

4th September 2020

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

**Re: N/M20 Cork to Limerick Road Improvement Scheme
Section 85 Agreement with Cork City Council**

A Chomhairleoir, a chara,

Limerick City and County Council is progressing the development of the N/M20 Cork to Limerick Road Improvement Scheme in partnership with Cork County Council, Cork City Council and Transport Infrastructure Ireland (TII). Improved accessibility between urban centres of population and their regions is identified as a major enabler for balanced regional development in the National Planning Framework and is a key element in the Government's Project Ireland 2040 Strategy.

The M20 Cork to Limerick Motorway Scheme had previously progressed through planning and design phases and the scheme was submitted to An Bord Pleanála in 2010 for statutory planning approval. Prior to a determination being made by An Bord Pleanála, the project was withdrawn in 2011, due to the economic downturn. In the intervening period, there have been significant changes at European and National policy level affecting the criteria which must now be applied in assessments of major infrastructural projects. These include changes to environmental legislation and design standards as well as the introduction of the Government's Public Spending Code.

In 2018, Limerick City and County Council and Cork County Council entered into an agreement pursuant to Section 85 of the Local Government Act 2001 and Section 14 of the Roads Act 1993 in relation to the Road Scheme. Following the boundary alteration between Cork City Council and Cork County Council on 31 May 2019 pursuant to the Local Government Act 2019, parts of the lands on which the Scheme is to be developed, which were previously within the functional area of Cork County Council, now lie within the functional area of Cork City Council.

To progress the project through the planning, design, statutory process and implementation stages, it is requested that Limerick City and County Council enter into a Section 85 Agreement with Cork City Council for the N/M20 Cork to Limerick Road Improvement Scheme. The lead authority for the project will be Limerick City and County Council. The Sponsoring Agency Monitoring Group for the project includes representatives from Limerick City and County Council, Cork City Council, Cork County Council, Transport Infrastructure Ireland and the appointed technical advisors (Barry Transportation, Sweco & WSP).

In this regard, it will be necessary for this Council to enter into an Agreement with Cork City Council in accordance with Section 85 of the Local Government Act 2001. The purpose of the Agreement is to give Limerick City and County Council all the powers, duties and functions of Cork City Council in relation to the N/M20 Cork to Limerick Road Improvement Scheme.

These powers, duties and functions will extend to the serving of the required notices, the entering into negotiations and agreements with affected landowners, the design, development and construction for the Scheme. This Agreement will also enable Limerick City and County Council to carry out the statutory functions of Cork City Council in connection with the preparation of the statutory documents for the Scheme and the submission to An Bord Pleanála.

There is no timeline set out in the Section 85 Agreement for the carrying out of the powers, functions and duties transferred to this Council, but the extent of the powers, functions and duties, which are to be transferred is limited to those required to develop and construct the N/M20 Cork to Limerick Road Improvement Scheme.

I attach herewith copy of Section 85 Agreement and in accordance with Section 85 of the Local Government Act 2001, it is recommended that the Council adopt the following resolution;

“That Limerick City and County Council agrees to the making of an Agreement between Limerick City and County Council and Cork City Council under Section 85 of the Local Government Act, 2001 and Section 14 of the Roads Act, 1993, in the form as presented to them for the carrying out by Limerick City and County Council of the relevant statutory procedures, procuring the necessary design work, acquiring the land and carrying out of/procuring the construction works and any other powers, functions and duties necessary for the design, construction and completion of the N/M20 Cork to Limerick Road Improvement Scheme.

The making of an Agreement by a local authority under Section 85 of the Local Government Act 2001 is a reserved function.”

This Agreement was approved by Cork City Council at its July Council meeting.

Is mise le meas



DR PAT DALY
CHIEF EXECUTIVE

Dated this _____ day of _____ 2020

BETWEEN
LIMERICK CITY AND COUNTY COUNCIL

One Part

AND
CORK CITY COUNCIL

Other Part

SECTION 85 AGREEMENT

Leahy & Partners,
Solicitors,
Park Manor,
Upper Mallow Street,
Limerick

AN AGREEMENT made the _____ day of _____ 2020

BETWEEN

LIMERICK CITY AND COUNTY COUNCIL having its principal offices at Corporate Headquarters, Merchants Quay, Limerick (hereinafter called “the Council”) of the One Part

AND

CORK CITY COUNCIL having its principal offices at City Hall, Anglesea St., Cork of the Other Part.

