



Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2021

**BETWEEN**

**KILDARE COUNTY COUNCIL**

One Part

**AND**

**SOUTH DUBLIN COUNTY COUNCIL**

Other Part

**SECTION 85 AGREEMENT**

**AN AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ 2021

**BETWEEN**

**KILDARE COUNTY COUNCIL** having its principal offices at Áras Chill Dara, Devoy Park, Naas, Co Kildare, W91 X77F (hereinafter called “the Council”) of the One Part

**AND**

**SOUTH DUBLIN COUNTY COUNCIL** having its principal offices at County Hall Tallaght, Dublin 24, D24 YNN5 of the Other Part.

**WHEREAS**

1. The Council and South Dublin 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, acquiring the land and carrying out of the construction works for the M4 Eastbound Bus Priority Measures Pilot (hereinafter called “The Project”).
2. Separate parts of the lands on which The Project is to be developed lie within the functional areas of the Council and South Dublin County Council.
3. South Dublin 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 Project situated in the functional area of South Dublin 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 The Project in the functional area of South Dublin County Council subject to what is contained in paragraph 3 below,

which may be exercised or performed by South Dublin 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 South Dublin 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, function and duties necessary for the design and construction of The Project within the functional area of South Dublin 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, duties and functions of South Dublin County Council in relation to The Project in the functional area of South Dublin County Council in accordance with this Section 85 Agreement.
4. The Council shall take all necessary steps to acquire the land in the functional area of South Dublin County Council for the purpose of The Project.
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 Project. In particular, the Council shall acquire, by agreement or compulsorily, any land in the functional area of South Dublin County Council that may be necessary for the execution, implementation and development of The Project.
6. Subject to and in accordance with any necessary statutory consent/approval and/or authorisation as is required, South Dublin County Council hereby agrees to the Council exercising and performing on its behalf the functions, powers and duties of, South Dublin County Council, which are now, or may hereafter be vested in, South Dublin County Council, to the extent necessary to enable the Council to carry out the construction and completion of The Project.
7. Any land acquired in the functional area of South Dublin County Council shall on being so acquired be transferred into the name of South Dublin County Council.
8. The Council shall construct and complete The Project, 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 Project 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 Project shall include the costs and expenses necessary, consequential and ancillary thereto which shall be ascertained and certified by the Director of Services, Directorate of Transportation or other person as may be appointed by the Chief Executive Officer of the Council.
11. The Council shall consult with and shall provide South Dublin County Council and its officers with all information currently available to it which South Dublin County Council may require from time to time in relation to the construction and completion of The Project.
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 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.
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.

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

**PRESENT** when the seal of

**KILDARE COUNTY COUNCIL** was affixed hereto:

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Chief Executive

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County Secretary/ Senior Executive Officer, Corporate Services

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Nominated Member

**PRESENT** when the seal of

**SOUTH DUBLIN COUNTY COUNCIL** was affixed hereto:

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Chief Executive

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County Secretary/ Senior Executive Officer, Corporate Services

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Nominated Member