



Comhairle Cathrach
& Contae Luimnigh

Limerick City
& County Council

Stiúrthóireacht na Forbartha Fisiciúil,
Comhairle Cathrach agus Contae Luimnigh,
Ceanncheathrú Chorporáideach,
Cé na gCeannaithe,
Luimneach

Physical Development Directorate,
Limerick City and County Council,
Corporate Headquarters,
Merchants Quay,
Limerick

EIRCODE V94 EH90

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16 January, 2020.

To: The Mayor and Each Member of Limerick City and County Council

Re: Local Authority Public Lighting Energy Efficiency Project – Southern Region – Section 85 (of the Local Government Act 2001) Agreement with Cork County Council

A Chomhairleoir, a chara,

The Roads Management Office (RMO) Public Lighting (PL) Unit, a local authority shared service based in Cork County Council delivered, in 2018, a business case which considered the financial and economic viability of undertaking a major retrofit of local authority public lighting in Ireland with high efficiency LED lanterns. By taking full advantage of technological developments, the retrofit project has the capacity to deliver significant energy efficiencies and cost savings to local authorities.

The Project is deemed to be of strategic importance to local authorities to assist them in reaching their energy efficiency targets for 2030.

The project will be rolled out on a region by region basis, with Limerick being included in the first phase of the rollout. It is recommended that a regionalised Design & Build LED retrofit contract would be the most appropriate solution, as this approach maximises economies of scale while ensuring sufficient scale to support competition. Cork County Council will be the lead authority for the Southern Region, which is made up of all the local authorities in Munster, except Cork City Council and Tipperary County Council.

The project will be progressed in Limerick under a Section 85 (of the Local Government Act 2001) Agreement between Limerick City and County Council and Cork County Council. This will entail Cork County Council managing the relevant statutory procedures, procuring the necessary design, and managing the carrying out of the construction works for the project.

A Section 85 Agreement can be entered into by a local authority where, in the opinion of that local authority, any function performable by it should be performed, generally or in a particular case, by another local authority, and that other authority is able and willing so to perform the function. Then the authorities may enter into an agreement that (a) the function shall be so performed on behalf of the first-mentioned authority by the other authority, and (b) it becomes so performable by that other authority in accordance with the agreement.



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Key programme milestones are as follows:

- Tender works contract for Region 1 (South West) in Q1 2020;
- Appoint a work contractor for Region 1 (South West) in Q3 2020;
- Works Contract 2 year retrofit programme + 2 years defects period.

I therefore recommend that in order to enable Cork County Council to act as the lead local authority for the Public Lighting Energy Efficiency Project - South West Region and to be the contracting "authority, the following resolution be adopted:

"Pursuant to Section 85 of the Local Government Act 2001 as amended Limerick City & County Council hereby agrees to enter into an Agreement with Cork County Council whereby Cork County Council will carry out all of the functions of Limerick City & County Council in respect of the Public Lighting Energy Efficiency Project – South West Region with the exception of obtaining any necessary planning approvals and undertaking public consultation procedures as required under the Planning and Development Acts and Regulations.

It is hereby resolved under Section 85 of the Local Government Act 2001 as amended to enter into this Agreement with Cork County Council for the provision of the services as outlined above.

The making of an agreement by a local authority under Section 85 of the Local Government Act 2001 (as amended) is a reserved function."

I attach herewith a copy of the Section 85 Agreement for the Public Lighting Energy Efficiency Project – South West Region for your consideration.


Brian Kennedy
Director of Service

Dated this _____ day of _____ 2020

BETWEEN

CORK COUNTY COUNCIL (The Lead Authority)

One Part

AND

LIMERICK CITY AND COUNTY COUNCIL (The Client Authority)

Other Part

**AGREEMENT FOR THE CARRYING OUT OF THE LOCAL AUTHORITY
PUBLIC LIGHTING ENERGY EFFICIENCY PROJECT**

“THE LED PROJECT”

AN AGREEMENT

BETWEEN

CORK COUNTY COUNCIL having its principal offices at County Hall, Carrigrohane Road, Cork (hereinafter called “the Lead Authority”) of the One Part;

AND

LIMERICK CITY AND COUNTY COUNCIL having its principal offices at Merchant’s Quay, Limerick (hereinafter “the Client Authority”) of the Other Part.

