



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

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

In respect of

**CONTRACT NO. 256Q/2019/20: SIR LOWRY'S PASS RIVER, 2.7KM RIVER UPGRADE
FROM THE N2 TO FALSE BAY, GORDON'S BAY**

Concluded between

THE CITY OF CAPE TOWN

Represented herein by

[REDACTED]

In his capacity as

Director: Bulk Services

Being duly authorised thereto by way of sub-delegated authority

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

AND

CSV CONSTRUCTION (PTY) LTD
(REGISTRATION NUMBER: [REDACTED])

Represented herein by

[REDACTED]

In his capacity as

Director

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 "**Contractor**")

1. PREAMBLE

- 1.1 **WHEREAS** on 11 April 2022 the Employer's Supply Chain Management Bid Adjudication Committee in terms of the resolution **SCMB 36/04/22**, resolved to award the Tender for a period not exceeding 42 months, from the date of commencement until 16 December 2026 subject to the conclusion of a section 33 of the Municipal Finance Management Act 56 of 2003 ("MFMA") process and Council adopting a resolution in which it approves the entire contract exactly as it is to be executed and in which it authorises the municipal manager to sign the contract on behalf of the municipality;
- 1.2 **AND WHEREAS** on 27 October 2022 the Employer's Council, in terms of with the Council Minutes C 37/10/22 resolved that: the entire contract exactly as they are to be executed incurring a financial obligation for 42 months, with an additional 12 months for the defects and liability period and in the estimated amount of R292 395 526.45 excluding VAT and an allowance for Contract Price Adjustment estimated in the amount of R36 703 448.84 excluding VAT, funded from the External Financing Fund as confirmed in the financial footnote attached to the report on the agenda be approved; the City Manager, or his nominee, be authorised to sign the **above** contracts;
- 1.3 **AND WHEREAS** the Tender concerns the Sir Lowry's Pass River, 2.7km River Upgrade from the N2 To False Bay, Gordon's Bay;
- 1.4 **AND WHEREAS** the Parties concluded a contract on 11 November 2022, being the date of signature of the Party last signing the contract ("**the Contract**");
- 1.5 **AND WHEREAS** on 18 August 2026 the Parties concluded an addendum to the Contract to define the Contract commencement date as, 12 January 2023;
- 1.6 **AND WHEREAS** the date for achieving Practical Completion as determined in terms of the Contract provisions, being 42 months excluding non-working days, calculating from 12 January 2023, is 26 October 2026;
- 1.7 **AND WHEREAS** the purpose of this Addendum is to amend the Contract by extending its expiry date to 08 October 2027;
- 1.8 **AND WHEREAS** this Addendum shall not constitute an Extension of the Practical Completion of the Works;
- 1.9 **AND WHEREAS** date or revision of the Practical Completion are determined in accordance with Clause 1.1.1.14, Part C1.2 of Contract Data contained in the Contract;

- 1.10 **AND WHEREAS** the further purpose of this Addendum is to reflect the consequential adjustment of the Contract Price Adjustment ("**CPA**") provision arising from the amendment of the Contract Value, in accordance with the applicable CPA provisions of the Contract;
- 1.11 **AND WHEREAS** the amendments contemplated in this Addendum are subject to the applicable approval requirements in terms of section 116(3) of the MFMA;
- 1.12 **AND WHEREAS** all other terms and conditions of the Contract shall not be affected by this Addendum and shall remain in full force and effect;
- 1.13 **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 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 be 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 Employer, 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. 256Q/2019/20: Sir Lowry's Pass River, 2.7km River Upgrade from the N2 To False Bay, Gordon's Bay;
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2.5.2	the "Contract"	means the contract concluded and entered into between the Parties, as per paragraph 1.4;
2.5.3	"Addendum"	Means this addendum to the Contract entered into between the Employer and the Contractor.
2.5.4	"CPA"	Means the Contract Price Adjustment applicable to the Contract in accordance with the relevant provisions and formula contained in the Contract.

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 COMMENCEMENT DATE, CONTRACT VALUE AND CPA

- 4.1 The Parties agree and record herein to amend the Contract by extending its expiry date to 08 October 2027.
- 4.2 The Parties further agree that the date and/or revision of the Practical Completion are determined in accordance with Clause 1.1.1.14, Part C1.2 of the Contract Data contained in the Contract.
- 4.3 The Parties agree and record that the Contract Value is amended from R265,814,114.95 (excluding VAT) to R371,794,010.29 (excluding VAT).
- 4.4 Consequential to the amendment of the Contract Value contemplated in clause 4.3, the CPA provision applicable to the Contract shall be adjusted in accordance with the applicable CPA provisions and formula contained in the Contract.
- 4.5 The CPA adjustment contemplated in clause 4.4 above is consequential to the amendment of the Contract Value and does not constitute a separate variation to the scope of the Works or an independent increase to the Contract Value.
- 4.6 The amendments to the Contract period, Contract Value and CPA provision

recorded in this Addendum shall be subject to the applicable approval requirements in terms of section 116(3) of the MFMA and shall take effect only to the extent and from the date permitted by the applicable approval.

- 4.7 Except as expressly amended by this Addendum, all other terms and conditions of the Contract shall remain unchanged and in full force and effect.

5 PROTECTION OF PERSONAL INFORMATION

- 5.1 The Contractor acknowledges that, for the purposes of the Contract, they may come into contact with or have access to personal information and other information that may be classified or deemed as private or confidential and for which Employer is responsible in terms of Protection of Personal Information Act ("POPIA"). Such personal information may also be deemed or considered as private and confidential as it relates to POPIA.
- 5.2 The Contractor agrees that they will at all times comply with POPIA and the Employer'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.
- 5.3 The Contractor 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 the Contract.
- 5.4 The Contractor agrees that it shall notify the Employer immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.
- 5.5 Unless so required by law, the Contractor 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 Employer.
- 5.6 The Contractor hereby indemnifies and holds the Employer harmless against all claims, losses, damages and costs of whatsoever nature suffered by the Employer arising from or in relation to the Contractor's (and/or its employees', agents' and sub-contractors') non-compliance with applicable data protection laws and/or other legislation.

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

6 LIMITATION OF THE EMPLOYER'S LIABILITY AND INDEMNITY, REGARDING THIS ADDENDUM

- 6.1 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 Employer 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 SLA in terms of this Addendum, including but not limited to the amendment of the Contract Period.
- 6.2 The Contractor and/or its employees, agents, concessionaires, suppliers, contractors or customers shall not have any claim of any nature against the Employer 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 SLA in terms of this Addendum, including but not limited to the extension of the Contract Period. The Contractor also hereby waives any such claim it may have.

7 WHOLE AGREEMENT, WAIVER AND VARIATION

- 7.1 This Addendum embodies the whole agreement 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 Employer, or their duly appointed representatives. There has been no representation which forms part of this Addendum which has not been included herein.
- 7.2 Any relaxation, indulgence or waiver which the Employer may grant to the Contractor or any condonation by the Employer of any breach of the terms of this Addendum will not become binding on the Employer. The Employer 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.
- 7.3 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 Employer, or their

duly appointed representatives.

8 COSTS

- 8.1 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.

9 SIGNATURE

- 9.1 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.
- 9.2 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.

DONE AND SIGNED AT _____ ON _____ 2026

THE CONTRACTOR

Represented by: _____
in his capacity as **Director**

WITNESS

DONE AND SIGNED AT _____ ON _____ 2026

THE CITY OF CAPE TOWN

Represented by: _____
in his capacity as **Director: Bulk Services**

WITNESS