



8th July, 2019

**TO: AN CATHAOIRLEACH
& EACH MEMBER OF KILKENNY COUNTY COUNCIL**

**Re: Section 85 Agreement Kilkenny County Council & Carlow County Councils
Proposed Flood Relief Scheme for the Community of Graiguenamanagh/Tinnahinch**

Dear Elected Member,

As you are aware in May 2018, Minister of State for the Office of Public Works & Flood Relief, Kevin 'Boxer' Moran T.D approved funding for 6no Flood Relief Schemes for Kilkenny.

Funding in the order of €9.06 million has been approved for Graiguenamanagh/Tinnahinch Scheme. The proposed Flood Relief Scheme encompasses both sides of the River Barrow in both Carlow and Kilkenny County Councils functional areas.

In order to undertake the project it is necessary for a Section 85 Agreement under the Local Government Act to be signed by both counties. It should be noted that the project is subject to planning and other related consents.

Accordingly, your approval is requested to enter the Section 85 Agreement between Kilkenny and Carlow County Councils in order to facilitate the design and construction of a Flood Relief Scheme for Graiguenamanagh/Tinnahinch. A copy of the proposed Section 85 agreement is attached for your information.

Yours Sincerely,

Mr. Tim Butler

Director of Services

AGREEMENT made this day of 2019,

BETWEEN THE COUNTY COUNCIL OF THE COUNTY OF KILKENNY (hereinafter called Kilkenny County Council) having its principal offices at County Hall, John Street, Kilkenny in the County of Kilkenny of the One Part.

AND THE COUNTY COUNCIL OF THE COUNTY OF CARLOW (hereinafter called Carlow County Council) having its principal offices at Athy Road, Carlow in the County of Carlow of the Other Part.

WHEREAS:

- (A) Kilkenny County Council is desirous to carry out flood relief works in Graiguenamanagh/Tinnahinch as described in the Schedule hereto and is hereinafter called the "The Project" in accordance with the provisions of the Planning and Development Acts 2000-2018, the Local Government Acts 2001-2016, Arterial Drainage Act, 1945 and Amendment Act, 1995, Road Act 1993 -2015 and all other Acts thereby Enabling:
- (B) The Office of Public Works has approved and funded the project to be undertaken by Kilkenny County Council and Kilkenny County Council would be best placed to implement and consent and/or approval for the project and to administer the contract.
- (C) Carlow County Council being of the opinion that, in relation to the design, construction and completion of the project, it would be more convenient if all statutory powers, functions and duties which may be exercised and performed by it to this extent were exercised and performed by Kilkenny County Council on behalf of Carlow County Council being able and willing to exercise and perform the functions, powers and duties.
- (D) The Project shall be carried out under Kilkenny County Councils powers and ongoing maintenance of the completed works will be the responsibility of both Carlow County Council and Kilkenny County Council with funding provided by the Office of Public Works subject to an agreed programme.
- (E) The parties hereto have agreed by resolution of each said Council and in accordance with the provisions of Section 85 of the Local Government Act 2001 (as amended) to enter into this agreement, as provided for by resolution.

NOW THEREFORE IT IS HERBY AGREED by and between the parties hereto as follows:

1. Kilkenny County Council shall obtain all necessary statutory consent/approval and/or authorization for the proposed works to which this Agreement relates.
2. Subject to and in accordance with any necessary statutory consent/approval and/or authorization as is required, Carlow County Council hereby agrees to Kilkenny County Council exercising and performing on its behalf the functions, powers and duties of Carlow County Council, which are now, or may hereafter be vested in Kilkenny County Council, to the extent necessary to enable Kilkenny County Council to carry out the design, construction and completion of the project.
3. Kilkenny County Council shall design, construct and complete the project, in consultation with the OPW and shall incur such costs or expenses (hereafter collectively referred to as "the cost") as it may decide is necessary for the cost of designing, construction and completing the project and as may be ancillary and consequential hereto.
4. Kilkenny County Council shall be responsible for and shall apply to the appropriate Authority for an allocation of the funds necessary to cover the cost.
5. The actual cost of the design, construction and completion of the project shall include the costs and expensed 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 be the Chief Executive Officer of Kilkenny County Council.
6. Carlow County Council shall consult with and shall provide Kilkenny County Council and its officers with all information currently available to it which Kilkenny County Council may require from time to time in relation to the design, construction and completion of the Project.
7. Kilkenny County Council shall consult with and shall provide Carlow County Council and its officers with all information currently available to it which Carlow County Council may require from time to time in relation to the design, construction and completion of the Project.
8. Carlow County Council shall co-operate fully with Kilkenny County Council in all respects and where and when necessary in relation to the exercise and performance by Kilkenny County Council of the Statutory powers, functions and duties to the extent undertaken by it under this agreement.
9. In the event of a dispute arising between the parties hereto as to the effect or interpretation of this agreement or as to the respective rights or liabilities of the parties hereto same shall be referred to and decided by Conciliators or by such other person as the said Authority may appoint and in that respect the decision of the said Authority or the person so appointed shall be final and binding on the parties hereto.

IN WITNESS whereof Kilkenny County Council and Carlow County have caused their respective Seals to be affixed hereto on the day and year first hereinbefore **WRITTEN**

PRESENT where the Corporate Seal of **COUNTY COUNCIL OF THE COUNTY OF KILKENNY** was affixed hereto:

(Nominated Member)

(Chief Executive Officer)

(County Secretary)

PRESENT where the Corporate Seal of **COUNTY COUNCIL OF THE COUNTY OF CARLOW** was affixed hereto:

(Nominated Member)

(Chief Executive Officer)

(County Secretary)

SCHEDULE HEREINBEFORE REFERRED TO

The identification, design and submission (for planning consent) of a Flood Relief Scheme, that is technically, socially, environmentally and economically acceptable, to alleviate the risk of flooding to the Community of Graigenamanagh/Tinnahinch to a determined Standard of Protection, and to procure, manage and oversee the construction of that Scheme.

