

GOVERNMENT OF NAIROBI CITY COUNTY



Papers Laid on
11th June, 2024
by Leader of
Majority Party.
[Signature]

THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(THIRD SESSION)



NCCA/TJ/PL/2024(32)

11TH JUNE 2024

PAPER LAID

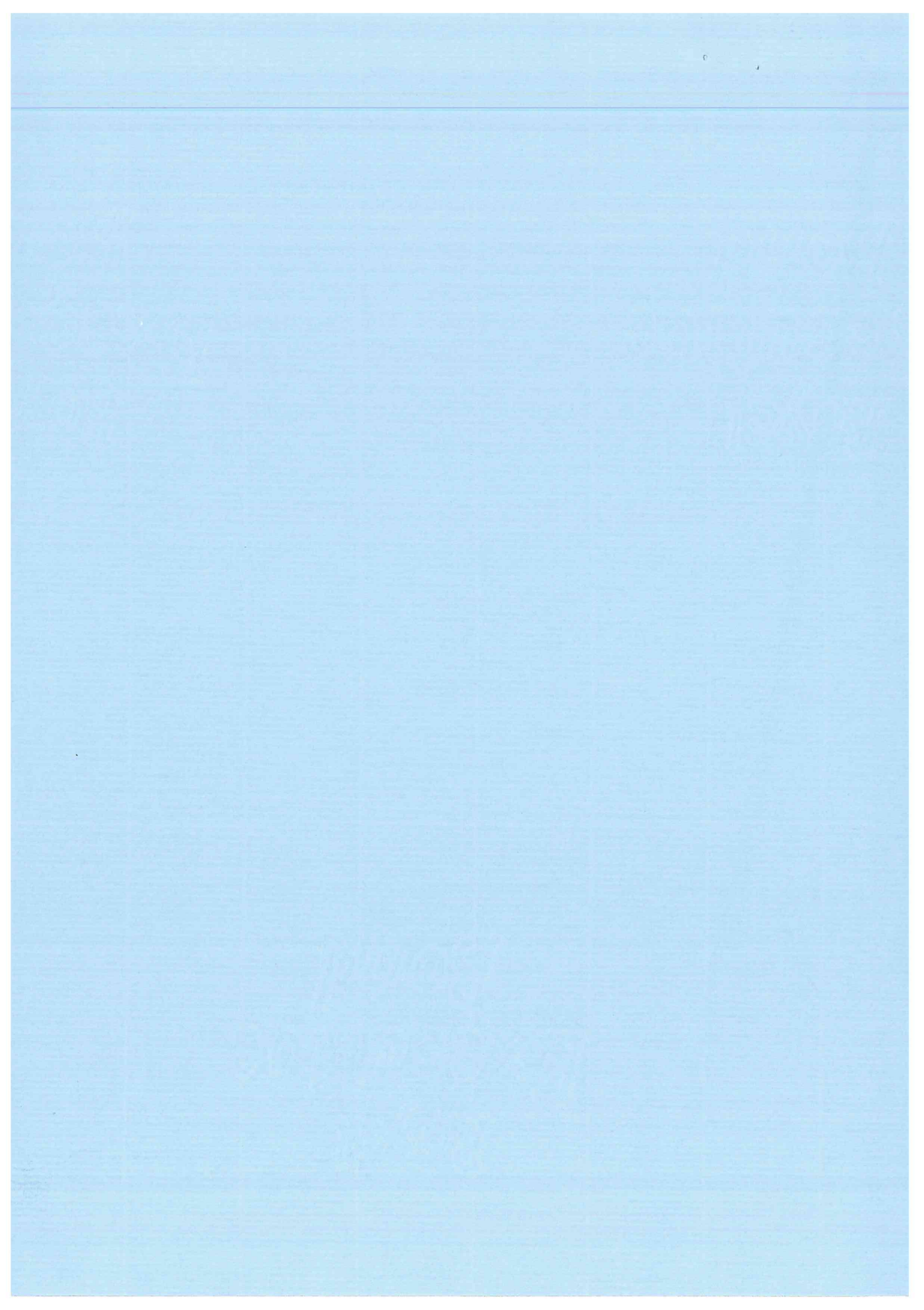
SUBJECT: AUTHORITY TO BORROW

Pursuant to Section 142 of Public Finance Management Act, 2012, I beg to lay the following Paper on the Table of this Assembly, today Tuesday 11th June 2024:

- REQUEST BY NAIROBI CITY WATER AND SEWERAGE COMPANY FOR THE COUNTY ASSEMBLY'S AUTHORITY TO BORROW FUNDS TO FINANCE SETTLEMENT OF OUTSTANDING PENSION DEBT.

(The Leader of Majority Party)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press





NAIROBI CITY COUNTY

www.nairobi.go.ke

OFFICE OF THE GOVERNOR

County Secretary and Head of County Public Service

(i) DCL kindly process for tabling
24/3/24
(ii) ASPCA Ref-ET process as advised Rev II below
(iii) DLS 29/4/2024

RE: CECM(FEP)/CKK/ran/964/2024

16th April, 2024

The Clerk
Nairobi City County Assembly
City Hall Building
Nairobi



RE: REQUEST BY NAIROBI CITY WATER AND SEWERAGE COMPANY TO BORROW

Reference is made to a request by Nairobi City Water and Sewerage Company (NCWSC) to borrow money towards settlement of outstanding pension arrears with the Local Authorities Pension Trust (LAPTRUST).

Further reference is made to an extract of the Minutes of the County Executive Committee meeting held in City Hall on 18th April, 2023 granting approval of the County Executive Committee for the said borrowing.

Further reference is made to the said legal opinion by the Attorney General dated 23rd January 2024 stating that NCWSC may take up liabilities(loans) on the strength of their balance sheet but should first seek the approval of the County Government prior to taking the loan.

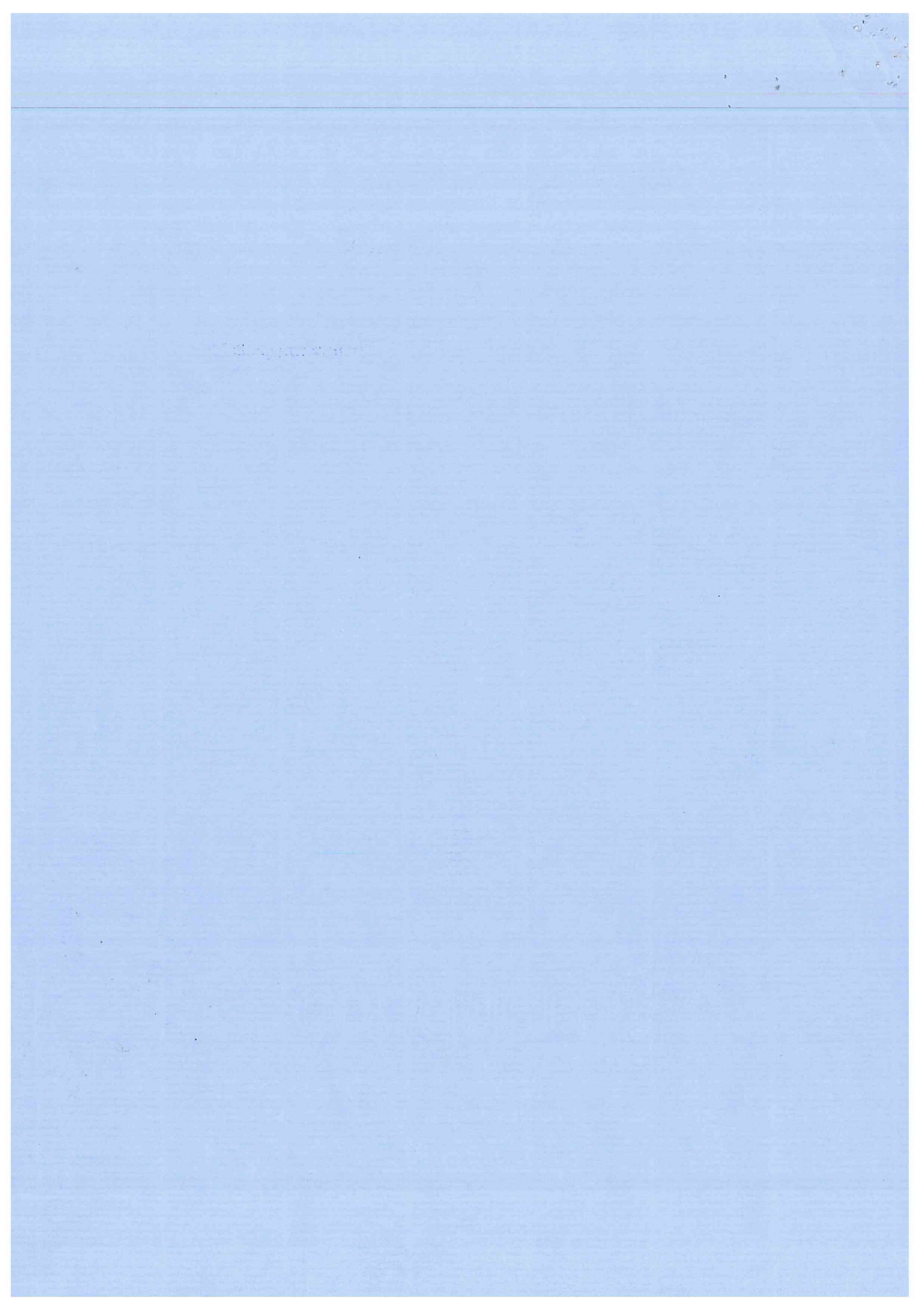
Considering that the County Government means both the County Executive and the County Assembly and also considering that the County Executive has given a nod for the borrowing.

