

6.

**A PORTION OF REMAINDER ERF 243 HERMANUS (OLIFANTSBERG, ROTARY WAY): DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER LEASE AGREEMENT WITH ESKOM HOLDINGS SOC LTD**

**A Le Roux  
5 April 2024**

**Manager: Property Administration**

**(028) 316-5623**

### **1. Executive Summary**

To obtain approval from the Executive Mayor to enter into a further lease agreement with Eskom Holdings SOC Ltd (“ESKOM”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of a portion of Remainder Erf 243 Hermanus, ±2,85m<sup>2</sup> (APPROXIMATELY TWO COMMA EIGHT FIVE SQUARE METRES) in extent, situated on the Olifantsberg, Rotary Way, Hermanus, hereinafter referred to as “the Property”, for equipment on the mast and space in the building for telecommunication purposes; and

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a direct lease agreement with ESKOM in respect of the Property for equipment on the mast and space in the building for telecommunication purposes, without following a competitive process.

See locality maps attached marked Annexure “A1” and “A2”.

### **2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Property Administration

### **3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Promotion of tourism, economic and social development

### **4. Delegated Authority**

Partly delegated to the Executive Mayor

### **5. Legal Requirements**

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

## 6. Background/Discussion/Evaluation/Conclusion

### Background

ESKOM has been using the Property since 2011 for equipment on the Olifantsberg mast and space in the adjoining building for telecommunication purposes.

The last agreement was for a period of 3 (THREE) years which expired on 30 August 2023. ESKOM applied for the renewal of the agreement before expiry thereof and is still paying rental.

ESKOM applied to renew the lease agreement as there is a high increase in the demand for reception and, in this case, the application is to retain the existing equipment on the mast and space in the building for telecommunication purposes currently situated on municipal property.

The area applied for has been used by ESKOM for approximately twelve years without any complaints from the public regarding the use of the Property and ESKOM delivers an essential service to the Overstrand community. The rental is paid to date.

### Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following paragraphs of the Administration of Immovable Property Policy are applicable:

**Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”**

As the application for renewal was received before the expiry of the last agreement there is no need for a formal application form to be completed and no application fee is payable.

**Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:**

- 17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or**
- 17.2 a direct lease.”**

**Paragraph 18: “A competitive process must at all times be followed in circumstances where:**

- 18.1 the lease is for a long term with an income value in excess of R10 million;**
- 18.2 the lease is for a formal business premises with a market related rental;**
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or**
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community”.**

Although the application is for a long-term the rental will not be in excess of R10 million and the site is not classified as a business site.

In this case a direct lease is proposed with a deviation from paragraph 18 in that a competitive process is not followed as this is for existing equipment which will serve the community. Should the lease not be approved ESKOM will have no communication for a large part of Hermanus which will be detrimental to the service delivery to the Hermanus community. The renewal of this lease will be in the best interest of the community.

**Paragraph 20: “Long term lease of municipal immovable property with an income value less than R10 million:**

**20.1 The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:**

- (a) the Accounting Officer has approved the lease in principle;**
- (b) in the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and**
- (c) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.”**

The Municipal Manager approved in principle the long-term lease of the Property to ESKOM for a period of 9 (NINE) years and 11 (ELEVEN) months, subject to a public participation process being followed, the approval by the Executive Mayor as delegated authority of the long-term

lease and approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy.

The proposed renewal of the lease agreement was advertised in the Village News on 13 October 2023 for a 30 (THIRTY) day comment/objection period. No comments/objections were received.

The Executive Mayor's approval of the long-term lease is hereby requested.

**Paragraph 26: *"In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount."***

The tariffs for equipment on a municipal mast and space in a building, is applicable.

The 2023/2024 tariff for equipment on a Mast is R2,446.09 (TWO THOUSAND FOUR HUNDRED AND FORTY-SIX RAND AND NINE CENTS) (VAT Excluded) per month, and the tariff for space in the building is R644.35 (SIX HUNDRED AND FORTY-FOUR RAND AND THIRTY-FIVE CENTS) (VAT excluded) per square metre per month. The rental for the space in the building will amount to R1,836.40 (ONE THOUSAND EIGHT HUNDRED AND THIRTY-SIX RAND AND FORTY CENTS) (VAT Excluded) per month as ESKOM is only leasing 2,85m<sup>2</sup> of space in the building. The total rental amount will be R4,282.49 (FOUR THOUSAND TWO HUNDRED AND EIGHTY-TWO RAND AND FORTY-NINE CENTS) (VAT Excluded) per month. The agreement will stipulate that the rental amount will escalate annually in accordance with the tariff as approved in the Annual Budget.

**Paragraph 47: *"Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease."***

The Property will be inspected by the Property Administration Department at least once a year.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 36 - 50 will be included in the lease agreement entered into with ESKOM.

**B. Advertisement/Notification**

The proposed renewal of the lease agreement was advertised in the Village News on 13 October 2023 for a 30 (THIRTY) day comment/objection period. No comments/objections were received.

## Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the Property to ESKOM for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 September 2023 for equipment on the mast and space in the building for telecommunication purposes at the rental amount of R4,282.49 (FOUR THOUSAND TWO HUNDRED AND EIGHTY TWO RAND AND FORTY-NINE CENTS) (VAT Excluded) per month, subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy, and that
- (b) Council approves a deviation from paragraph 18 of the Administration of Immovable Property Policy, in order to enter into a direct lease with ESKOM for equipment on the mast and space in the building for telecommunication purposes, without following a competitive process.

## 7. Financial Implications

The Municipality stands to gain a rental amount of R4,282.49 (FOUR THOUSAND TWO HUNDRED AND EIGHTY-TWO RAND AND FORTY-NINE CENTS) (VAT Excluded) per month, where after the lease amount will escalate every year on the 1<sup>st</sup> of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2024. All expenses pertaining to the proposed lease will be borne by ESKOM.

## 8. Staff Implications

None

## 9. Comments from other Departments, Divisions and Administrations

**Senior Manager: Operational Department – Mr Tiaan Marx**

*“I don’t have any objection with regards to this application.”*

**Senior Manager: Expenditure and Assets - Mr J Vorster**

*“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”*

## 10. Annexures

Annexures A1 & 2:           Locality Maps

**RECOMMENDATION TO THE EXECUTIVE MAYOR:**

1. that the lease of municipal property, being a portion of Remainder Erf 243 Hermanus ( $\pm 2,85\text{m}^2$  in extent), to Eskom Holdings SOC Ltd for equipment on the mast and space in the building for telecommunication purposes at the rental amount of R4,282.49 (FOUR THOUSAND TWO HUNDRED AND EIGHTY-TWO RAND AND FORTY-NINE CENTS) (VAT Excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 September 2023 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2024.

**RECOMMENDATION TO THE COUNCIL:**

that the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing a direct lease to Eskom Holdings SOC Ltd for equipment on the mast and space in the building for telecommunication purposes, **be approved**.

<b>RESPONSIBLE OFFICIAL :</b>	<b>R OCTOBER</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>29 MAY 2024</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>9 JUNE 2024</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>



