

MEMORANDUM OF AGREEMENT made the 27th day of June 2009

BETWEEN THE MINISTER FOR AGRICULTURE FISHERIES and FOOD of Agriculture House, Kildare Street, Dublin 2 in the City of Dublin, (hereinafter called "the Minister" which expression shall include his Successors or Assigns where the contract so requires or admits), of the One Part and CORK COUNTY COUNCIL of County Hall, Cork City in the County of Cork (hereinafter called "the Licensee"), of the Other Part.

WHEREAS the Licensee has applied to the Minister for a Licence to use and occupy that part of the Foreshore described in the First Schedule hereto (hereinafter called "the Scheduled Property."), for the purpose as set out in the Second Schedule hereto (hereinafter called "the Development").

AND WHEREAS the Minister, in exercise of the powers vested in him by Section 3 of the Foreshore Act, 1933, as amended by Section 2 of the Foreshore (Amendment) Act, 1992, hereby grants to the Licensee Licence to use and occupy the said Scheduled Property on the terms and conditions following:-

1. This Licence shall remain in force for the term of 35 years from 29th March 2006 except as hereinafter provided.
2. The Licensee shall comply with the Site Specific requirements stipulated by the Minister as set out in the Third Schedule hereto.
3. The Licensee shall pay to the Minister the sum of

_____ on the execution hereof (receipt of which is hereby acknowledged) and the annual sum _____ and thereafter any additional sum that may be imposed as hereinafter provided, such payments to be made on the first day of July in every year during the continuance of this Licence the first of such payments to be made on the signing hereof.

4. The Development shall be placed, maintained and constructed in accordance with the plans which have been submitted to, and approved by the Minister.
5. The Licensee shall use that part of the Scheduled Property, the subject matter of this Licence, for the purpose of said Development and for no other purpose thereof.
6. The Licensee shall, at all times during the continuance of this Licence, keep the said Development in a good and proper state of repair and condition to the satisfaction of the Minister and ensure that it will not be injurious to navigation, the adjacent lands or the public interest.
7. The Licensee shall indemnify and keep indemnified the State and the Minister, their Officers, Agents and Employees against all actions, loss, claims, damages, costs, expenses and demands, arising in any manner whatsoever in connection with the construction maintenance or use of the said Development or in the exercise of the permission hereby granted.
8. The Minister shall be at liberty at any time to terminate this Licence by giving to the Licensee three months notice in writing ending on any day, and upon determination of such notice, the Licence and permission hereby granted shall be deemed to be revoked and withdrawn without the liability for the payment of any compensation by the Minister to the Licensee.
9. The Licensee, shall, if so required by the Minister, within three months after receipt of such notice, or on determination of this Licence from any other cause, at its own expense remove the said Development to the satisfaction of the Minister, and, if the Licensee refuses or fails to do so, the Minister may cause the said Development to be removed and shall be entitled to be paid by and to recover from the Licensee as a civil debt due to the State all costs and expenses incurred by him in connection with such removal and restoration.

10. In the event of the breach, non-performance or non-observance by the Licensee of any of the conditions herein contained, the Minister may ~~forthwith~~ terminate this Licence without prior notice to the Licensee.
11. Any notice to be given by the Minister may be ~~transmitted~~ through the Post Office addressed to the Licensee at its last known address.
12. The benefit of this Licence is personal to the Licensee and not assignable and the rights given hereunder may only be exercised by the Licensee.

AND IT IS HEREBY CERTIFIED THAT:

1. For the purpose of the stamping of this Instrument that ~~this is an~~ Instrument to which the provisions of Section 53 of the Finance Act, 1999, do not apply for the reason that the entire of the Scheduled Property involved comprises Foreshore and contain no Buildings.
2. The Family Law Acts of 1976, 1981, 1989, 1995 and the Family Law (Divorce) Act, 1996, do not affect the Property.

FIRST SCHEDULE

ALL THAT AND THOSE an area of foreshore at Church Bay Strand, Baltimore Harbour in the County of Cork more particularly described and delineated in red on the map annexed hereto.

SECOND SCHEDULE

Construction of an outfall pipe from the proposed wastewater treatment plant and the construction of an overflow discharge pipe from the wastewater pumping station.

THIRD SCHEDULE

Specific Conditions

1.
 - a) The Licensee shall use that part of the foreshore, the subject matter of this Licence, for the purpose of laying, using and maintaining the aforementioned works in accordance with the plans and drawings* submitted to and approved by the Minister for Agriculture Fisheries and Food and for no other purpose whatsoever.
 - b) The Licensee may also use the adjacent foreshore but only to the extent necessary, and in compliance with condition 3 (a), for the purpose of laying and maintaining the said works and shall restore the said foreshore to its proper condition immediately after such use.