Now therefore this letter hereby forwards the request by NCWSC for consideration by the Nairobi City County Assembly.

PATRICK ANALO AKIVAGA, Regd. Physical Planner
AG. COUNTY SECRETARY AND HEAD OF COUNTY PUBLIC SERVICE
Copy to: H. E The Governor - Nairobi City County
H. E The Deputy Governor - Nairobi City County
CECM - Finance and Economic Affairs

(ii) DLS: kindly process for tabling on Tue 30/04
25/4

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NAIROBI CITY COUNTY
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FINANCE AND ECONOMIC PLANNING AFFAIRS

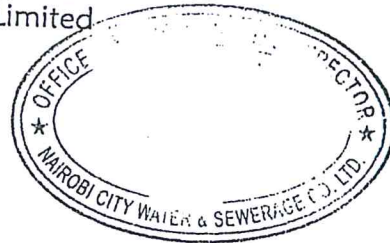
Office of the County Executive Committee Member

RE: CECM(FEP)/CK/ran/591/2023

The Managing Director
Nairobi City Water and Sewerage Company Limited
P. O. Box 30656-00100
City Hall Building
NAIROBI



26th May, 2023



Dear Sir,

RE: NAIROBI CITY WATER AND SEWERAGE COMPANY TERM LOAN TO FINANCE SETTLEMENT OF OUTSTANDING PENSION DEBT

Reference is made to your letter NCWSC/FD/NCC/VOL.VI/470/PEO/am dated October 4, 2022 and subsequent CEC Meeting held on 18th April 2023.

The CEC approved as per the attached resolution.

We confirm that the County Government: -

- a) Has no objection to the efforts of the Company to seeking the said financing;
- b) The debt to be used towards settlement of outstanding pension arrears with Local Authority Pension Trust;
- c) The Company has ensured adherence to the Public Procurement and Asset Disposal Act of 2015 with regard to the procurement of the services.

Yours faithfully,

CHARLES K. KERICH
COUNTY EXECUTIVE COMMITTEE MEMBER
FINANCE AND ECONOMIC PLANNING

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NAIROBI CITY WATER & SEWERAGE COMPANY LTD.

