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

**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 9th July 2018**

**H-I 7 (c)**

**GC**

**Proposed disposal of by way of Lease of Telecommunications Ducts at Grange Castle Business Park, Clondalkin, Dublin 22 to EdgeConneX Ireland Limited**

EdgeConneX Ireland Limited, 6th Floor, South Bank House, Barrow Street, Dublin 4 are an international datacentre company developing lands adjacent to Grange Castle Business Park. They have a number of approved planning applications (SD16A/0176, SD16A/0214, SD16A/0345 AND SD17A/0027) which were consented by GCFM in terms of an agreed interface with the Business Park. This interface includes both connection to the foul sewer pumping station and connection to the business park road network, subject to terms.

Edgeconnex Limited have already agreed terms for connections to the foul pumping station, access to the business park road network and services and a wayleave in favour of South Dublin County Council for the provision of wastewater services to lands West of the R120 at Grange castle Business Park together with associated works which are under construction.

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, interface agreements with adjoining developments, 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 EdgeConneX Ireland Limited has now applied for a lease ducts referenced 1A comprising 1,506 metres as identified coloured green on drawing numbered 02\_028D\_9011.

 I recommend that the Council grant a lease to EdgeConneX Ireland Limited in respect of underground telecommunications ducts referenced 1A measuring 1,506 metres at Grange Castle Business Park, Dublin 22 for the purpose of providing telecommunications to their site adjacent to 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 Duct as identified coloured green on drawing numbered 02\_028D\_9011 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 1A measuring 1,506 metres or thereabouts as identified coloured green on drawing numbered 02\_028D\_9011 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 €86,640.18 (i.e. 1,506 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 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 sixty 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. Where such opening up is necessary, the Lessee shall obtain the prior written consent of the Council to the opening up of the grounds above the Duct, which consent shall not be unreasonably withheld, for the purpose of repairing, renewing, maintain, inspecting or replacing the ducts.
9. 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.
10. 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.
11. 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 or 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 13 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 (Ten million Euro) 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.
10. That in the event of any name change to applicant prior to formal completion of the legal transfer, the applicant must provide documentary evidence to the Council proving that the new named party is one and the same as the named applicant heretofore to enable the transfer to complete.

The lands being disposed of form 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.

D. McLoughlin

Chief Executive