*(Drawing Numbered 2(BM)-PO1, 2(BM)-PO2, and 2(BM)-P03-01 provided by T.J. O'Connor & Associates.)

2. The Licensee shall prior to the commencement of any works on the foreshore:
 - (i) provide certification by a Chartered Engineer stating that the works have been designed in accordance with the relevant Irish or British Standard Specifications or Codes of Practice for strength, stability and durability, taking into account building regulations and safety legislation;
 - (ii) arrange for the publication of a local marine notice in a locally read newspaper giving a general description of works and approximate dates of commencement and completion;
 - (iii) consult with the local Harbour Master with respect to the safety of navigation of marine traffic in the river and comply with all instructions of the Harbour Master in relation to safety of navigation;
 - (iv) Ensure that the locations of the check valves at the outfall point are marked using a high visibility flotation mark or a high visibility pylon.
3. The Licensee shall comply with conditions (a) to (d) below, as stipulated by Heritage and Planning Division of the Department of the Environment, Heritage and Local Government. The Licensee shall comply with any instructions of the Heritage and Planning Division in relation to the implementation of these conditions.
 - a) The works area on the foreshore may extend no more than 5 metres either side of the pipeline trench. The site may only be accessed within the 10 metres foreshore works corridor.

- b) Geotextile material should be used to minimise damage to adjacent soft-sediment habitats
 - c) Material removed during the construction phase shall be used as back-fill once the works are completed
 - d) Potential contaminants shall be stored in suitable facilities to prevent introduction into the marine environment. A contingency plan shall be devised prior to commencement of works to handle any potential spillage incidents.
4. The Licensee shall ensure that archaeological monitoring is carried out during excavation/disturbance works to the foreshore, associated with the installation of the pipes. Archaeological monitoring shall be subject to the following:
- (a) The Licensee shall engage a qualified archaeologist to monitor all groundworks associated with the development. The archaeologist must be licensed under the National Monuments Acts 1930-2004.
 - (b) The monitoring should be undertaken under licence from the Department of the Environment, Heritage and Local Government and the licence application for an excavation/monitoring licence should be accompanied by a detailed method statement.
 - (c) Should archaeological material be found during the course of monitoring, the archaeologist may have work on the site stopped, pending a decision as to how best to deal with the archaeological material. The Licensee shall be advised by the Underwater Archaeology Unit of the Department of the Environment, Heritage and Local Government with regard to any necessary mitigation action (e.g. preservation in situ, dive and/or geophysical survey or excavation). The Licensee shall facilitate the archaeologist in recording any material found.
 - (d) All diving should be undertaken in accordance with the Health and Safety Authority's Safety in Industry (Diving at Work) Regulations (SI 422 of 1981). As such the Licensee engaging the necessary archaeological personnel should ensure that all dive equipment used and dive team personnel qualifications are properly certified and that the correct commercial dive insurance is in place.
5. The Licensee shall ensure that the works are carried out in accordance with applicable environmental laws.
6. The Licensee shall consult with the Area Engineer of the Department of Agriculture Fisheries and Food during all stages of the works.
7. The Licensee shall notify the Irish Coast Guard by telephone immediately in the event of any spillage or accident occurring below the high water mark of ordinary or medium tides or above the high water mark which may impact on the foreshore during the carrying out of the works, or during operations following the completion of these works.

8. The effluent discharged from the treatment plant outfall pipe shall have a maximum 5-day B.O.D. concentration of 25 mg/l and a maximum suspended solids concentration of 35 mg/l, on a 95% basis. The maximum total daily BOD load discharged from the treatment plant outfall shall be 17kg.
9. All works shall be completed within five years of the granting of this Licence.
10. The Licensee shall:
- (i) advise the British Admiralty Hydrographic Office of the location and nature of the development;
 - (ii) apply to the Commissioners of Irish Lights for sanction of new navigational aids/buoyage and/or alteration of existing navigational aids/buoyage;
11. The Licensee shall provide certification by a Chartered Engineer, within two months after completion of the said works, that the works have been completed in accordance with the drawings approved of by the Minister and with the said Standard Specifications or Codes of Practice.
12. The Licensor reserves the right to review and amend the terms of this Licence based on the results of any monitoring programme or other relevant information that becomes available.

IN WITNESS whereof the Minister has caused his seal of Office to be hereunto affixed and the Common Seal of the Licensee has been affixed hereto the day and year first above WRITTEN.

PRESENT when the Seal of)
Office of the MINISTER FOR)
AGRICULTURE, FISHERIES AND)
FOOD, was affixed and)
was authenticated by the)
signature of:)

David P. Henry)

A person authorised
under Section 15(1)
of the Ministers and
Secretaries Act, 1924,
to authenticate the
seal of the Minister.

WITNESS William Keefe)
ADDRESS 10 Dept. of Agriculture)
Kildare St, Dublin 2)
OCCUPATION Civil Servant)

