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

**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 9th July 2018**

**H-I 7 (d)**

**GC 225**

**Proposed Disposal of 46.74 acres of land at Grange Castle South, Grange Castle Business Park Campus, Clondalkin, Dublin 22 to Amazon Data Services Ireland Limited.**

An application, has been received from Amazon Data Services Ireland Limited, One Burlington Plaza, Burlington Road, Dublin 4 to acquire 40.19 acres with an option to purchase a further 6.55 acres or thereabouts at Grange Castle Business Park South to construct a data centre campus with related facilities to support the growing demand for cloud computing services in the region. Amazon has established itself as a key employer in Ireland and the investment in South Dublin County Council is a testament to the facilities offered at Grange Castle Business Park.

I recommend that the Council dispose of lands totalling 46.74 acres or thereabouts at Grange Castle Business Park to Amazon Data Services Ireland Limited (the Applicant), One Burlington Plaza, Burlington Road, Dublin 4 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 as follows:

1. (i) 40.19 acres or thereabouts by way of a 999 year Lease (the main site) on drawing No. 02\_028D\_9150.

(ii) 6.55 acres or thereabouts by way of 999 Lease on the exercising by Amazon Data Services Ireland Limited of the option to purchase the Option Site on Drawing No. 02\_028D\_9151.

1. (a) That the lands being disposed of in the first instance (the main site) comprise approximately 40.19 acres or thereabouts. The precise boundaries have yet to be established. A formal Land Registry compliant map shall be prepared by the Council for inclusion with the legal documents and furnished to the Applicant for approval in early course but in the interim a draft plan for identification purposes drawing no. 02\_028D\_9150 is annexed showing the site outlined in red.

(b) The Council will retain a 10 metre wayleave area shaded yellow along the northern, southern and western boundaries. There is a requirement for a 15 meter wayleave area shaded blue along the eastern boundary. These will be 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. The Applicant is aware that the Council, it’s Servant or Agents have commenced works over the wayleave area surrounding the cardinal directions North, South, East and West of the disposal site to facilitate various construction and service provision projects which may run for the next 12-18 months.

1. That the consideration due to the Council shall be calculated on the basis of the sum of €500,000.00 euro) per acre (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 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 term 13.
	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 13 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.

4 (a) The Council shall, in consideration of the payment of an Annual Option Fee payable yearly in advance, commencing on the date of signing of the contract for sale for the disposal of the 40.19 acres (the main site), be prepared to grant a two year Option to Amazon Data Services Ireland Limited, only, to purchase the Option Site, measuring 6.55 acres shown on Drawing No. 02\_028D\_9151. The Option Fee will be payable on the anniversary of the signing of the contract referred to above.

1. Should the Option be exercised in accordance with term no. 4 (a) above the consideration payable to the Council shall be calculated on the basis of the sum of €500,000 per acre linked to the Irish CPI (Consumer Price Index) for the duration of the option period with effect from the signing of the contract for sale for the main site. The consideration will be payable in the same manner as outlined in term no. 3.
2. The option fee structure is as follows…
	1. Year 1 – 1% of the purchase price of €500,000 per acre or approximately €32,750
	2. Year 2 – 2% of the purchase price of €500,000 per acre escalated by the CPI in 3b above.

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|  | **Option Site** |
| **Area** | 6.55 acres |
| **Consideration** | €3,275,000 |
|  |  |
| **Payable Year 1 – 1%** | €32,750 |
| **Payable Year 2 – 2%** | €65,500 |

1. Any extension of the Option Agreement and the terms and conditions of any such extensions shall be at the sole and absolute discretion of the Council.
2. The Option Agreement shall be strictly non-transferable, save where it is transferred as part of a permitted transfer under the terms of the Agreement as referenced in 13 below, and shall be prepared by the Council’s Law Agent and shall include terms and conditions normally contained in agreement of this type. In particular, the option site may be used only for the expansion of Amazon Data Services Ireland Limited facilities on the main site or by a subsidiary company of Amazon Data Services Ireland Limited involved in a related activity.
3. The Applicant is aware that within the option site there is a services corridor measuring approximately 1.64 acres as shaded orange on drawing 02\_028D\_9151. There are a number of privately owned and managed services within this corridor. Any diversion and or access of these services on the option site will be a matter for the Applicant.
4. Should the Applicant exercise the option to purchase the option site a wayleave corridor will be required along the services corridor.