KAMPALA RD, P. O. Box 30656-00100, Nairobi, Kenya

Tel: +254 703 080 000

Email: info@nairobiwater.co.ke

www.nairobiwater.co.ke



Ref: NCWSC/FD/NCC/VOL.VI/470/PEO/am

October 4, 2022

County Executive Committee Member
Finance and Economic Planning
Nairobi City County
P O Box 45844 – 00100
NAIROBI



Dear Sir,

RE: BRIEF ON OUTSTANDING LAPTRUST DEBT

After incorporation of the Company, the staff working in the defunct Water & Sewerage department of the Nairobi City Council were absorbed by Nairobi City Water & Sewerage Company. Members of staff continued making contributions to LAPTRUST at the rate of 12% and 15% of pensionable pay for employee and employer respectively. In September 2005, members were transferred to Nairobi Water Provident Scheme administered by Madison Insurance Co. from LAPTRUST. In September 2010 members rejoined LAPTRUST from Madison, after a 5-year period.

The contribution rates for the Nairobi Water Provident Scheme administered by Madison Insurance Co. were 10% of basic pay for both employee and employer while the rates for LAPTRUST were 12% and 15% of pensionable pay (basic pay and house allowance). The lower rates of Madison reduced the benefits due to members. A special actuarial valuation was commissioned in 2012 to determine the amount payable by NCWSC for the 5 years members were in Madison. The purpose of this special actuarial valuation was to ensure members enjoy uninterrupted pensionable service. The actuarial valuation indicated a deficit of Kshs.937,905,811.95.

Interest on unremitted contributions and accrual deficit over time has seen the debt increase to Kshs.2,177,078,960.32 as at June 30, 2022 as indicated below;

Accrued interest	-	1,239,173,148.37
Actuarial deficit	-	<u>937,905,811.95</u>
Total	-	<u>2,177,078,960.32</u>

Currently the Company has a daily standing instruction of Kshs 3.5 million per working day (Kshs.73.5 million per month). This caters for current monthly contribution of Kshs 44 million and the balance caters for the debt, which attracts an interest of 3% per month as per RBA Act provisions. We have engaged LAPTRUST who have agreed to charge 1.25% per month of the outstanding debt. This results to an interest charge of approximately Kshs.16 million per month. At the current trend, the Company will not be able to clear the outstanding pension debt.

Board of Directors:

B. L. Okumu (Chairman), T. Muriuki (Vice-Chair), A. Kahiya, N.C.C. C.E.C.M. Finance & Economic Planning, N.C.C. C.O. Water, Sanitation & Energy, M. Kuruga, E. Mukuli, L. M. Kamba, M.A Abdullahi, Eng. N. M. Muguna (Managing Director)



NAIROBI CITY COUNTY

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OFFICE OF THE GOVERNOR
County Secretary and Head of County Public Service

MEMO

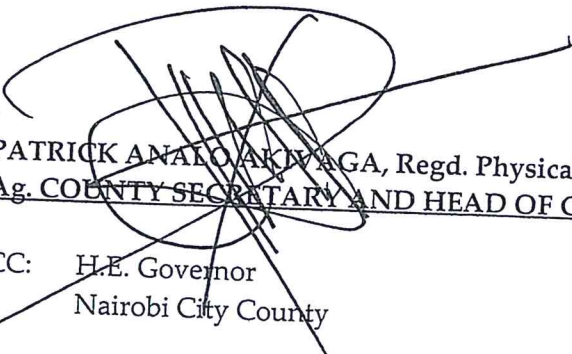
TO : THE COUNTY EXECUTIVE COMMITTEE MEMBER
FINANCE AND ECONOMIC PLANNING AFFAIRS

REF : NCC/CS/CEC/VOL. I/2024/080

DATE : 16th April, 2024

RE: FOWARDING OF EXTRACTS OF MINUTES OF 5TH COUNTY EXECUTIVE COMMITTEE MEETING HELD ON 18TH APRIL, 2023 ON THE MATTER OF CEC MEMO NO. 24 of 2023

Forwarded herewith please find the extract of the confirmed minutes of the 05th meeting of the County Executive Committee held on 18th April, 2023, under MIN.38/CEC/APRIL/2023: on resolutions which approved the CEC Memo No. 24 of 2023 on Request for Approval of Nairobi City Water and Sewerage Company Limited (NCWSC) to secure a facility from a commercial bank to settle the outstanding LAPTRUST Pension Debt for your use and further action.


