

and not be subject to any contract price adjustment 90% of the tendered price will be subject to adjustment annually every 12 months based on the average Consumer Price Index (CPI) as follows:

Second year:

Average CPI will be calculated from the last 12 months of the first year, by adding the percentage CPI for the 12 month divided by 12.

Third year:

Average CPI will be calculated from the last 12 months of the second year, by adding the percentage CPI for the 12 month divided by 12.

Fourth year:

Average CPI will be calculated from the last 12 months of the first year, by adding the percentage CPI for the 12 month divided by 12.

Fifth year:

Average CPI will be calculated from the last 12 months of the first year, by adding the percentage CPI for the 12 month divided by 12.

Sixth year (if applicable):

Average CPI will be calculated from the last 12 months of the first year, by adding the percentage CPI for the 12 month divided by 12.

Seventh year (if applicable):

Average CPI will be calculated from the last 12 months of the first year, by adding the percentage CPI for the 12 month divided by 12.

8.3 10% of the tendered price will remain fixed.

5.2. The parties agree and record herein that the Contract be amended that Clause 17: Pricing, now reads as follows with the deletion of Clause 8.3 and replacement with Clause 17.4(d):

17.4 (a) Contract Prices as tendered for in Section B, will be fixed for the first 12

months of the contract and thereafter will be subject to increases as contained in the government gazette and South African Post Office rates.

17.4(b) Contract Prices as **tendered** in Section A, and C will be fixed for the first 12 months of the contract and thereafter will be subject to the percentage increase as stated below:

17.4 (c) The Contract Prices shall be fixed for the first 12-months of the contract and not be subject to **any contract price adjustment**.

17.4(d) 10% of the tendered rate will remain fixed **for the duration of the contract**.

17.4(e) 90% of the rate will be subject to adjustment annually based on the average percentage of 12 months based on the average Consumer Price Index (CPI) as published by STATS SA: Consumer Price Index (P0141– Table B2 – CPI headline year-on-year rates) as follows:

17.4(e)(i) **Second year:**

Average CPI will be calculated from the last 12 months of the first year, by adding the percentage CPI for the 12 months divided by 12.

17.4(e)(ii) **Third year:**

Average CPI will be calculated from the last 12 months of the second year, by adding the percentage CPI for the 12 months divided by 12.

17.4(e)(iii) **Fourth year:**

Average CPI will be calculated from the last 12 months of the third year, by adding the percentage CPI for the 12 months divided by 12.

17.4(e)(iv) **Fifth year:**

Average CPI will be calculated from the last 12 months of the fourth year, by adding the percentage CPI for the 12 months divided by 12.

17.4(e)(v) **Sixth year (if applicable):**

Average CPI will be calculated from the last 12 months of the fifth year, by adding the percentage CPI for the 12 months divided by 12.

17.4(e)(vi) **Seventh year (if applicable):**

Average CPI will be calculated from the last 12 months of the sixth year by adding the percentage CPI for the 12 months divided by 12.

17.4(f) Any claim for an increase in the Contract Price shall be submitted in writing to the:

Director Supply Chain Management^s, City of Cape Town,
P.O. Box 665, Cape Town, 8000; or
By email to: CPA.Request@capetown.gov.za

prior to the date upon which the Contract Price adjustment would become effective.

5.3 The **Parties** agree and record herein that Part 7: Contract Price Adjustment and/or Rate of Exchange Variation, Clause 8: Pricing Instructions, currently reads:

8.1 Prices as tendered for Section B, will be subject to the increase as contained in the government gazette & South African Post Office rates.

8.2 Prices as tendered for Sections A, and C will be firm first 12 months and thereafter will be subject to the percentage price increase as stated below:

8.3 The Contract Price/s shall be fixed for the first 12 months of the contract and not be subject to any contract price adjustment. 90% of the tendered price will be subject to adjustment annually every 12 months based on the average Consumer Price Index (CPI) as follows:

Second Year:

Average CPI will be calculated from the last 12 months for the first year, by adding the percentage CPI for the 12 months divided by 12.

Third Year:

Average CPI will be calculated from the last 12 months for the second year, by adding the percentage CPI for the 12 months divided by 12.

Fourth Year:

Average CPI will be calculated from the last 12 months for the first year, by adding the percentage CPI for the 12 months divided by 12.

Fifth Year:

Average CPI will be calculated from the last 12 months for the first year, by adding the percentage CPI for the 12 months divided by 12.

Sixth Year (if applicable):

Average CPI will be calculated from the last 12 months for the first year, by adding the percentage CPI for the 12 months divided by 12.

Seventh Year (if applicable):

Average CPI will be calculated from the last 12 months for the first year, by adding the percentage CPI for the 12 months divided by 12.

8.3 10% of the tendered price will remain fixed.

