

**GREENWAY EASEMENT GRANT AGREEMENT BETWEEN THE COUNTY OF BUNCOMBE
AND
Enka Water Control Corporation**

THIS GREENWAY EASEMENT GRANT 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 Enka Water Control Corporation, a North Carolina non-profit corporation (herein sometimes "Enka Water").

WITNESSETH

WHEREAS, on or about September 2, 2014, Fletcher Partners, Inc. presented plans to the County, acting by and through its duly elected Board of Commissioners ("Board"), for a proposed sports complex and a greenway on a portion of the old American Enka plant site and the Board agreed to make \$1.3M in funding available to Enka Youth Sports Organization ("EYSO") upon the following stipulations:

- The sports park be open for recreation and/or public purpose and adequate public access;
- EYSO to receive the approximately 90 acre site donation from Fletcher Partners;
- EYSO to secure \$2.4M from TDA;
- EYSO to secure \$1M from private donors;
- EYSO commits to complete greenways as depicted in the 90 acre portion of Master Plan; and
- EYSO to provide docs of environmental due diligence.

WHEREAS, County, Fletcher Partners, EYSO, Enka Partners, LLC, and Enka Water represent all of the owners of such tracts of land along Hominy Creek in the area of the old American Enka plant site in what is now called Enka Commerce Park where a draft Enka Heritage Trail diagrams [a copy of which is attached hereto and titled "Enka Heritage Trail" and sometimes referred to herein as "Exhibit A"] depict the course of a portion of the greenway. The property identified along the said Enka Heritage Trail diagram are identified on the records of the Buncombe County Tax Office as PIN #: 9617-34-9076 owned by Enka Water Control Corporation; PIN #: 9617-43-0440 owned by Enka Partners; PIN #: 9617-44-7442 owned by Fletcher Partners; PIN #: 9617-54-1005 owned by Enka Partners; PIN #: 9617-64-3084 owned by EYSO; PIN #: 9617-75-0217 owned by County; and PIN #: 9617-83-0644 owned by Fletcher Partners.

WHEREAS, since the said hearing before the Board of Commissioners, the County has invested in Enka Center development through direct infrastructure, the \$1.3M for EYSO ballfield due diligence and development, and incentive grants to industrial tenants of Enka Center in an amount in excess of \$9M.

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.

WHEREAS, on or about March 5, 2019, the County, Fletcher Partners, EYSO, and Enka Partners, LLC entered into a Greenway Easement Grant Agreement whereby Fletcher Partners, EYSO, and Enka

Partners, LLC each agreed to grant to County both temporary construction easements and permanent easements for such portions of their properties as is necessary and appropriate to accomplish the design, construction, maintenance, and repair of the greenway trail system.

WHEREAS, no binding agreement has been entered into with Enka Water regarding the proposed greenway route or its completion over its property identified above.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein and other good and valuable consideration and the sum of \$10.00 paid each to the other in hand paid, the receipt and sufficiency of which are hereby acknowledged, Enka Water agrees to convey an easement to County and County agrees to receive such easement from Enka Water over and across the property of Enka Water as referenced above on the terms and conditions set forth 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 County and Enka Water understand and agree that Enka Water is the owner of property in the general area of the Enka Heritage Trail diagram and identified on the records of the Buncombe County Tax Office as PIN #: 9617-34-9076 and being more particularly described as Parcel G on that plat recorded in Plat Book 118, Page 147 Buncombe County Registry (sometimes herein the "Property").

Section 3. Enka Water agrees that it will enter into and grant to County both temporary construction easements and permanent easements for such portions of its property as is necessary and appropriate to accomplish the design, construction, maintenance, and repair of the greenway trail system over its property as herein described. Such easement must allow sufficient room for the construction, operations, maintenance, and repair of the greenway trail system. Enka Water agrees that said easement shall be granted to County by on or before December 31, 2020.

Section 4. **Due Diligence.** Prior to December 1, 2020, County reserves the right to conduct such due diligence of the Property as it deems reasonably necessary.

Enka Water shall deliver to County within fifteen (15) calendar days after the full execution of this Agreement, true and correct copies of the following items (if same are available) (the "Due Diligence Items"):

- (a) Copies of any existing title or other insurance policies covering all or any part of the Property; and
- (b) Copies of any outstanding service contracts, lease and/or sublease agreements, utility agreements, management agreements, maintenance agreements, security agreements and other agreements relating to the Property (whether or not said agreements are cancelable, at will, or otherwise); and
- (c) Copies of any agreements entered into by Enka Water that impose use, operation or development restrictions on the Property; and
- (d) Copies of any geotechnical reports in its possession or prepared on behalf of Enka Water or any of its owners or affiliated entities, and relating to the Property; and
- (e) Copies of any environmental site assessments in possession or prepared on behalf of Enka Water or any of its owners or affiliated entities, and relating to the Property; and

- (f) Copies of any site plans and civil engineering drawings previously prepared by or on behalf of Enka Water and relating to the Property.