PATRICK ANALO AKIVAGA, Regd. Physical Planner
Ag. COUNTY SECRETARY AND HEAD OF COUNTY PUBLIC SERVICE

CC: H.E. Governor
Nairobi City County

H.E. Deputy Governor
Nairobi City County

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NAIROBI CITY COUNTY



MINUTES OF THE 5TH MEETING OF NAIROBI CITY COUNTY EXECUTIVE COMMITTEE HELD ON 18TH APRIL, 2023 IN THE COMMITTEE ROOM, CITY HALL AT 08:00HOURS

Present

1. H. E. Sakaja, Arthur Johnson : Governor (*Chairing*)
2. H. E. Njoroge Muchiri : Deputy Governor
3. Ms. Rosemary Kariuki : CEC Member – Business & Hustler Opportunity
4. Mr. Ibrahim Nyangoya : CEC Member – Boroughs Administration & Personnel
5. Ms. Suzanne Silantoi : CEC Member – Inclusivity, Public Participation & Customer Service
6. Dr. Anastasia Nyalita : CEC Member – Health, Wellness & Nutrition
7. Ms. Maureen Njeri : CEC Member – Green Nairobi
8. Mr. Charles Kerich : CEC Member – Finance & Economic Affairs
9. Mr. Brian Mulama : CEC Member – Talents, Skills Development & Care
10. Mr. Patrick Analo Akivaga : Ag. County Secretary & Head of Public Service

In attendance

11. Ms. Lydia Kwamboka : County Attorney
12. Mr. David Njoroge : Chief of Staff
13. Ms. Marion Rono : CCO - Housing and Urban Renewal
14. Ms. Joyce Kinyanjui : Director – IGR & Head of CEC Secretariat
15. Mr. Leonard Biwott : Assistant Director - Supply Chain Management
16. Ms. Hellen Mutinda : CEC Secretariat
17. Mr. Samuel Kinyanjui : CEC Secretariat

Absent with apologies

18. Mr. Mike Gumo : CEC Member – Innovation & Digital Economy
19. Mr. Patrick Mbogo : CEC Member – Mobility & Works
20. Mr. S. G. Mwangi : CEC Member - Built Environment & Urban Planning

Agenda

1. Prayers
 - Receive apologies
 - Adoption of the Agenda
2. Declaration of Conflict of Interest
3. Reading and Confirmation of Minutes of the CEC Meeting held on 11th April, 2023, and Matters arising thereof;
4. Presentation of CEC Memoranda
 - No. 12 of 2023 on Establishment of Nairobi City County ICT Policy;
 - No. 13 of 2023 on Establishment of Nairobi City County Information Sensitivity Policy;
 - No. 19 of 2023 on Nairobi City County Food Safety Policy;
 - No. 20 of 2023 Amendment of the Nairobi City County Alcoholic Drinks and Licensing Act 2014;
 - No. 23 of 2023 on Depositing of Title Documents for NCCG Urban Renewal Projects;
 - No. 24 of 2023 on Request for Approval for Nairobi City Water & Sewerage Company Limited (NCWSC) to secure a Facility from a commercial bank to settle the outstanding LAPTRUST Pension Debt;
 - No. 25 of 2023 on Memorandum of Understanding (MoU) between Nairobi City County and Food for Education for the Implementation of the School Feeding Programme
5. A. O. B
6. H. E. the Governor's Remarks;
7. Closure of Meeting and date of the next meeting.

