

REPORT TO: MAYCO

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1. ITEM NUMBER      **MC 04/06/20**

2. SUBJECT

**AMENDMENT OF CONTRACT IN ACCORDANCE WITH CLAUSE 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT**

**ONDERWERP:**

**WYSIGING VAN KONTRAK OORENKOMSTIG KLOUSULE 116(3) VAN DIE WET OP MUNISIPALE FINANSIËLE BESTUUR**

**ISIHLOKO:**

**UKULUNGISWA KWEKHONTRAKTHI NGOKUNGQINELANA NESOLOTYA-116 (3) LOMTHETHO ONGOLAWULO LWEZIMALI ZIKAMASIPALA**

3. DELEGATED AUTHORITY

In terms of System of Delegations (v5) as adopted by Council on 26 March 2020 (Resolution C05/03/2), Part 1, the Executive Mayor designated powers, duties and rights, "*Part 1, Section 5 (11) To consider reports tabled in terms of Section 116(2) (d) and 116(3) of the MFMA*"

This report is FOR NOTING BY

Committee name :

**The Executive Mayor together with the Mayoral Committee (MAYCO)**

Council

#### 4. DISCUSSION

Contract CM 48369 is managed by the Water & Waste (WW) Directorate and must be amended for reasons provided in the attached schedule (Annexure A).

Section 116(3) of the Municipal Finance Management Act states as follows:

“A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after—

- (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
- (b) the local community—
  - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
  - (ii) has been invited to submit representations to the municipality or municipal entity.”

In order to comply with 4 (b) (i) and (ii) above, the intention to amend the listed contract was advertised and a period of seven working days was allowed for the local community to make representations.

The notice of the intention to amend the contracts and the invitation for representations was handled in compliance with Section 21 subsection (1) to (4) of the Municipal Systems Act which states as follows:

“Communications to local community.

(1) When anything must be notified by a municipality through the media to the local community in terms of this Act or any other applicable legislation, it must be done –

- a) in the local newspaper or newspapers of its area;
- b) in a newspaper or newspapers circulating in its area and determined by the council as a newspaper of record; or
- c) by means of radio broadcasts covering the area of the municipality.

(2) Any such notification must be in the official languages determined by the council, having regard to language preferences and usage within its area.

(3) A copy of every notice that must be published in the Provincial Gazette or the media in terms of this Act or any other applicable legislation must be displayed at the municipal offices.

(4) When the municipality invites the local community to submit written comments or representations on any matter before the council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the municipality named in the invitation, will assist that person to transcribe that person’s comments or representations.”

It must be noted that the intention to amend the contract was advertised on the City of Cape Town’s website and in the Cape Argus and Die Burger on 29 May 2020.

This report is therefore necessary as required in Section 116(3) of the MFMA and to request that the Executive Mayor, together with MAYCO consider the intention to amend contracts procured through the supply chain management policy of the municipality.

- 4.1. Financial Implications  None  Opex  Capex
- Capex: New Projects
  - Capex: Existing projects requiring additional funding
  - Capex: Existing projects with no additional funding requirements

No additional costs are due by the City of Cape Town for the extension of time, with the exception of CPA (in terms of the Contract).

4.2. Policy and Strategy  Yes  No

4.3. Legislative Vetting  Yes  No

4.4. Legal Compliance

4.5. Staff Implications  Yes  No

4.6. Risk Implications     Yes     No

The contract was structured whereby the Service Provider would undertake the required civil, mechanical and electrical works and would finance the supply, commissioning and operation of the reverse osmosis wastewater reuse plant, and recoup these costs (and profit) through the sale of the potable water produced over the 24 month production and supply period. Should the increase in contract period not be granted, the City would not be able to honour its contractual obligation of a 24 month production and supply period, the consequence of which would, inter alia, be:

- A breach of contract by the City;
- Reputational damage to the City;
- Reputational damage and loss of trust in the City's Water Strategy, in particular the Water Reuse component of Commitment 3 of the Water Strategy; and
- Financial loss by the Service Provider, which he would seek to recover in terms of the Contract, failing which the Service Provider would seek relief through legal recourse;
- Loss of "proof of concept" opportunity in water reuse key stakeholder engagement programme.

The increase in the contract period poses no immediately identifiable risks to the City, and demonstrates its commitment and ability to honour contractual obligations and to professionally manage complex and new technology contracts. This in turn, would positively impact on prospective tenderers' perceptions of the City with respect to tenders (and pricing thereof) relating to Commitment 3 (development of new, diverse water supplies) of the Water Strategy.