The County may terminate this Agreement and choose not to close and acquire easements to the Property, for any reason or no reason, at any time prior to December 1, 2020. Upon termination of this Agreement for any reason prior to Closing, the Due Diligence Items shall be returned to Enka Water. Furthermore, County and its accountants, appraisers, attorneys, and other representatives shall be afforded, at County's expense, the opportunity to review all other Due Diligence Items at any time reasonably requested by County prior to the Closing Date or the termination of this Agreement.

Section 5. **Inspection Period.** County and its agents and representatives shall have through and including December 1, 2020, to conduct such investigations and evaluations of the Property as it deems in its sole discretion to be necessary and appropriate (the "Inspection Period").

Accordingly, County, its agents or representatives, at County's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, and surveying the Property. County shall conduct all such on-site inspections, examinations, testing, and surveying of the Property in a good and workmanlike manner, at County's expense, shall repair any damage to the Property caused by County's entry and on-site inspections. To the extent permitted by applicable laws, the County assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this paragraph and agrees to indemnify and hold Enka Water harmless from any damages resulting therefrom. This indemnification obligation of County shall survive the Closing or earlier termination of this Agreement. Except as provided herein, County shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing.

Section 6. **Closing Date.** The parties agree to execute and deliver any and all documents necessary to close the grants of the temporary construction easements and permanent easements and to complete the transactions provided herein within thirty (30) days of the end of the Inspection Period, (hereinafter "Closing Date" or "Closing").

Section 7. The parties hereto agree to cause the permanent easement grants as set forth above to be open to the non-exclusive use of the public as a public greenway in perpetuity.

Section 8. The County of Buncombe is hereby self-insured for tort claims. County agrees that it will in turn enter into indemnity agreements with Enka Water holding it harmless from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, reasonable uses of said greenway in a manner consistent with Buncombe County Parks & Recreation Greenway Operating Guidelines. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity.

The County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.

Section 9. County will be responsible for Greenway expenses, including, but not limited to, site investigations, survey, engineering, construction, maintenance, and operations. Each party will be responsible for its attorneys' fees.

Section 10. The parties acknowledge and agree to work with Dominion Energy where feasible to provide easements and access for the construction of new service lines, as applicable.

Section 11. County will maintain the greenway in accordance with Buncombe County Parks & Recreation Greenway Operating Guidelines. The guidelines define acceptable and prohibited use, operating hours, staffing requirements during usage periods, maintenance requirements, etc. The guidelines must be published and effective no later than the first scheduled use of the greenway. County will maintain greenway trail in accordance with all local ordinance and requirements.

Section 12. Buncombe County Parks & Recreation will be responsible for and provide usage reports regarding greenway usage downtimes and user trends. This reporting must meet the requirements identified by the Buncombe County Tourism Development Authority ("TDA") as part of its grant process.

Section 13. County will comply with the terms and conditions of the Grant Agreement funded by the TDA as same relates to the design and construction of the greenway. County will advance the costs of such design and construction as same is required in order to comply with the TDA grant requirements for reimbursement of these expenses.

Section 14. The parties hereto acknowledge that by previous agreement EYSO shall have the right to inspect and enforce maintenance and repair obligations of the County, and upon sixty (60) days notice EYSO may conduct any necessary maintenance and repairs and County will be obligated to reimburse the reasonable costs of EYSO in taking such corrective measures. Consistent with this paragraph, County will meet with, or offer to meet with EYSO, Fletcher Partners, Enka Partners, and Enka Water representatives at least annually in order to review operation and maintenance needs of the greenway. Notwithstanding the foregoing, the parties understand that such inspections and maintenance are limited to Buncombe County Parks & Recreation Greenway Operating Guidelines.

Section 15. County and Enka Water must comply with all federal, state, local laws, and ordinances.

Section 16. This agreement is effective immediately and may only be modified by the written consent of the Parties.

Section 17. 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.

{Signature Page Follows}

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

Enka Water Control Corporation

By: _____

Date: _____

County of Buncombe

By: _____
Brownie Newman, Chair

Date: _____

Attest:

Lamar Joyner, Clerk to the Board

Date: _____