The Meeting was called to order at 8.17 a.m. with opening prayers by Mr. Ibrahim Nyangoya, CEC Member for Boroughs, Administration & Personnel.

No. 24 of 2023: Request for Approval for Nairobi City Water & Sewerage Company Limited (NCWSC) to secure a Facility from a commercial bank to settle the outstanding LAPTRUST Pension Debt

The Memo sought to inform the CEC about the challenges being faced by Nairobi City Water & Sewerage Company (NCWSC) in servicing the LAPTRUST debt. The debt arose when the company's retirement benefits scheme was briefly transferred from LAPTRUST to Nairobi Water Provident Scheme administered by Madison Insurance Company from September 2005 to September 2010. The debt was accruing a very high interest rate of 3% per month compounded, compared to the much lower annual interest rate that would be charged by a commercial bank. The terms of repayment of a bank loan would also be more reasonable compared to the current terms where NCWSC was required to remit at least KShs. 3.5 Million every working day. This was having an adverse effect on the company's cash flow since it was draining much of the revenues meant for operations.

As at June 2022, the LAPTRUST debt stood at KShs. 2,177,078,960.32.

It was against this background that NCWSC was seeking approval to obtain a bank to clear the debt. This would curtail the escalation of the debt and relieve the Company of the punitive daily repayment obligation. Consequently, the company would be able to improve its cash flow and its operations in the long run.

It was recommended that the CEC Memo be approved. However, the Memo should be amended to indicate the number of employees involved in the pension scheme. The savings envisaged by converting the debt into a bank loan should also be well articulated in the Memo. Further, the relevant legal provisions on interest charged on pension accruals, and the interest on bank loan should be stated in the Memo.

Through a proposal by the CEC Member - Inclusivity, Public Participation & Customer Service which was seconded by the CEC Member - Boroughs, Administration and Personnel:

Resolution:

- (i) The CEC Memo No. 24 of 2023 was approved with amendments as indicated above;
- (ii) NCWSC was instructed to seek further negotiations with LAPTRUST on the interest accruing on the debt with a view of obtaining more favourable terms.

Action: CEC Member - Green Nairobi.

Signed:

Chairman.....

Date

25th April 2023

Secretary.....

Date

25.4.23



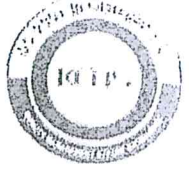
NAIROBI CITY WATER & SEWERAGE COMPANY LTD.

KAMPALA RD, P. O. Box 30656-00100, Nairobi, Kenya

Tel: +254 703 080 000

Email: info@nairobewater.co.ke

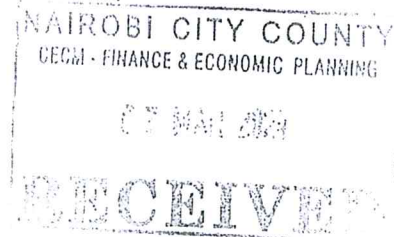
www.nairobewater.co.ke



Ref: NCWSC/FD/NCC/VOL.VII/621/PEO/am

March 5, 2024

County Executive Committee Member
Finance and Economic Planning Affairs
Nairobi City County
P O Box 30075-00100
NAIROBI



Dear Sir,


RE: LEGAL OPINION REGARDING BORROWING BY NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED

Reference is made to our letter Ref: NCWSC/FD/NCC/16/01/2024 dated 16th January, 2024 on the above subject matter.

The Company is in receipt of a revised legal opinion from Attorney General on the above subject matter.

Attached is the legal opinion (Ref: AG/CONF/2/A/35 Vol.1 dated 23rd January 2024) for your further action.

Yours faithfully,


Eng. Nahason Muguna
Managing Director

Board of Directors:

A. Kazunji (Chairman), B. Okumu (Vice-Chair), N.C.C. C.E.C.M. Finance & Economic Planning, N.C.C. C.E.C.M. Green Nairobi, R. Hassan, E. Mukuhi, C. Alaro, E. Wamnyi, J. Mukabwa, Eng. N. M. Muguna (Managing Director)



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/CONF/2/A/35 Vol. 1
Your Ref: NCWS/MD3/AG/2023/001

23rd January, 2024

Eng. Nahashion Muguna
Managing Director
Nairobi City Water & Sewerage Company
NAIROBI

RE: REQUEST FOR LEGAL OPINION REGARDING BORROWING BY NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED (NCWSC).

