

**COST SHARING AGREEMENT BETWEEN THE COUNTY OF BUNCOMBE
AND FLETCHER PARTNERS, INC**

THIS REIMBURSEMENT AGREEMENT is made and entered into this ____ day of February, 2020, by and between the County of Buncombe, a body politic and corporate of the State of North Carolina (the "County") and Fletcher Partners, Inc., a North Carolina business corporation (herein sometimes "Fletcher Partners") related to parcel 9617-53-6128.

Enka Partners of Asheville, LLC, North Carolina limited liability company (herein sometimes "Enka Partners") related to parcel 9617-54-1005.

Enka Youth Sports Organization, Inc., a North Carolina non-profits corporation (herein sometimes EYSO") related to parcel 9617-64-3084.

WITNESSETH

WHEREAS, Fletcher Partners is a principal amongst the group of development partners that is working to develop Enka Commerce Park;

WHEREAS, in 2015 the County arranged funding and the construction of a bridge over Hominy Creek from US 19, Smokey Park Highway, and to the northern area of Enka Commerce Park;

WHEREAS, a roadway has been constructed as development occurred extending from Sand Hill Road to the area of Enka Youth Sports Organization;

WHEREAS, the County has been assisting with interested parties to complete the road infrastructure between Smokey Park Bridge and existing Jacob Holm Way lying generally along the western boundary of the Enka Youth Sports Organization ballfields (herein the "Project") for the public benefit as such roadway will benefit Enka Intermediate School, the future Enka Fire Substation, existing industrial tenants (including Haakon who considered this road as critical to their location decision) and promote further Economic Development in the area;

WHEREAS, the County has secured \$1.3M from NC Department of Transportation ("DOT") and \$2M from Appalachian Regional Commission (herein referred to as "ARC") to complete this roadway connection and the NC Department of Transportation estimates that another \$1M in funding is required;

WHEREAS, pursuant to N.C. Gen. Stat. §153A-11, the County has the authority to enter into agreements with other entities, and pursuant to N.C. Gen. Stat. §153A-449 a county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in.

NOW THEREFORE, the parties hereto, for and in consideration of the promises and covenants contained in this Cost Sharing Agreement, the County and EYSO agree as follows:

Section 1. The Recitals set forth above, along with the definitions of certain terms, are incorporated herein by reference as if fully restated.

Section 2. The parties hereto understand that after accounting for the \$1.3M from DOT and the \$2M from ARC the DOT estimates another \$1M ("Additional Costs") will be required to complete the Project. Further, it is understood that the DOT is planning to go out for bid for the entire Project costs in February 2020. The County commits to provide 65% of the Additional Costs and Fletcher Partners will provide 35%, but in no event exceed \$350,000, toward the Additional Costs.

Section 3. The parties hereto understand and agree that each must provide to DOT its portion of Additional Costs in full before the project begins, and, in any event, before March 31, 2020.

Section 4. The County will enter into a reimbursement agreement with DOT providing for the Additional Costs, and reimbursement to or for the benefit of both the County and Fletcher Partners in the event the Project comes in under budget. Said reimbursement agreement shall name Fletcher Partners as a third party beneficiary.

Section 5. Fletcher Partners shall cause any and all necessary and appropriate easements to be granted to DOT by not later than February 28, 2020. Such easements shall be prepared on a form satisfactory to DOT. Enka Partners of Asheville, LLC joins in this agreement for the purpose of acknowledging that the Project crosses a portion of its property within Enka Commerce Park and to confirm that it will grant the necessary and appropriate easement as described herein.

Section 6. The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party. The parties agree that nothing in this Agreement constitutes a waiver of sovereign/governmental immunity, and that the County's obligations in this paragraph shall be limited to the extent and manner of recovery pursuant to the County's self insured claim policies and state law.

Section 7. This agreement may only be modified by the written consent of the Parties.

Section 8. Fletcher Partners must comply with all federal, state, local laws, and ordinances.

Section 9. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms or conditions shall be effective unless made in writing and duly executed by both parties.

Section 10. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

Section 11. Time Is Of The Essence. Time is of the essence with respect to the payments, performance required of the various parties under this Agreement ends on a Saturday, Sunday or any day

on which the state courts of Buncombe County, North Carolina are closed, that time period shall be extended until the next business day.

Section 12. Counterparts and Facsimile Execution. This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute the same document. This Agreement, if executed and delivered by facsimile shall be sufficient for purposes of binding the sending party.

Section 13. Effective Date. The Effective Date of the Agreement shall be the date that the document has been fully signed by both County and Fletcher Partners.

Section 14. This Cost Sharing Agreement was approved by the Buncombe County Board of Commissioners on _____ by Resolution #: _____.

{Signature Page Follows}

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year written below.

Fletcher Partners, Inc.

By: _____

Date: _____

Attest: _____

Date: _____

Enka Partners of Asheville, LLC

By: _____

Date: _____

Attest: _____

Date: _____

County of Buncombe

By: _____

Date: _____

Brownie Newman, Chair

Attest:

Lamar Joyner, Clerk to the Board

Date: _____