

4<sup>th</sup> September 2020

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

**Re: N21 Abbeyfeale Road Scheme  
Section 85 Agreement with Kerry County Council**

A Chomhairleoir, a chara,

Limerick City and County Council is progressing the development of the N21 Abbeyfeale Road Scheme. Most, if not all, of the lands on which the road scheme is to be developed will lie within the functional area of Limerick City and County Council. However, it is anticipated that a small portion of lands may lie within the functional area of Kerry County Council. In any case, it will be necessary to undertake surveys, investigations and assessments within the functional area of Kerry County Council.

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 Kerry County Council in accordance with Section 85 of the Local Government Act 2001. The purpose of the Agreement is to give Limerick City and County Council all the powers, duties and functions of Kerry County Council in relation to the N21 Abbeyfeale Road Scheme.

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 of the scheme. This Agreement will also enable Limerick City and County Council to carry out the statutory functions of Kerry 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 this 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 N21 Abbeyfeale Road 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;

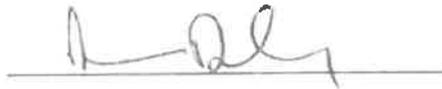
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**“That Limerick City and County Council agrees to the making of an Agreement, as presented to it, under Section 85 of the Local Government Act, 2001 and Section 14 of the Roads Act, 1993, with Kerry County Council, for the carrying out by Limerick City and County Council of the relevant statutory procedures, procuring the design work, the employment and appointment of all consultants, experts and advisors, acquiring the land and carrying out of the construction works and any other powers, functions and duties necessary for the N21 Abbeyfeale Road Scheme.**

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

**The Agreement was approved by Kerry County Council at its July Council meeting.**

**Is mise le meas**

A handwritten signature in black ink, appearing to read 'Pat Daly', is written over a horizontal line.

**DR PAT DALY  
CHIEF EXECUTIVE**

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2020

**BETWEEN**  
**LIMERICK CITY AND COUNTY COUNCIL**

One Part

**AND**  
**KERRY COUNTY COUNCIL**

Other Part

**SECTION 85 AGREEMENT**

**Leahy & Partners,**  
**Solicitors,**  
**Park Manor,**  
**Upper Mallow Street,**  
**Limerick**

**AN AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ 2020

**BETWEEN**

**LIMERICK CITY AND COUNTY COUNCIL** having its principal offices at Corporate Headquarters, Merchants Quay, Limerick (hereinafter called "the Council") of the One Part

**AND**

**KERRY COUNTY COUNCIL** having its principal offices at County Buildings, Rathass, Tralee, Co. Kerry (hereinafter called "Kerry County Council") of the Other Part.

**WHEREAS**

1. The Council and Kerry 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 N21 Abbeyfeale Road Scheme (hereinafter called "The Road Scheme"), which consists of a bypass/relief road for Abbeyfeale.
2. Most, if not all, of the lands on which The Road Scheme is to be developed lie within the functional area of the Council. However, it is anticipated that a small portion of lands on which The Road Scheme is to be developed may lie within the functional area of Kerry County Council. In either case, it will be necessary to undertake surveys, investigations and assessments within the functional area of Kerry County Council.
3. Kerry 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 Kerry County Council (if any); 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 Kerry County Council, subject to what is contained in paragraph 3 below,

which may be exercised or performed by Kerry 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 Kerry 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 Kerry 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 Kerry County Council in relation to The Road Scheme in the functional area of Kerry County Council in accordance with this Agreement.
4. The Council shall take all necessary steps to acquire any land in the functional area of Kerry 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 Kerry County Council and the Council that may be necessary for the planning, execution, implementation and development of The Road Scheme.

Subject to and in accordance with any necessary statutory consent/approval and/or authorisation as is required, Kerry County Council hereby agrees to the Council exercising and performing on its behalf the powers, functions and duties of Kerry County Council, which are now, or may hereafter be vested in Kerry County Council,

to the extent necessary to enable the Council to carry out the construction and completion of The Road Scheme.

6. Any land acquired in the functional area of Kerry County Council for the purposes of The Road Scheme shall, on being so acquired, be transferred into the name of Kerry County Council at no cost to Kerry County Council.
7. 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.
8. The Council shall be responsible for and shall apply to Transport Infrastructure Ireland for an allocation of the funds necessary to cover the Cost and this Agreement is subject to funds being made available to the Council.
9. 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 Physical Development or by such other person as may be appointed by the Chief Executive of the Council.
10. The Council shall consult with and shall provide Kerry County Council and its officers with all information currently available to it which Kerry County Council may require from time to time in relation to the construction and completion of The Road Scheme.
11. 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 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.
12. 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.

13. 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 Kerry 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 Kerry 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

**LIMERICK CITY AND COUNTY COUNCIL**

Was affixed hereto:

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**Chief Executive**

Authenticated By:

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**Acting Senior Executive Officer, Corporate Services**

**THE SEAL OF KERRY COUNTY COUNCIL**

was affixed hereto by:

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**Chief Executive**

Authenticated By:

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**Senior Executive Officer, Corporate Services**

Dated this            day of            2020

Between:

LIMERICK CITY AND COUNTY COUNCIL

One Part.

And

KERRY COUNTY COUNCIL

Other Part

SECTION 85 AGREEMENT

LEAHY & PARTNERS

SOLICITORS

PARK MANOR

UPPER MALLOW STREET

LIMERICK

