

Appointment of Standing Conciliator

(Clause 13.2 of PW-CF1 to PW-CF4 inclusive (cited version 2.0 or later))

THIS AGREEMENT is made on **BETWEEN**

1.	<i>The Employer</i>	Dublin City Council
	<i>Principal office of Employer</i>	Civic Offices, Wood Quay, Dublin 8, D08 RF3F
2.	<i>The Contractor</i>	
	<i>Registered office of Contractor</i>	

and

3.	<i>The Standing Conciliator</i>	
	<i>Address of Standing Conciliator</i>	

Whereas

A. The Employer and Contractor have entered into a contract dated (the **Contract**) for

Description of Works Dodder Greenway - Milltown Road-Dodder Walk to Dundrum Road
Active Travel Scheme

B. The Contract provides for the appointment of a Standing Conciliator in accordance with Schedule Part 1N of the Contract.

NOW IT IS HEREBY AGREED as follows:

1. The Parties shall appoint the Standing Conciliator in accordance with the Contract.
2. The Standing Conciliator accepts this appointment and undertakes to carry out the Standing Conciliator's duties in accordance with this Agreement and the terms of the Contract. The Standing Conciliator's duties are as appended to this Agreement.
3. For all purposes related to this Agreement the Employer's, Contractor's and Standing Conciliator's addresses are as follows:

3.1	<i>Employer's Address</i>	
3.2	<i>Contractor's Address</i>	
3.3	<i>Standing Conciliator's Address</i>	

TERM

4. The term of this Agreement ("Term") shall be:

Start Date: *Starting Date of the Contract or the date of this Agreement*

End Date: *The Date of Substantial Completion of the Contract*

Term advisory note 1: *The Parties and the Standing Conciliator should set the dates above with due regard to the Contract duration.*

Term advisory note 2: *The Parties and the Standing Conciliator may agree in writing to extend the term of this Agreement, on the same terms and conditions, where necessary.*

FEES

5. Subject to the provisions of this clause 5 the Employer and the Contractor shall pay the Standing Conciliator's Fixed Price Lump Sum fee, (Fees) in the manner set out in Appendix 2.
- a. Discharge of the Fees is subject to:
 - i. Compliance by the Standing Conciliator with the provisions of this Agreement
 - ii. The Standing Conciliator being in possession of a tax clearance certificate issued by the Revenue Commissioners
 - b. Payment of the amount of Fees due (less any due deduction in withholding tax) shall be made within 30 days of the Standing Conciliator furnishing a valid invoice.

Fixed Price Lump Sum Fee: Insert Fixed Price Lump Sum Fee

Fees advisory note 1: *The agreed fee is for the performance of the duties of Standing Conciliator and shall be Fixed Price Lump Sum.*

Fees advisory note 2: *Fees for conciliating a dispute, referred under Sub-clause 13.2, are not to be included in the Fixed Price Lump Sum fees for a Standing Conciliator. These are to be dealt under Clause 7 of this Agreement.*

6. As between themselves, the Contractor and the Employer shall each pay one half of amounts due to the Standing Conciliator under this Agreement. As between the Standing Conciliator and the Parties, the Employer and the Contractor are jointly and severally liable to the Standing Conciliator. If one Party pays the other's share of an amount due to the Standing Conciliator, that Party is entitled to reimbursement from the other Party.

APPOINTMENT AS CONCILIATOR

7. Under the Public Works Contract Forms PW-CF1 to PW-CF4 inclusive the Standing Conciliator shall act as conciliator for all disputes referred to conciliation under Sub-clause 13.2 of the Contract. The Parties shall pay the Standing Conciliator's fees and expenses¹ as conciliator for conciliating disputes referred to conciliation under Sub-clause 13.2 of the Contract as follows:

¹ Select the appropriate from the menu.

Insert fees and expenses for conciliator

Appointment as conciliator advisory note 1: *The agreed fees and expenses, (where required), above apply to the conciliation of disputes referred to conciliation under Sub-clause 13.2 of the Contract ("conciliator's fees").*

Appointment as conciliator advisory note 2: *The conciliator's fees may be based on hourly rates and shall not form part of the Lump Sum Fixed Price fee under this Agreement, nor shall the conciliator's fees form part of the Contract Sum.*

Appointment as conciliator advisory note 3: *The conciliator's fees shall be inserted in to Model Form MF 1.16, Appointment of Conciliator.*