WHEREAS

1. The Government has set a target for the public sector to improve its energy efficiency by 33% by 2020 under the National Energy Efficiency Action Plan of 2009 and the Public Sector Energy Efficiency Strategy (2017).
2. The 24 Local Authorities listed in Schedule 1 have agreed to collaborate on the Local Authority Public Lighting Energy Efficiency Project (hereinafter called “the LED Project”) to maximise energy savings; replacing existing bulbs with LED luminaires and ancillary equipment in an effective and efficient consistent manner enabling the long term proactive management of the Public Lighting asset.
3. These Local Authorities have also agreed a regionalised structure for the delivery of the LED Project comprising three regions (Southern, Eastern and North Western Regions) with three regional leads.
4. For the Southern Region the authorities listed in Schedule 2 including the Lead Authority and the Client Authority consider that, in the interests of efficiency and effectiveness, the LED Project should be completed by the Lead Authority on behalf of the other local authorities.
5. The public lighting to be improved as part of the LED Project includes public lighting within the functional areas of the Lead Authority and the Client Authority.
6. The Lead Authority should have the authority to carry out all necessary executive functions to complete the LED project including (but not limited to) the functions of a Road Authority set out in Section 13 of the 1993 Roads Act as interpreted by that Act.

THEREFORE:

Cork County Council and Limerick City and County Council (Client Authority) make this Agreement as follows.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Lead Authority and the Client Authority agree that the powers, Executive Functions of the Client Authority as a Local Authority and as a Roads Authority however arising, insofar as they relate to the implementation of the LED Project within the functional area of the Client Authority may be exercised and performed by the Lead Authority on behalf of the Client Authority in accordance with this agreement.

Commencement and Duration:

2. This Agreement will commence from the date of hereof being the date of execution by all Client Authorities of an agreement with the Lead Authority listed in Schedule 2 and operates for a period of five years from that date unless otherwise agreed by the Lead Authority and the Client Authorities therein listed.

Scope:

3. The Lead Authority shall serve such notices, administer and complete such contracts and agreements, pursue such negotiations and, generally do and perform all such matters and things as are necessary to ensure the design, procurement and construction of the LED Project.
4. Without prejudice to the generality of Clause 3 above, and for purposes of clarity, the following is agreed between the parties:
 - a. The Lead Authority shall manage any contracts including undertaking the role of Client or similar in any contractual arrangements necessary to undertake the LED Project. The Lead Authority shall also ensure that the necessary appointments are made under any safety health and welfare legislation including appointments under the Construction Regulations.
 - b. The Lead Authority may accept completion of any works completed as part of the LED Project at its sole discretion. Once the Lead Authority notifies the Client Authority in writing of the completion and acceptance of any works within the functional area of the Client Authority, the Client Authority shall assume responsibility for the completed works and its maintenance.

Performance:

5. The Lead Authority shall consult with the Client Authorities in the region prior to issuing any tender for work under the LED Project.
6. The Lead Authority will perform and generally carry out its obligations under this agreement with the skill, care, diligence, efficiency and professional conduct reasonably to be expected from a Local Authority with resources including suitably qualified and experienced staff. It will require any agents or contractors used in the delivery of the project to perform the same to an equal standard as its own staff.

7. The Client Authority for its part will assist and co-operate with any requests for information including providing available inventory information to facilitate the Project.
8. The Client Authority shall also facilitate and co-operate with the Lead Authority regarding general communications regarding the Project to local media, elected members and the public.
9. The Client Authority and Lead Authority shall nominate staff to liaise on the project and these staff shall meet at least quarterly during the duration of this Agreement.

Indemnity and Liability:

8. The Client Authority covenants with the Lead Authority to indemnify the Lead Authority from and against any actions, claims or demands arising out of the exercise by the Lead Authority of the powers functions and duties as they relate to the implementation of the LED Project within the functional area of the Client Authority.
9. The Lead Authority shall ensure that any indemnifications or insurances procured by it as part of the project with contractors or agents extend to the Client Authority.

