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

**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 9th July 2018**

**H-I 7 (e)**

**GC166 - Disposal of 7.35 acres at Grange Castle Business Park to Interxion Ireland Designated Activity Company**

By way of Order DEV/66/14 dated 26th November 2014 recommended the disposal of 5.02 acres or thereabouts at Grange Castle Business Park to Interxion Ireland Limited, Unit 24 Hume Avenue, Parkwest Business Park, Dublin 12 subject to certain terms and conditions. The proposed disposal was noted at the Meeting of the Council held on the 8th December 2014. Minute No. H7b)/1214 refers.

A final grant of planning permission was granted on 9th April 2015 for the construction of a data centre, office accommodation and ancillary works with a gross floor area of 5,530 sq. metres (Planning Ref. SD15A/0034). This development was fully completed and officially opened in March 2017.

The new Companies Act 2014, which came into effect on the 1st June 2015, created a new company type, the **Designated Activity Company (DAC)**. As a result Interxion Ireland Limited now operates under the name Interxion Ireland Designated Activity Company.

An application has now been received from Interxion Ireland Designated Activity Company (the Applicant) to purchase a further area of 0.22 acres with an option to purchase a further 7.13 acres to cater for the expansion of their existing facility.

I recommend that the Council dispose of lands totalling 7.35 acres or thereabouts at Grange Castle Business Park to Interxion Ireland Designated Activity Company, Grange Castle Business Park, Nangor Road, Dublin 22 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. 0.22 acres or thereabouts by way of a 999 year lease, as shown outlined red on Drawing 02\_028D\_1033.
2. 5.87 acres or thereabouts by way of 999 year Lease on the exercising by the Applicant of the Option to purchase the Option Site 1 shown coloured yellow and outlined red on Drawing No. 02\_028D\_1033.
3. 1.26 acres or thereabouts by way of 999 year Lease on the exercising by the Applicant of the Option to purchase the Option Site 2 shown coloured orange and outlined red on Drawing No. 02\_028D\_1033. The Development potential of this site is limited to roads and services and the Applicant is aware that the site contains services owned by 3rd party service provider(s). Existing wayleaves including 24 hour access by service provider(s) cannot be affected by this disposal. It is a matter for the Applicant to agree any variance to the current wayleave arrangement with the 3rd party service provider(s).

and subject to the following terms and conditions:-

1 (a) That the lands being disposed of in the first instance comprise approximately 0.22 acres or thereabouts. The precise boundaries, particularly the northern boundary have yet to be established. A formal disposal map shall be prepared in due course by the Council for inclusion with the legal documents but in the interim a draft plan for identification purposes Drawing No ­­­­02\_028D\_1033 is annexed showing the site outlined in red.

1. The Applicant shall at no cost to the Council construct the proposed access road from points A to B as shown over the Council owned lands as identified by pink broken lines on drawing 02\_028D\_1033. Specifications for this access Road to be agreed with South Dublin County Council in advance and will be to a similar standard and specification to the existing road on the Applicants existing site.
2. The Council will retain wayleaves on the sites as follows:
3. The Council will retain a 10 metre wayleave on the northern boundary, a 5 metre wayleave along the southern, western and eastern boundaries of Option Site 1. These wayleaves will be required within the perimeter of the lands being disposed of to facilitate the existing and future servicing by the Council of this site and any other lands.
4. The Council will retain a wayleave on the entirety of Option Site 2.
5. That the consideration due to the Council shall be calculated as follows:
	* 1. The lands being disposed of in the first instance comprising of approximately 0.22 acres on the basis of the sum of €500,000 (five hundred thousand euro) per acre (the “Purchase Price”),
		2. The lands referred to as Option site 1 comprising of 5.87 acres on the basis of a sum of €500,000 (five hundred thousand euro) per acre (the “Purchase Price”)
		3. The lands referred to as Option site 2 comprising of 1.26 acres on the basis of a sum of €500,000 (five hundred thousand euro) per acre ameliorated to €250,000 (the “Purchase Price”) per acre on the basis of the scale and nature of the 3rd party wayleaves on the site which render the land currently undevelopable. Should this change the Council will receive the full consideration of €500,000 per acre plus CPI.

payable for the lands, as to the amounts described at (a), (b) and (c) below:-

(a) 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.