5. That the applicant is aware of a 10 metre wayleave for a Foul Sewer located within the entire lands being disposed hatched green on drawings 02\_028D\_9150 and 02\_028D\_9151. Any diversion of these services on the disposal site will be a matter for the Applicant.

1. That the Applicant acknowledges and accepts that the burdens identified on the folios listed below form part of this disposal:-

Burden No 6, Plan Nos.5 and 7 Folio 10892

Burden No 3 Plan No 3 Folio DN1903

Burden No. 4 Plan 19 Folio DN 14491

Burden No. 2 Plan 12 Folio DN 5849

1. The Applicant is aware and accepts the existing access route cross hatched purple and identified by points C to D on drawing 02\_028D\_9150 to an existing mast structure at point D.
2. The Applicant is aware of the existence of a stream which traverses the north east section of the disposal site. Any diversion of this stream is a matter for the Applicant.
3. The Applicant has been informed of the construction of fibre ducting corridors as part of the current road upgrade of the R120. Private utility company’s services will be contained within these corridors along the South and Western boundaries of the disposal site. Any diversion and or access of duct corridors services on the disposal site will be a matter for the Applicant.
4. There are outbuildings and derelict dwellings located on the lands being disposed of and demolition of these buildings/dwellings are a matter for the Applicant.
5. That the Applicant must apply for full planning permission (and if requested provide an Environmental Impact Statement) for Phase I development of the site not later than 6 months following the resolution of the archaeology matters on the site.
6. That: (i) if the works (meaning site preparation and shell and core construction) have not commenced within six months of the date of final grant of planning permission for the development, or by 31st December 2019 whichever is the later, or such later date as may be agreed in writing with South Dublin County Council; or (ii) if shell and core works are not substantially completed in accordance with the final grant of planning permission within thirty (30) months from the date of commencement of such works; or (iii) such later date as may be agreed in writing with South Dublin County Council; then either party may by written notification on the other rescind the agreement for lease / contract for sale. 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 by written notification on the Council rescind the agreement for lease / contract for sale. In event of rescission on any of the foregoing grounds, any monies paid to the date thereof under 3 above shall be repaid to the Applicant without payment of interest. It is acknowledged that construction of the data centre may occur on a staged basis and provided the Applicant has commenced and completed the first phase thereof to be defined as the point at which the first data hall (which is part of the property and not the whole), external works including roads, carparks, attenuation ponds, landscaping, berming and HV Substation is completed and ready for customer use (“Phase I”) within the time frames set out in this paragraph it will be deemed to have complied with its obligations herein.
7. 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. 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.
8. 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 (including archaeological 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. Subject to any requirements arising from the Councils own investigations being their responsibility to discharge at their expense.
2. That the Applicant 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 which will allow for the operation of a network operations centre and computer data centre including the storage, assembly, installation, operation, maintenance and repair of equipment used in a networking operations and computer data centre; General office use; and other ancillary and related uses and for any other use in compliance with Legal Requirements (all of the above being individually a "Permitted Use" and collectively "Permitted Uses") and subject to the terms of the “Master Lease” (see 18 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) on the site except the buildings shown on the approved drawings and for which Planning Permission has been granted, as outlined in term no. 12. Full ‘as constructed’ drawings shall be appended to the Master Lease. A maintenance Plan for the external areas and buildings shall be submitted to the Council.
4. That as soon as works have reached eaves level in Phase I (in other words the “topping-out” phase, meaning that all foundations are in place, the structural system is erected and inspected, and the building is weather-tight with roof complete) in accordance with relevant planning permission(s) in the development on the site, and if the works have been carried out to the satisfaction of the Councils Consultant Engineers acting reasonably, 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 buildings 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 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.
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 12 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 30 day cure period 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 construction of the data centre, 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 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 (i.e. legal, engineering, architects, and other required consultants’) fees in this case.
5. That the Applicant shall pay any V.A.T., 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 Council’s Solicitors shall draft the agreements, contracts and leases substantially in the forms previously provided to the Applicant for review 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 3 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. The Applicant is asked to furnish a letter from their solicitors setting out the proper name of the intending purchaser.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.
10. No agreement enforceable at law is created or is intended to be created until an exchange of contracts has taken place.

The larger northern site being disposed of was acquired on 27 May 2004 from Richard Beattie for Grange Castle Business Park.

The smaller north western site being disposed of was also acquired from Richard Beattie - the portion of road was acquired on 1 January 1963 for roads purposes and the remaining portion was acquired on 7 November 2003 for Grange Castle Business Park.

D. McLoughlin

Chief Executive