Funding

10. Before the Lead Authority awards any contract for the LED Project the Lead Authority and Client Authority shall agree the amounts due by the Client Authority under the contract and the Client Authority shall provide a purchase order for that amount to facilitate the payment process as between the Council and the Lead Authority.
11. In the event that a variation, instruction or order arises in any contract procured by the Lead Authority that increases the cost of the project for the Client Authority the Lead Authority will inform the Client Authority of that event as soon as possible. The Client Authority shall adjust the amount of their purchase order accordingly subject to the limits of any adjustments being agreed at the time of award of the contract (see 10).
12. The Client Authority will pay amounts due for work completed as part of the LED project upon Certification by the Lead Authority nominated staff to the effect that works have been carried out in accordance with the main contract. Payment to the Lead Authority shall be within 15 days of certification and presentation of an invoice.

Cooperation:

13. Subject to such restraints as apply to them as public authorities, the Lead Authority and the Client Authority will support reciprocal co-operation in performing this Agreement and completing the LED project- for example
 - i. in implementing any change management arrangements necessary to support the project
 - ii. in dealing with relationships between personnel, contractors, agents etc.

- iii. for informed consultations;
- iv. in arranging mutually suitable timing in relation to the delivery of the Project and taking account of the other party's priorities at a given time;
- v. for orderly suspension (where necessary) and resumption of the Project;
- vi. to minimise problems and delays (irrespective of responsibility for such);

Disputes:

14. Dispute resolution shall follow the process set out in the LGMA's PMO User Guide: Delivery of the CCMA Shared Service Programme. The escalation process for dispute resolution and the rapid response mechanism to apply shall be as set out in paragraph 6.7 of the User Guide.

General

15. Reference to any statutory provision in this Agreement shall include reference to any amendment thereof and any regulations introduced on foot of thereof.

WITNESS WHEREOF the parties hereto have hereunto set their seals the day and year first herein written.

PRESENT when the seal of

Lead Authority

Was affixed hereto:

Director of Service/Approved Officer

Authenticated By:

Senior Executive Officer, Corporate Services

THE SEAL OF LIMERICK CITY AND COUNTY COUNCIL was affixed hereto by:

Director of Service/Approved Officer

Authenticated By:

Senior Executive Officer, Corporate Services

Dated this day of 2020

Between:

Cork County Council

One Part.

And

Limerick City and County Council

Other Part

**AGREEMENT FOR THE CARRYING OUT OF THE LOCAL AUTHORITY PUBLIC LIGHTING
ENERGY EFFICIENCY PROJECT**

- "THE LED PROJECT"

SCHEDULE 1 – LIST OF PARTICIPATING LOCAL AUTHORITIES

1. Carlow County Council
2. Cavan County Council
3. Clare County Council
4. Cork County Council
5. Donegal County Council
6. Galway City Council
7. Galway County Council
8. Kerry County Council
9. Kildare County Council
10. Kilkenny County Council
11. Leitrim County Council
12. Limerick City & County Council
13. Longford County Council
14. Louth County Council
15. Mayo County Council
16. Meath County Council
17. Monaghan County Council
18. Offaly County Council
19. Roscommon County Council
20. Sligo County Council
21. Tipperary County Council
22. Waterford City & County Council
23. Westmeath County Council
24. Wicklow County Council

SCHEDULE 2 – THREE REGIONS

Region	Participating Authorities
Region One – Southern	Cork County Council (Lead Authority) Clare County Council Kerry County Council Limerick City & County Council Waterford City & County Council
Region Two – Eastern	Kilkenny County Council (Lead Authority) Carlow County Council Kildare County Council Longford County Council Louth County Council Meath County Council Offaly County Council Tipperary County Council Westmeath County Council Wicklow County Council
Region Three – North West	Mayo County Council (Lead Authority) Cavan County Council Donegal County Council Galway City Council Galway County Council Leitrim County Council Monaghan County Council Roscommon County Council Sligo County Council