**5. RECOMMENDATIONS**

It is recommended that:

Acting in terms of Delegation No. 5 (11), the Executive Mayor together with the Mayoral Committee (MAYCO) consider the intention to amend Contract CM 48369, by way of an increase in contract period, for the reasons provided in Annexure A.

Daar word aanbeveel dat:

Die uitvoerende burgemeester tesame met die burgemeesterskomitee (MAYCO) ingevolge delegasie no. 5 (11) oorweging skenk aan die voorneme om kontrak CM

48369 te wysig deur die kontraktydperk te verleng om die redes aangegee in bylae A.

Kundululwe ukuba:

Besenza ngokweSigunyaziso esinguNomb.5(11), uSodolophu weSigqeba kunye neKomiti yeSigqeba sakhe (i-MAYCO) mabathathele ingqalelo injongo yokulungiswa kweKhontrakthi engunomb.CM 48369, ngokwendlela yokwandiswa kwethuba lokuqhubeka kwayo, ngokwezizathu ezibonakaliswe kwisihlomelo-A.

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**ANNEXURES                    A – DETAILS OF CONTRACT TO BE AMMENDED**


**FOR FURTHER DETAILS CONTACT**

NAME	Mr Zolile Basholo	CONTACT NUMBER	021 400 2840
E-MAIL ADDRESS	zolile.basholo@capetown.gov.za		
DIRECTORATE	Water & Waste	FILE REF NO	27/16/17/33/1
SIGNATURE : DIRECTOR	 Digitally signed by Zolile Basholo Date: 2020.05.20 11:22:25 +02'00'		Digitally signed by Barry Wood Date: 2020.05.20 10:55:28 +02'00'

**EXECUTIVE DIRECTOR**

NAME                    Mr Mike Webster                    COMMENT:

DATE                    \_\_\_\_\_

SIGNATURE              
Digitally signed by Michael  
John Webster  
Date: 2020.05.20 12:18:46  
+02'00'

**CHIEF FINANCIAL OFFICER**

NAME                    Mr Kevin Jacoby                    COMMENT:

DATE                    \_\_\_\_\_

SIGNATURE            \_\_\_\_\_

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**LEGAL COMPLIANCE**

- REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.
- NON-COMPLIANT

NAME	Joan-	Digitally signed	COMMENT:
DATE		by Joan-Mari Holt	
SIGNATURE	Mari Holt	Date: 2020.05.26	
		08:13:12 +02'00'	

**Joan-Mari Holt**

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**Subject:** AMENDMENT OF CONTRACT IN ACCORDANCE WITH CLAUSE 116(3) OF THE MFMA

The following note is made regarding legal compliance of the report:

For consideration.

Kind regards

**Joan-Mari Holt**

Legal Advisor

Office of the City Manager

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**CITY OF CAPE TOWN**  
**ISIXEKO SASEKAPA**  
**STAD KAAPSTAD**

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## ANNEXURE A

### AMENDMENT OF CONTRACTS IN COMPLIANCE WITH SECTION 116(3) OF THE MFMA

IMPLEMENTING DEPARTMENT	TENDER NUMBER	DATE OF COMMENCEMENT	EXPIRY DATE OF CONTRACT	PROPOSED NEW EXPIRY DATE	REASON FOR, MANNER AND COST OF AMENDMENT	PROJECT DESCRIPTION
Water & Sanitation	CM 48369 ZANDVLIET REUSE	30 April 2018	30 June 2020	30 May 2021	<p>As part of the emergency phase of the Water Resilience Programme as approved by the Executive Mayor in response to the drought, Contract CM 48369 Zandvliet Reuse was awarded by deviation to Water and Sanitation Services/Zana Manzi JV on 30 April 2018.</p> <p>The contract was structured as follows:</p> <ol style="list-style-type: none"> <li>i. A two month period to set up the plant.</li> <li>ii. Production of 10 Mld for a 24 month period;</li> </ol> <p>During the setup of the plant, delays were experienced for which the Service Provider is entitled to an extension of time to the plant setup period, the consequence of which is the 24 month production and supply period being moved out (not increased), with an end date of 2021-05-30. The extension of time is in excess of 6 months and will move the contract end date into the 4<sup>th</sup> financial year since commencement, thus triggering the need for Section 116(3) approval on both accounts. With the Total Contract Period expiring on 2020-06-30 (the end of the applicable 3 year MTREF period), Section 116(3) approval is to be obtained for the full period of the extension of time prior to it being granted.</p> <p>No additional costs are due by the City of Cape Town for the extension of time, with the exception of CPA (in terms of the Contract).</p>	Supply potable water complying with SANS 241:2015, by treating the effluent from the Zandvliet Wastewater Treatment works, and Pumping it at a rate of 10Ml/d into the Bulk Water Distribution System.

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