We acknowledge receipt of your letter dated 10th January, 2024 under Ref: NCWSC/MD3/AG/2024/002/AM through which you seek clarification on whether the approval of the National Treasury is required in light of: -

- a) The loan is to be obtained from a local bank;
- b) The company is not funded by the exchequer but rather generates its own income; and
- c) The loan does not require any guarantee from the National Government as the Company shall use its own revenue as collateral for the loan.

We note that in our letter dated 21st December, 2023 under Ref: No. AG/CONF/2/A/35 Vol. 1 based on the information provided then, we advised that the Company should seek approval of the National Treasury and Economic Planning prior to obtaining a long term facility from the Commercial bank. Further, in your current letter, you have indicated that the loan facility is obtained from a local Bank and shall not require a guarantee from the exchequer but rather from the Company's revenue as collateral for the loan.

We have reviewed your request against the background of clarification that you have provided as well as the law and advise as follows: -

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



e) *Doing or performing all other things or acts necessary for the proper discharge its functions.*

5. Regulation 9 of the Water Services Regulations, 2021 further provides-
- 1) A county water and sewerage services provider established pursuant to section 77 of the Act shall be responsible for the provision of water and sewerage services and for development and management of the related infrastructure and facilities, within its area of supply and for this purpose shall hold on behalf of the County Government, County public waterworks.
 - 2) A county water and sewerage service provider established under section 77 of the Act shall –
 - a) *Be a legal person and a corporate entity managed and accounted for as an independent or separate business enterprise;*
 - b) *Have the exclusive right to provide water services within its area of supply;*
 - c) *Provide or put in place arrangements to provide water services to all consumers in its area of supply who desire a water service and are willing to comply with conditions for the supply of water; and*
 - d) *Apply for, secure and maintain a licence issued by the Regulatory Board in order to undertake the provision of water services within its area of supply.*
6. Regulation 12 of the Water Services Regulations, 2021 indicates that the funds and assets of the County water services provider shall consist of such monies appropriated by the County Assembly, any monies or property which may in any manner accrue or vest in the county water services provider in the course of the exercise of its functions; such monies as may become payable to the county water services provider by way of tariffs, fees and other charges in respect of services rendered by or through it; and all monies from any other sources whatsoever donated, lent or granted to the county water services provider.
7. Regulation 35 requires that the water services provider shall be managed on a commercial basis in accordance with sound business principles. Further, a licensed water services provider shall *inter alia* implement financial, commercial, management and administrative systems to enable it operate an efficient and cost effective water service.

funding as buttressed under Regulation 202 of the Public Finance Management (County Governments) 2015 Regulations.

13. We note that the Act is silent on long term borrowing of the County Government entities. Nevertheless, the Regulations allow for County Government owned enterprises to operate on commercial principles which, in our view, allow such entities to engage in activities such as borrowing on the strength of their books of accounts.


Way forward

14. In reliance on the information availed to this Office and more particularly: -
- a) That the loan is to be obtained from a local bank;
 - b) The company is not funded by the exchequer but rather generates its own income; and
 - c) The loan does not require any guarantee from the National Government as the Company shall use its own revenue as collateral.

The Nairobi City Water & Sewerage Company Limited;

- a. in operating on commercial principles and with a defined commercial income stream that substantially supports the associated commercial activities, may take up liabilities (loans) on the strength of their balance sheet; and
- b. Pursuant to the Nairobi County Corporations Act, 2019, should seek the approval of the County Government prior to taking out the loan.

Kindly be advised.


Hon. J. B.N. Muturi, EGH
Attorney General

Copy to: Hon. Shadrack J. Mose
SOLICITOR GENERAL