**COMHAIRLE CHONTAE ÁTHA CLIATH THEAS
SOUTH DUBLIN COUNTY COUNCIL**



**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 12th March 2018**

**ITEM NO. H-I 8 (a)**

**Re: GC 196 / LD1453**

**Proposed disposal by way of Lease of Telecommunications Ducts at Grange Castle Business Park, Clondalkin, Dublin 22 to CyrusOne Ireland Datacentre’s Holdings Limited.**

At a meeting of the Council on 10th July 2017, the elected members noted the disposal of 14.98 acres or thereabouts at Grange Castle Business Park to CyrusOne Irish Datacentre’s Holdings, Limited C/O Eversheds Sutherland, 1 Earlsfort Centre, Earlsfort Tce, Dublin 2 subject to terms and conditions., minute reference H7/0717 refers. The legalities to complete the transfer are at an advanced stage.

The Council in its capacity as the developer of Grange Castle Business Park and having regard to the principles of good estate management in the interests of the Park as a whole, has provided a range of infrastructural services to service and facilitate clients locating in the Park including underground telecommunications ducts.

The Ducts have been provided in a number of phases of the park development and as part of the R120 road construction. CyrusOne Irish Datacentre’s Holdings has now applied for a lease ducts referenced 3C and C comprising 2781m as identified coloured green on drawing numbered 02\_028D\_9113- I02 to support their planned development of their site.

 I recommend that the Council grant a lease to CyrusOne Irish Datacentre’s Holdings in respect of underground telecommunications ducts referenced 3C and C measuring 2781m at Grange Castle Business Park, Dublin 22 for the purpose of providing telecommunications within the Park, in accordance with Section 211 of the Planning and Development Act, 2000 and subject to the provisions of Section 183 of the Local Government Act, 2001 subject to the following terms and conditions:-

1. To use the Ducts as identified coloured green on drawing numbered 02\_028D\_9113- I02 for the transmission and reception of telecommunications signals in digital data and impulse signals and for no other purpose what so ever.
2. The ducts referenced 3C and C measuring 2781 metres of thereabouts as identified coloured greed on drawing numbered 02\_028D\_9113- I02 comprise of two way ducting including all chambers, manholes, junctions chambers and covers but excluding surrounding soil of the surface, except where the cover of a chamber or junction chamber is on and includes the surface.
3. The lease shall be for a term of 999 years subject to payment of a Capital Premium of €159,990 (i.e. 2781 metres at €57.53 per metres)
4. The rent reserved in the Lease shall be €100 per annum reviewable every 5 years by reference to the Consumer Price Index.
5. In the event of consent being granted to a change of use of the Ducts the Lessee shall pay €150 per metre increased by reference to the Consumer Price Index or the open market value of the Ducts at the date of application for consent whichever is the greater. In the event of dispute the matter will be referred to an independent professional valuer nominated by the President of the Irish Auctioneers and Valuers Institute and his determination shall be binding. For the avoidance of doubt the upgrading of any cabling within the Duct from time to time throughout the term of the Lease to its most technologically advanced equivalent shall not constitute a change of use.
6. Any breach in the terms of the Lease not remedied within 60 days of the service of notice or in the event of the liquidation or receivership of the Company the Council shall be entitled to terminate the Lease by written notice.
7. The Lessee shall obtain the prior written consent of the Council, which consent shall not be unreasonably withheld, for the purpose of repairing, renewing, maintaining, inspecting or replacing the ducts.
8. Reinstatement works shall be carried out in accordance with the guidelines for opening, backfilling and reinstatement of trenches in public roads as published by the Department of the Environment and Local Government in, April 2002 or as amended from time to time.
9. The Council reserves the right, at its expense, to alter or vary the route of the duct or any part thereof, for the purpose of facilitating any present or future development of the Park subject to the terms of the Lease.
10. The Lessee shall furnish on demand:-

(i) A statement listing any alterations and/or additions to the services in the ducts.

(ii) Copy of current licence for the use of the Ducts/Services provided through them from the Minister for Communications, Marine and National Resources or other regulatory authority and satisfactory evidence that all fees have been paid up to date, if applicable.

(iii)       Furnish annually site maps and as built drawings detailing new extensions to the existing infrastructure including drop connection routes, if applicable.

1. The Lessee is to ensure that all parts of the Ducts including the chambers, manholes and covers are permanently and securely covered with covers of sufficient design and strength to withstand the weight of such vehicular, pedestrian and other traffic that may be reasonably expected to pass over them.
2. The Lessee shall not assign, transfer, mortgage or share the possession or occupation of the ducts or any part thereof without the prior written consent of the Council, which consent shall not be unreasonably withheld, but which consent shall not be required for a transfer to an occupier, sub-tenant of assignee of the Lessee’s site.
3. The Lessee shall acknowledge that it shall be reasonable for the Council to withhold its consent under term 12 if the Council has spare capacity in any services ducts in the Park.
4. To keep the ducts insured with a reputable insurer against loss or damage in a sum sufficient to cover the full cost of reinstating the ducts including Architects fees, site clearance costs, allowances for cost and price inflation, VAT, stamp duties and all other incidental expenses in connection with the rebuilding of the ducts.
5. To indemnify and keep indemnified the Council against all and any expenses, costs, claims, demands, damages and other liabilities, in respect of any claim made directly or indirectly out of the occupation of the Council’s lands or the failure by the Lessee to comply with its obligations.  The minimum limit of indemnity required is €10m for any single event.
6. At all times during the occupation of the Council’s lands the Lessee shall comply with all statutory requirements and enactments and execute at its own expense any works or arrangements that may be required.
7. Each party shall be responsible for its own legal costs in this matter.
8. The Lease Agreement shall contain such other terms and conditions as are deemed appropriate by the County Solicitor in Leases of this nature.
9. No agreement enforceable at law is created or intended to be created until exchange of contracts has taken place.

The lands to be disposed of forms part of lands acquired from Kenneth Beattie, Richard & John Beattie and Marie Corrigan in 2003, 2004 and 2008 respectively for future development and road widening purposes.

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**Daniel McLoughlin**

**Chief Executive**