8.4 Any claim for an increase in the Contract Price shall be submitted in writing to the:

Director Supply Chain Management, City of Cape Town,

P.O. Box 665, Cape Town, 8000; or

By email to: CPA.Request@capetown.gov.za

prior to the date upon which the price adjustment would become effective.

5.4. The parties agree and record herein that the Contract be amended that Part 7: Contract Price Adjustment and/or Rate of Exchange Variation, clause 8:

Pricing Instructions, now reads as follows with the numbering sequence corrected:

- 8.1 *Contract Prices as tendered for in Section B, will be subject to increases as contained in the government gazette and South African Post Office rates.*
- 8.2 *Contract Prices as **tendered** in Section A, and C will be fixed for the first 12 months of the contract and thereafter will be subject to the percentage increase as stated below:*
- 8.3 *The Contract Prices shall be fixed for the first 12-months of the contract and not be subject to **any contract price adjustment**.*
- 8.4 *10% of the tendered rate will remain fixed **for the duration of the contract**.*
- 8.5 *90% of the rate will be subject to adjustment annually based on the average percentage of 12 months based on the average Consumer Price Index (CPI) as published by STATS SA: Consumer Price Index (P0141– Table B2 – CPI headline year-on-year rates) as follows:*
- 8.5.1 **Second year:**
Average CPI will be calculated from the last 12 months of the first year, by adding the percentage CPI for the 12 months divided by 12.
- 8.5.2 **Third year:**
Average CPI will be calculated from the last 12 months of the second year, by adding the percentage CPI for the 12 months divided by 12.
- 8.5.3 **Fourth year:**
Average CPI will be calculated from the last 12 months of the third year, by adding the percentage CPI for the 12 months divided by 12.
- 8.5.4 **Fifth year:**
Average CPI will be calculated from the last 12 months of the fourth year,

by adding the percentage CPI for the 12 months divided by 12.

8.5.5 Sixth year (if applicable):

Average CPI will be calculated from the last 12 months of the fifth year, by adding the percentage CPI for the 12 months divided by 12.

8.5.6 Seventh year (if applicable):

Average CPI will be calculated from the last 12 months of the sixth year by adding the percentage CPI for the 12 months divided by 12.

8.6 Any claim for an increase in the Contract Price shall be submitted in writing to the:

*Director Supply Chain Management, City of Cape Town,
P.O. Box 665, Cape Town, 8000; or
By email to: CPA.Request@capetown.gov.za*

prior to the date upon which the Contract Price adjustment would become effective.

5.5. Notwithstanding clauses 4.1 to 5.4 above, the Purchaser retains the option at its discretion to amend the Contract as may be mutually agreed with the Supplier, subject to compliance with all applicable legislation and official policies.

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 Supplier 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 Supplier 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 Supplier of all of the Supplier'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 Supplier and the City, or their duly appointed representatives.

7. PROTECTION OF PERSONAL INFORMATION

- 7.1 The Supplier acknowledges that, for the purposes of this Contract, they may come into contact with or have access to personal information and other information that may be classified as or deemed as private or confidential and for which the City is responsible in terms of the Protection of Personal Information Act (POPIA). Such personal information may also be deemed or considered as private and confidential as it relates to POPIA.
- 7.2 The Supplier agrees that it will at all times comply with the provisions of POPIA and the City's Privacy Notice, and that it shall only collect, use and process personal information it comes into contact with pursuant to this Contract in a lawful manner, and only to the extent required to execute the services, or to provide the goods and to perform their obligations in terms of the Contract.
- 7.3 The Supplier agrees that it shall put in place, and at all times maintain, appropriate physical, technological and contractual security measures to ensure the protection and confidentiality of the personal information that it, or its employees, its contractors or other authorised individuals comes into contact in relation to this Contract.
- 7.4 The Supplier agrees that it shall notify the City immediately where there are reasonable grounds to believe that the personal data of a data subject has been accessed or acquired by an unauthorised person.
- 7.5 Unless so required by law, the Supplier agrees that it shall treat the personal information as confidential and further not disclose any personal information as defined in POPIA to any third party without the prior written consent of the City.

7.6 The Supplier hereby indemnifies and holds the City harmless against and any and all claims, losses, damages and costs of whatsoever nature suffered by the City arising from or in relations to the Contractor's (and/or its employees', agents' and sub-contractors') non-compliance with applicable data protection laws and/or other legislation.

7.7 The Supplier agrees that the City may conduct regular data protection audits on the Supplier and undertakes to give its full co-operation in this regard.

8. SIGNATURE

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.

9. COSTS

9.1. 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.

THE CITY OF CAPE TOWN

[Redacted Signature]

Signature:

Eloise de Villiers

Name:

[Redacted Name]

Director: Revenue

Title:

Director

Date:

Place

Witness 1:

Witness 2:
