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

**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 14/05/2018**

**H-I 7 (c)**

**GC226 -Disposal of 3.23 acres at Grange Castle Business Park to Grange Backup Power Limited**

An application has been made by Grange Backup Power Limited to purchase a site of approx. 3.23 areas at Grange Castle Business Park. Grange Backup Power Limited intends to construct, subject to receipt of the necessary licenses and planning permission, a 96 MW Peaking Power Plant (the “Project”). In order to allow Grange Back up power apply for the necessary statutory licences and permissions for the project they have requested that the lands be reserved for purchase under an option agreement for a period of 4 years with an option to extend this period by a further 3 years as per terms set out in Managers Order GC/20/2013 dated 17/12/2013.

I recommend that the Council dispose of lands totalling 3.23 acres or thereabouts at Grange Castle Business Park to Grange Backup Power Limited (the “Company”) in respect of the lands measuring 3.23 acres or thereabouts shown outlined in red on Drawing No. 02\_028D\_148-D to include an option agreement on the lands subject to the following terms and conditions:-

**Disposal of lands on exercising Option Agreement**

1. That the lands being disposed of comprise approximately 3.23 acres or thereabouts. A formal disposal map shall be prepared by the Council for inclusion with the legal documents but in the interim a draft plan for identification purposes as per drawing no. 02\_028D148-D is annexed showing the site outlined in red. The drawing will show a services wayleave corridor coloured yellow and also a 5 metre Right of Way coloured orange and labelled X to Y for access to the ESB substation and telecoms. The wayleaves are required within the perimeter of the lands being disposed of to facilitate the future servicing by the Council of this site, the Business Park and any other lands.
2. That the consideration due to the Council shall be calculated on the basis of of €350,000 per acre if exercised within any extension period of the initial option agreement (the “Purchase Price”), payable, as to the amounts described at (a), (b) and (c) below:-
	1. 10% of the Purchase Price on signing and exchange of a Contract for Sale/ an Agreement for Lease in respect of the site. Such amount to be refunded, less any option fee paid, in the event that the development proposed for the site does not receive full planning permission, and/ or in the event of any of the terms and conditions of the disposal not having been satisfied.
	2. 80% of the Purchase Price within 15 business days of date of the Applicant’s entry onto the site for the purpose of commencing construction works on foot of the final grant of planning permission (provided that, for the avoidance of doubt, the Applicant shall be entitled to carry out due diligence and engineering analysis activities (including, but not limited to geotechnical analysis and studies, soils testing, water analysis, site borings, environmental assessments, etc.) prior to the payment of this sum in accordance with any building licence to that effect as described in paragraph 5.
	3. The remaining 10% of the Purchase Price on the grant of the Master Lease which shall occur at the time and in the manner set out at 10 below.

The Council shall be entitled to charge interest at a rate of eight per cent (8%) per annum on any outstanding sums in the event of failure by the Applicant to pay the foregoing sums on the above dates. This interest rate penalty shall be calculated on a daily basis for any period of time deposits are outstanding without cause.

1. That the Applicants having secured full planning permission for the entire development on the site shall forward to the Council no later than one month prior to the Applicant commencing works on foot of the final grant of planning permission, a copy of the outline building programme for such works describing the key construction milestones.
2. That if (i) construction works have not commenced within six months of the exercising of the option agreement, or such later date as may be agreed in writing with South Dublin County Council or (ii) if works are not substantially completed within thirty (30) months from the date of exercising the option agreement then either party may by written notification on the other rescind the agreement for lease / contract for sale, provided that these periods will be extended on a reasonable basis if commencement or completion of the development is disrupted or delayed due to an event or circumstance outside the Applicant’s reasonable control or as otherwise may be agreed, each party acting reasonably. And further that, in the event that the final grant of planning permission is issued containing conditions which the Applicant considers to be onerous, the Applicant may be written notification on the Council rescind the agreement for lease / contract for sale, provided that these periods will be extended on a reasonable basis if commencement or completion of the development is disrupted or delayed due to an event or circumstance outside the Applicant’s reasonable control or as otherwise may be agreed, each party acting reasonably. In the event of rescission on any of the foregoing grounds, any monies paid to the date thereof (excluding the option fee) under 2 above shall be repaid to the Applicant without payment of interest.
3. That the Council shall enter into an agreement for lease or contract for sale in respect of the sale of the site to the Applicant (by way of grant of the Master Lease), based on and to give effect to these heads of terms, and which agreement / contract shall contain a licence authorising the Applicant to enter onto the site from the date thereof prior to the grant of the Master Lease, to carry out due diligence and site analysis (including, but not limited to geotechnical analysis and studies, soils testing, water analysis, site borings, environmental assessments, etc.) prior to the grant of final planning permission, and after the issue of such permission, to construct the data centre and offices. The agreement / contract shall contain further reasonable obligations upon the Applicant with respect to that construction to ensure the satisfactory completion of the approved development on the site.
4. The Applicant will be responsible for all planning levies and contributions payable in accordance with the Council’s Development Contribution Scheme made under the Planning and Development Act 2000. The Contributions under the Scheme are payable prior to entry on to the site or as otherwise agreed by the Council. The applicants must satisfy themselves as to the capacity of all services to service the proposed development.

[A special Arts contribution fixed at 50 cent per square foot of gross building areas shall also apply payable no earlier than the grant of the Master Lease.]

1. That all site investigations, groundworks, overhead cable diversions, demolitions/site clearance/septic site removal (such works are subject to regulations and to obtaining the relevant statutory licences), services connections, development and associated costs incurred in the delivery of the entire completed development shall be borne by the applicants.
2. That the Applicants shall undertake not to use the site for any purposes other than that of due diligence and site analysis prior to the final grant of planning permission and thereafter for the purpose of carrying out the proposed development, subject to the terms of the “Master Lease” (see 13 below). All buildings shall be occupied by the applicants or their tenants, agents, employees, invitees and/or assigns in accordance with the terms of the Master Lease.
3. That the Applicant shall build nothing (except with the prior written approval of the Council and such consent shall not be unreasonably withheld or delayed) on the site except the buildings shown on the approved drawings and for which Planning Permission has been granted, as outlined in condition 3. An architect’s certificate of practical completion confirming that the development has been completed in accordance with the approved plans and specification for which planning permission has been granted shall be submitted by the applicant and shall be appended to the Master Lease. A maintenance Plan for the external areas and buildings shall be submitted to the Council.
4. That within 30 days of completion of the construction of the said development the applicant shall furnish to the Council an Architect’s opinion on compliance with planning permission and with the building regulations together with a certificate setting out the gross internal floor area of the development. On receipt of same the Council will grant the Applicant a lease of that site. The lease shall be for a term of 999 years (commencing from a date to be agreed upon, but no earlier than the date of Practical Completion of the development thereon) subject to a rent of €500 per annum (exclusive of rates, taxes, and outgoings in respect of the site) which will be reviewed at the end of every 5 years of the term in line with any changes in the Irish Consumer Price Index. The Council’s Solicitors shall draft the lease for approval by the Applicant’s Solicitors. The lease granted shall be known as the Master Lease (“Master Lease”). The Master Lease shall provide that the lessee shall become a member of the management company for the Business Park, and shall pay the annual service charge described in accordance with the provisions of the Master Lease and appendices thereto.
5. That the Agreement to Lease or contract for sale is not to operate as a lease and it shall not be transferable save (i) in the case of a financial institution of good standing which has entered into a mortgage with the Applicant specifically for the purposes of financing the Applicant to undertake the development of the site or (ii) to a nominee wholly owned by or under common ownership with Grange Backup Power Limited (including any reorganisation of such company).
6. That South Dublin County Council reserves the right, only to be exercised by the Council acting reasonably, to re-enter on the site and resume possession thereof should the applicants fail to commence and complete the buildings within the period specified at 4 above or in the event of the dissolution, bankruptcy or insolvency of the applicants save in the case where a Financial Institution which has entered into a mortgage with the applicants for the purposes of financing the development of the site and enforces its security against the site. South Dublin County Council shall provide written notice of any intent to exercise this right and offer a reasonable cure period of not less than 30 days for rectification of any default on the Applicant’s part, including use of mediation/arbitration, or similar third-party intercession.
7. That during the building period and pending the grant of the Master Lease, the applicant will provide all reasonably required evidence of the ‘all risks’, public liability and employer’s liability insurance cover maintained by the Applicant for the construction period. It is acknowledged that following completion of the development, the building and all insurable risks associated therewith will be included in the Applicant’s self-insurance programme. All insurance will be subject to the approval of the Councils insurance advisors, acting reasonably.

The insurance shall, be in the joint names of the Applicant and the Council, or shall contain an indemnity to principals clause, and will be for such an amount as will provide cover for the full Reinstatement Value of so much of the building as is erected at any time together with a sum for Professional Fees and removal of debris charges

The Applicant shall also indemnify South Dublin County Council against any claim for compensation which might / may be made by any party arising out of building works being carried out on the site, or any working areas or on any access points thereto.

1. That the Council is and shall be carrying out extensive construction projects in the Business Park. Both parties shall use their reasonable endeavours to ensure that any interaction between respective contractors employed to carry out any works including, but not limited to building or road works, is carried out in an open and transparent manner with engineers and liaison officers such as to ensure that no additional contract costs accrue to either party.
2. That no uncovered outdoor storage shall be permitted on the subject lands. All processing, packing, waste disposal or recycling and such like operations shall be carried out within suitable structures or equipment such as compactors located on the premises in accordance with any statutory regulations or requirements in that regard.
3. That all car and commercial vehicle parking areas, loading areas and service areas must be suitably landscaped and screened from public view. In this regard the Applicant shall carry out at the Applicant’s costs such boundary and landscape treatment works as the Council may reasonably require, bearing in mind the nature of the Park and provided that such works are not substantially more than required of any other occupiers of the Park during construction. Such works may, only where reasonable, be in addition to similar works required under a planning permission for development of the subject lands. The Applicant shall submit a copy of its landscaping and security plan to the Council’s Development Department prior to the grant of the Master Lease for approval.
4. That each party shall be responsible for their own professional (ie. legal, engineering, architects, and other required consultants’) fees in this case.
5. That the Applicant shall pay any V.A.T.(subject to receipt of a valid VAT invoice), stamp duty or taxes arising at any stage in this transaction (except where any lawful exemption or relief therefrom applies), including on the creation of a Building Licence (if any), an Agreement to Lease or contract for sale, and a Master Lease.
6. That the Councils Solicitors shall draft the agreements, contracts and leases and may include further reasonable terms and conditions as deemed appropriate to give effect to the heads of terms set out herein, including provision for use of an expert or arbitrator process to settle any disputes arising, as appropriate, in order to achieve a reasonable balance in the protection of the parties’ respective interests in the matter. In the case of disputes concerning final measurement and valuation of the site for the purposes of calculating the Purchase Price, an arbitration clause shall refer to the appointment of a Chartered Valuation Surveyor to act as arbitrator. This person to be appointed by agreement of the parties or in default of agreement to be appointed by the President of the Society of Chartered Surveyors in the Republic of Ireland. The costs of any arbitration to be borne equally by the parties.
7. That the Applicant shall satisfy South Dublin County Council (acting reasonably) prior to exchange of the agreement for lease / contract for sale, that sufficient funds are available for the payment of the sums set out in paragraph 2 above, and prior to commencement of construction on foot of the final grant of planning permission or each phase thereof, to cover the capital costs of such construction or the relevant phase thereof as appropriate.
8. That the above proposal is subject to the necessary approvals and consents being obtained in order to allow full construction activities.
9. No agreement enforceable at law is created or is intended to be created until an exchange of contracts has taken place.

**Option Agreement on lands**

1. The Option period on the 3.23 acres of land or thereabouts shall be for a period of 4 years commencing from the date of the signed Managers Order GC/20/2013 (the “Option Period”), dated 17/12/2013.
2. The Option Fee shall be €48,450.
3. Provided that the Company has obtained planning permission for the Project the Council may extend the Option Period on the lands. The extension period shall be for a maximum of 3 years (the “Extension Period”) with an annual Option Fee of €48,450.
4. In February 2017 pursuant to planning reference Number SD16A/0398 Grange Backup Power Limited was granted full planning permission on the option lands, however a decision on an EPA Licence is still awaited by Grange Backup Power Limited. The Council is agreed to the “Extension period” on the options lands as per Condition No 3 above as the original option period on the lands expired in December 2017.
5. The Option Agreement on the lands shall be strictly non-transferable (other than to a company in the same group as the Company or by way of security assignment to the Company’s lending institution) and shall be prepared by the Council’s Law Agent and shall include terms and conditions normally contained in agreements of this type.
6. Where the company exercise the Option to purchase the lands within the Extension Period the consideration payable to the Council shall be calculated on the basis of €350,000 per acre less the amount of any Option Fee already paid.
7. The Option Agreement may be terminated by either party by written notice to the other at any time if the other commits a material breach of any of the terms and conditions of the Agreement and fails to remedy such breach within 14 days of being furnished with written notification thereof.
8. If on the expiration of the Extended Option Period the Company has not exercised the Option to purchase the lands then the Council shall be released from its obligations under the Option Agreement and all Option Fees paid in full will be non-refundable.
9. The Company shall be responsible for the payment of stamp duty and VAT or Taxes, if any, arising on this agreement.
10. Within 30 days of the approved disposal the applicant shall complete the option agreement.
11. Each party shall be responsible for their own legal and professional fees in this case.
12. No agreement enforceable at law is created or intended to be created until exchange of contracts has taken place.

An application has been made by Grange Backup Power Limited to purchase a site of approx. 3.23 areas at Grange Castle Business Park. Grange Backup Power Limited intends to construct, subject to receipt of the necessary licenses and planning permission, a 965 MW Peaking Power Plant (the “Project”). In order to allow Grange Back up power apply for the necessary statutory licences and permissions for the project they have requested that the lands be reserved for purchase under an option agreement for a period of 4 years with an option to extend this period by a further 3 years as per terms set out in Managers Order GC/20/2013 dated 17/12/2013.

I recommend that the Council dispose of lands totalling 3.23 acres or thereabouts at Grange Castle Business Park to Grange Backup Power Limited (the “Company”) in respect of the lands measuring 3.23 acres or thereabouts shown outlined in red on Drawing No. 02\_028D\_148-D to include an option agreement on the lands subject to the following terms and conditions:-

The lands being disposed of form part of lands acquired from Alfred Beattie in 1997 for future development purposes.

D. McLoughlin

Chief Executive