* 1. 80% of the Purchase Price within 15 business days of date of the Applicants 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 no. 6.
	2. 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 in term no. 11 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 Interxion Ireland Limited 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.

3 (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 the disposal of the 0.22 acre site, be prepared to grant a three year Option to the Applicant, only, to purchase the Option Site 1, measuring 5.87 acres and Option Site 2 measuring 1.26 acres shown on Drawing No. 02\_028D\_1033. The Option Fee will be payable on the anniversary of the signing of the contract referred to above and shall be calculated as illustrated in the table below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Option Fees** | **Purchase Price per acre** | **Year 1****1% per acre** | **Year 2****2% per acre** | **Year 3****3% per acre** |
| Option Site 1 5.87 acres | €500,000 | €29,350 | €58,700 | €88,050 |
| Option Site 2 1.26 acres | €250,000 | €3,150 | €6,300 | €9,450 |
| Consideration Due: |  | **€32,500** | **€65,000** | **€97,500** |

1. Should the Option be exercised in accordance with term 3 (a) above the consideration payable to the Council shall be calculated on the basis of the sum of €500,000 per acre for Option Site 1 and €250,000 per acre for Option Site 2 both linked to the CPI (Consumer Price Index) for the duration of the option period with effect from the signing of the contract for the main site. The consideration will be payable in the same manner as outlined in term no. 2.
2. The Option Fee shall be set off the consideration for the option sites provided (i) the option is exercised by the Applicant within the option period specified in term 3(a) and (ii) that all approved developments on the 0.22 acre disposal site and construction of the access road are fully completed and occupied to the satisfaction of the Council. In the event that (i) and (ii) above are not complied with the Council will retain the Option Fee, together with any interest thereon. The question of extending the Option Agreement and the terms and conditions of any such extensions shall be at the sole and absolute discretion of the Council.
3. The Option Agreement shall be strictly non-transferable 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(s) may be used only for the expansion of the Applicants facilities by a subsidiary company of the Applicant involved in a related activity.
	1. That the Applicant must apply for full planning permission (and if requested provide an Environmental Impact Statement) for the development of the 0.22 acre disposal site not later than 31st December 2018 and within 6 months on the exercising of the option to purchase the option sites or such other date as may be approved solely at the discretion of the Council. The Applicant shall forward to the Council within six months of the date of final grant of planning permission, and in any event, 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: (i) if the construction 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 such later date as may be agreed in writing with South Dublin County Council; or (ii) if shell and core construction 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 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 to 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 term no. 2 above shall be repaid to the Applicant without the payment of interest. It is acknowledged that construction of the data centre may occur on a staged basis as will be evident from the building programme described in term no.4 above, and provided the Applicant has commenced and completed the first phase thereof within the time frames set out in this paragraph it will be deemed to have complied with its obligations herein.
	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 into 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.
	4. That 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, as amended, and agrees not to exercise any right to appeal against the financial contributions. The contributions under the Scheme are payable prior to entry on to the site or as otherwise agreed by the Council. The Applicant 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 apply and shall be payable no earlier than the grant of the Master Lease.]

8. That all site investigations (including archaeological investigations), groundwork’s, 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 Applicant.

9. That the Applicant shall undertake not to use the site for any purposes other than that of carrying out the proposed development, i.e. a data centre and related facilities which contain its substantial operations and subject to the terms of the “Master Lease” (see term no. 11 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.

10. 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. 4. 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.

11. That as soon as building works have reached eaves level (in other words the “topping-out” phase of construction, 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 applicants 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 Interxion Ireland Limited’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.

* 1. 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 applicants specifically for the purposes of financing the applicants to undertake the development of the site.
	2. 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 term no. 5 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 Applicants part, including use of mediation/arbitration, or similar third-party intercession.
	3. 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 Interxion Ireland DAC 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 Applicants 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 cost 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 therefore 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 Solicitor 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 term no. 2 above, and prior to commencement of 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.

The lands being disposed of in the first instance (0.22 acres) were acquired from Thomas Beattie on 7 June 1978 for Grange Castle Business Park.

The lands at Option 1 site (5.87 acres) and Option 2 site (1.26 acres) were acquired from Alfred Beattie on 24 November 1997 for Grange Castle Business Park.

D. McLoughlin

Chief Executive