8. On his/her appointment as Standing Conciliator, the Parties shall provide the Standing Conciliator with a complete set of Contract Documents. During the term of this Agreement, the Parties shall furnish the Standing Conciliator with the following:
 - a. any such amendments to the Contract Documents;
 - b. all programmes as per Sub-clause 4.9 of the Contract, all Progress Reports as per Sub-clause 4.10 of the Contract and all minutes of meetings and objections thereto as per Sub-clause 4.16 of the Contract;
 - c. any other correspondence agreed between the Parties to be circulated to the Standing Conciliator; and
 - d. any other documents required by the Standing Conciliator in the performance of his/her duties, or required under the Contract to be issued to the Standing Conciliator.
9. The Standing Conciliator shall ensure his/her availability for all site visits, meetings, hearings as necessary to perform his/her duties.
10. The Standing Conciliator shall keep up to date with the Contract, the Works and the contractual relationship between the Parties.
11. The Standing Conciliator may, on his/her own initiative or at the request of either Party, but in either case with the agreement of both Parties, informally assist the Parties in resolving any disputes.
12. The Standing Conciliator may, with the agreement of both Parties, offer views, either orally or written, and in any case without prejudice, of the likely outcomes of a dispute under consideration.
13. The Standing Conciliator may, with the agreement of both Parties, hold separate meetings with each Party to the Contract.

TERMINATION

This Agreement shall terminate on expiry of the Term.

14. This Agreement shall terminate on expiry of the Term.
15. This Agreement may be terminated immediately:
 - a. if the Standing Conciliator fails to act in accordance with this Agreement and any agreed duties appended to this Agreement;
 - b. if the Standing Conciliator is unable for whatever reason to perform his/her obligations under this Agreement for a reasonable period of time;
 - c. at any time at the joint election of the Parties.
16. The Standing Conciliator may terminate this Agreement on 60 days notice to the Parties.

17. When the Standing Conciliator ceases to be the Standing Conciliator following a termination under Clause 14, 15 or 16 of this Agreement he/she shall return to the Parties any unearned portion of any fee paid, or the Parties shall pay any outstanding amount due to the Standing Conciliator under this Agreement at the time the Standing Conciliator ceased to be the Standing Conciliator.
18. The Standing Conciliator shall return all confidential information under this Agreement within 60 days of termination.

CONFLICT OF INTEREST

19. The Standing Conciliator shall;
 - a. have no interest, financial or otherwise in the Parties or the Contract except for payment under this Agreement or the Appointment of Conciliator Agreement;
 - b. have not previously been employed as a consultant or otherwise by the Parties, except as disclosed in writing to the Parties before the signing of this Agreement.

CONFIDENTIALITY

20. The Standing Conciliator shall keep all details of the Contract, this Agreement and/or Standing Conciliator activities private and confidential and shall not publish or disclose any information pertaining to the Contract, this Agreement and/or Standing Conciliator activities without receipt of prior written consent from the Parties.

MISCELLEANOUS

21. The Standing Conciliator shall not assign, delegate or sub-contract any of his/her duties, without the agreement of the Parties to the Contract.
22. This Agreement is governed by and construed in accordance with Irish law.
23. Any dispute or claim arising out of or in connection with this Agreement shall be settled by arbitration in accordance with the arbitration rules referred to in the Contract, amended as required.

Signed for and on behalf of the Employer

Name of authorised person

Signature of authorised person

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's Address

Signed on behalf of²

Name of Contractor

Name of authorised person

Signature of authorised person

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's Address

² If the Contractor is not incorporated in Ireland, execution will be in accordance with the law of its jurisdiction of incorporation for execution in Ireland.

OR (if the Contractor is an individual)

Signed by

<i>Name of Contractor</i>	
<i>Signature of Contractor</i>	

In the presence of

<i>Name of witness</i>	
<i>Signature of witness</i>	
<i>Witness's occupation</i>	
<i>Witness's Address</i>	

OR (if the Contractor is a joint venture execution must be by each member, using the blocks below)

Joint Venture Member 1

Signed on behalf of

<i>Name of Joint Venture Member 1</i>	
<i>Signature of authorised person</i>	

In the presence of

<i>Name of witness</i>	
<i>Signature of witness</i>	
<i>Witness's occupation</i>	
<i>Witness's Address</i>	

Joint Venture Member 2

Signed on behalf of

Name of Joint Venture Member 2

Signature of authorised person

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's Address

Joint Venture Member 3

Signed on behalf of

Name of Joint Venture Member 3

Signature of authorised person

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's Address

Signed by the Standing Conciliator

Signature of Standing Conciliator

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In the presence of

Name of witness

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Signature of witness

--

Witness's occupation

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Witness's Address

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APPENDIX 1

DUTIES OF THE STANDING CONCILIATOR

Insert Duties of Standing Conciliator

Insert Duties of Standing Conciliator

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Duties advisory note 1: When completing this appendix The Parties and the Standing Conciliator should have due regard to the Contract and the Guidance Note GN 3.1.1, Dispute Resolution, of the Capital Works Management Framework available at <http://constructionprocurement.gov.ie/>.

APPENDIX 2

AGREED PAYMENT TERMS FOR FEES OF THE STANDING CONCILIATOR

Insert terms of Payment of Fees to the Standing Conciliator

Payment Terms advisory note 1: *When completing this appendix The Parties and the Standing Conciliator should have due regard to the Duties of the Standing Conciliator as agreed and inserted in Appendix 1.*