

Our Ref: 0139_07_00006

9th November 2020

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

**Re: N24 Cahir to Limerick Junction Scheme
Section 85 Agreement with Tipperary County Council**

A Chomhairleoir, a chara,

Tipperary County Council is progressing the development of the N24 Cahir to Limerick Junction Scheme. The section of the existing N24 under consideration in this project, the N24 Cahir to Limerick Junction Scheme, is located between the M8 motorway, north of Cahir in Co. Tipperary and an appropriate tie-in point in County Limerick.

To progress the project through the planning, design, statutory process and implementation stages, it will be necessary for this Council to enter into an agreement with Tipperary County Council in accordance with Section 85 of the Local Government Act 2001. The purpose of the agreement is to give Tipperary County Council all the powers, duties and functions of Limerick City and County Council in relation to the N24 Cahir to Limerick Junction Scheme within the functional area of County Limerick.

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 Tipperary County Council to carry out the statutory functions of Limerick City and County 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 Tipperary County 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 N24 Cahir to Limerick Junction 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, as presented to it, under Section 85 of the Local Government Act, 2001 and Section 14 of the Roads Act, 1993, with Tipperary County Council, for the carrying out by Tipperary County Council of all the relevant statutory procedures, procuring the necessary design work, acquiring the land and carrying out of the construction work and any other powers, functions and duties necessary for the design, construction and completion of the N24 Cahir to Limerick Junction Scheme.

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

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DR PAT DALY
CHIEF EXECUTIVE

Dated this _____ day of _____ 2020

BETWEEN

TIPPERARY COUNTY COUNCIL

One Part

AND

LIMERICK CITY AND COUNTY COUNCIL

Other Part

SECTION 85 AGREEMENT

Leahy & Partners,

Solicitors,

Park Manor,

Upper Mallow Street,

Limerick

AN AGREEMENT made the _____ day of _____ 2020

BETWEEN

TIPPERARY COUNTY COUNCIL of Civic Offices, Emmet Street, Clonmel, Co. Tipperary (hereinafter called “the Council”) of the One Part

AND

LIMERICK CITY AND COUNTY COUNCIL of Corporate Headquarters, Merchants Quay, Limerick (hereinafter called “Limerick City and County Council”) of the Other Part.

WHEREAS

1. The Council and Limerick City and County Council are desirous of carrying out the appraisal and assessment of project options, procuring the necessary design work, carrying out and implementing all relevant statutory procedures, including acquiring the land and carrying out of the construction works for the N24 Cahir to Limerick Junction Scheme (hereinafter called the “**Road Scheme**”). The section of the existing N24 under consideration in this project, the Road Scheme, is located between the M8 motorway, north of Cahir in County Tipperary and an appropriate tie-in point in County Limerick.
2. Separate parts of the lands on which the Road Scheme is to be developed lie within the functional areas of both the Council and Limerick City and Council.
3. Limerick City and County 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 Limerick City and County Council and
 - (b) the powers, functions and duties of procuring the appraisal and assessment of project options, 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 any part of the Road Scheme in the functional area of

Limerick City and County Council, subject to what is contained in paragraph 3 below,

which may be exercised or performed by Limerick City and County 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.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Council shall obtain all necessary consents/approvals and authorisation for the proposed works to which this Agreement relates.
2. 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 Limerick City and County 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 for the design and construction of the Road Scheme within the functional area of Limerick City and County 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.
3. The Council shall have and exercise all the powers, functions and duties of Limerick City and County Council in relation to the Road Scheme in the functional area of Limerick City and County Council in accordance with this Agreement.
4. The Council shall take all necessary steps to acquire any land in the functional area of Limerick City and County Council required for the purpose of the Road Scheme.
5. 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 planning, appraisal, design, construction and procurement of the Road Scheme. In particular, the Council shall acquire, by agreement or compulsorily, any land in the functional area of Limerick City and County Council, and the Council, that may be necessary for the planning, execution, implementation and development of the Road Scheme.

6. Subject to and in accordance with any necessary statutory consent/approval and/or authorisation as is required, Limerick City and County Council hereby agrees to the Council exercising and performing on its behalf the powers, functions and duties of Limerick City and County Council, which are now, or may hereafter be vested in Limerick City and County Council, to the extent necessary to enable the Council to carry out the construction and completion of the Road Scheme.
7. Any land acquired in the functional area of Limerick City and County Council for the purposes of the Road Scheme shall, on being so acquired, be transferred into the name of Limerick City and County Council at no cost to Limerick City and County Council.
8. The Council shall construct and complete the Road Scheme, in consultation with Transport Infrastructure Ireland, and shall incur such costs or expenses (hereinafter collectively referred to as the "**Cost**") as it may decide is necessary for the cost of constructing and completing the Road Scheme and as may be ancillary and consequential hereto.
9. The Council shall be responsible for and shall apply to the appropriate authority for an allocation of the funds necessary to cover the Cost and this Agreement is subject to funds being made available to the Council.
10. The Cost of the construction and completion of the Road Scheme shall include the costs and expenses necessary, consequential and ancillary thereto which shall be ascertained and certified by the Director of Services, Directorate of Roads, Transportation, Infrastructure or by such other person as may be appointed by the Chief Executive of the Council.
11. The Council shall consult with and shall provide Limerick City and County Council and its officers with all information currently available to it which Limerick City and County Council may require from time to time in relation to the construction and completion of the Road Scheme.
12. 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, 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, Local Government and Heritage 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.

13. 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.

14. Following completion of construction, the Council shall accept the Road Scheme or any part thereof, once the Council is 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 Limerick City and County 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 Limerick City and County 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.

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

PRESENT when the seal of
TIPPERARY COUNTY COUNCIL

Was affixed hereto:

Chief Executive

Authenticated By:

Senior Executive Officer, Corporate Services

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

Chief Executive

Authenticated By:

Acting Senior Executive Officer, Corporate Services

Dated this day of 2020

Between:

TIPPERARY COUNTY COUNCIL

One Part.

And

LIMERICK CITY AND COUNTY COUNCIL

Other Part

SECTION 85 AGREEMENT

LEAHY & PARTNERS

SOLICITORS

PARK MANOR

UPPER MALLOW STREET

LIMERICK