WHEREAS

1. The Council and Cork City Council are desirous of carrying out the relevant statutory procedures, procuring the necessary design work, acquiring the land and carrying out of the construction works for the N/M20 Cork to Limerick Road Improvement Scheme (hereinafter called “The Road Scheme”).
2. Separate parts of the lands on which The Road Scheme is to be developed lie within the functional areas of the Council, Cork County Council and Cork City Council.
3. On 9 August 2018, the Council and Cork County Council entered into an agreement pursuant to Section 85 of the Local Government Act 2001 and Section 14 of the Roads Act 1993 in relation to the Road Scheme. Following the boundary alteration between Cork City Council and Cork County Council on 31 May 2019 pursuant to the Local Government Act 2019, parts of the lands on which the Road Scheme is to be developed, which were previously within the functional area of Cork County Council, now lie within the functional area of Cork City Council.
4. Cork City Council is of the opinion that it would be more convenient that:-
 - (a) The powers, functions and duties of acquiring part of the land necessary for the development of the part of The Road Scheme situated in the functional area of Cork City Council; and
 - (b) The powers, functions and duties of procuring the detailed design, discharging the statutory procedures, procuring the necessary contractors, construction of and all other powers, functions and duties necessary for the design, construction and completion of The Road Scheme in the functional area of Cork City Council, subject to what is contained in paragraph 3 below,

which may be exercised or performed by Cork City Council, shall be exercised and performed by the Council and the Council is able and willing so to exercise and perform the said powers, functions and duties in accordance with Section 85 of the Local Government Act 2001 and Section 14 of the Roads Act 1993 and any amendment thereto.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The parties hereto have agreed to enter into this Agreement under the provisions of Section 85 of the Local Government Act, 2001 and Section 14 of the Roads Act 1993 and any amendment thereto, and Cork City Council is of the opinion that it would be more convenient that the powers, functions and duties relating to the carrying out of all the relevant statutory procedures, procuring the necessary design work and construction work and any other powers, functions and duties necessary in connection with The Road Scheme within the functional area of Cork City Council should be exercised and performed by the Council and the Council is able and willing so to exercise and perform the said powers, functions and duties.
2. The Council shall take all necessary steps to acquire the land in the functional area of Cork City Council required for the purpose of The Road Scheme.
3. The Council shall have and exercise all the powers, duties and functions of Cork City Council in relation to The Road Scheme in the functional area of Cork City Council in accordance with this Agreement.
4. The Council shall serve such notices, complete such contracts and agreements, pursue such negotiations and, generally do and perform all such matters and things as are necessary to the design, procurement and construction of The Road Scheme and in particular shall acquire, by agreement or compulsorily, any land in the functional area of Cork City Council that may be necessary for the execution, implementation and development of The Road Scheme.
5. The Council shall apply to Transport Infrastructure Ireland for an allocation for the planning, design and construction costs and land costs of The Road Scheme and this Agreement is subject to funds being made available to the Council.
6. Any land acquired in the functional area of Cork City Council shall on being so acquired be transferred into the name of Cork City Council.

7. Following construction, the Council shall accept The Road Scheme or any part thereof, once satisfied to do so and in accordance with the terms of any contract or agreement between the Council and the appointed contractor(s) or other relevant party/parties and in that event thereafter shall be the road authority (as defined in the Roads Act 1993) for such part of The Road Scheme that is within the functional area of the Council, and Cork City Council, once notified in writing by the Council that it has accepted The Road Scheme or any part thereof, shall be the road authority (as defined in the Roads Act 1993) in respect of such part of The Road Scheme that is within the functional area of Cork City Council.

Notwithstanding what is stated in this Agreement, the Council retains the right to undertake any works either by itself or its agents, in connection with the completion of The Road Scheme. This Agreement shall remain in force until such time as all matters provided for herein have been completed.

8. In the event of any dispute arising between the parties hereto as to the effect or interpretation of these presents or their respective rights or liabilities hereunder the same shall be referred to the arbitration of an Arbitrator agreed between the parties, and in default of agreement, appointed by the Minister for Housing Planning and Local Government or the successor to such position, at the date of application, and the Arbitrator so agreed or appointed shall have all the powers of an Arbitrator under the Arbitration Act 2010 and his or her decision shall be final and binding on the parties hereto.
9. Reference to any statutory provision in this Agreement shall include reference to any amendment thereof and any regulation introduced in respect of any regulation or amendment to such statutory provision.

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

PRESENT when the seal of

LIMERICK CITY AND COUNTY COUNCIL

Was affixed hereto:

Chief Executive

Authenticated By:

Senior Executive Officer, Corporate Services

Common Seal of Cork City Council

was affixed hereto and was

authenticated by:

The Chief Executive
of Cork City

Council and a
person nominated

under Section 11 (8)
of the Local

Government Act
2001 to authenticate

the Common Seal of
Cork City Council

Dated this day of 2020

Between:

LIMERICK CITY AND COUNTY COUNCIL

One Part.

And

CORK CITY COUNCIL

Other Part

SECTION 85 AGREEMENT

LEAHY & PARTNERS

SOLICITORS

PARK MANOR

UPPER MALLOW STREET

LIMERICK