Ordinance #O-

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND CHAPTER 46 OF THE CODE OF ORDINANCES FOR THE CITY OF HENDERSONVILLE TO GRANT A FRANCHISE TO DUKE ENERGY CAROLINAS TO OPERATE WITHIN THE CITY OF HENDERSONVILLE

WHEREAS, the City of Hendersonville pursuant to Sec. 46-187 of the Code of Ordinances for the City of Hendersonville requires that electric power generation, transmission and distribution systems obtain a franchise before operating within the City limits for the City of Hendersonville; and

WHEREAS, the City of Hendersonville adopted "An Ordinance Granting A Franchise Unto Duke Power Company To Construct And Maintain Its Lines For The Transmission Of Electricity Along, Over And Under The Highways Of The City Of Hendersonville, State Of North Carolina, And To Conduct And Carry On Within Said City Of Hendersonville The Business Authorized By And Under The Terms Of The Charter Of Said Duke Power Company," effective April 7, 1977, for a term of 50 years ("Existing Franchise"); and

WHEREAS, Duke Energy Carolinas, LLC, successor to Duke Power, has requested that a new franchise by granted to replace the Existing Franchise and the City Council wish to grant such a franchise to Duke Energy; and

WHEREAS, an ordinance granting a franchise must be adopted at two regular meetings of the City Council for the City of Hendersonville;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA THAT:

SECTION 1. This Ordinance shall be known as "An Ordinance Of The City Of Hendersonville City Council To Amend Chapter 46 Of The Code Of Ordinances For The City Of Hendersonville To Grant A Franchise To Duke Energy Carolinas To Operate Within The City Of Hendersonville."

SECTION 2. That there shall be added a new Article VIII of Chapter 46 of the Code of Ordinances, City of Hendersonville, North Carolina, to read as follows:

CHAPTER 46 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE VIII. – Right of Duke Energy Carolinas, LLC, to Use and Occupy the Public Ways for the Operation of Electric Power Generation, Transmission and Distribution Systems.

Sec. 46-188. Definitions

As used in this Ordinance, the following terms, words and phrases shall have the meanings

respectively ascribed to them in this section:

"Duke Energy" shall mean Duke Energy Carolinas, LLC; a North Carolina limited liability company organized under the laws of the State of North Carolina and authorized to do business in the State of North Carolina and any assignee of or successor in interest to Duke Energy Carolinas, LLC under this franchise Ordinance.

"City" or "City of Hendersonville" shall mean the City of Hendersonville, a municipal corporation located in Henderson County, North Carolina, including its current and future boundaries; City or the City Council or any officer or agent duly authorized in acting on behalf of the City as a municipal corporation, as indicated by the context by which the term is used.

"City Council" shall mean the governing body of the City of Hendersonville, as now or hereafter constituted.

"Commission" shall mean the North Carolina Utilities Commission or any successor body lawfully constituted.

"Public Way or Ways" shall mean any public street, avenue, road, alley, lane, bridge, or other public right-of-way within the City over which the City has jurisdiction or control. The term shall exclude greenways. Public way shall also include sidewalks maintained by the City which are within North Carolina Department of Transportation owned or controlled rights of way. Any location that does not qualify as a Public Way pursuant to this definition but has facilities in place pursuant to a previous franchise agreement between the City and Duke Energy shall be deemed a Public Way under this Ordinance for so long as Duke Energy's facilities remain there.

Sec. 46-189. Nonexclusive Franchise Granted

(a) Duke Energy is hereby granted a nonexclusive franchise and right to construct, operate and maintain an electrical utilities system, including such communications infrastructure as is necessary and convenient for the electrical utility's operations as an electric utility, within the City for the generation, transmission, distribution and sale of electricity to consumers and users within the City and to the City and any and all agencies and departments thereof. Duke Energy is also given permission to do all acts necessary or helpful for the purposes enumerated hereinabove or hereinafter; and assent, and permission is hereby given and granted to Duke Energy, its successors and assigns, to conduct, carry on, exercise, do or transact including, without limitation, the power, right and privilege to use, lease, sell, convey and transmit power by electricity for manufacturing, lighting, heating, motive power or other purpose or purposes and for the doing of an electrical business generally.

(b) Duke Energy is hereby granted the right, authority, and privilege to construct and install, operate, maintain, renew, replace and repair electrical and communications facilities including but not limited to lines, cables, towers, poles, conduits, transformers, connections and services thereto, in, through, across, along and under Public Ways in the City for the generation, transmission, distribution and sale of electricity, its internal communications purposes and for any and all other

purposes authorized by this Ordinance, subject to the terms and conditions hereinafter set forth in this Ordinance, and subject to compliance with any reasonable encroachment process instituted by the City; provided, however, that nothing in this Ordinance without further approval of the City shall authorize or permit the construction of a cellular tower or similar facility within the Public Ways. In addition to the other requirements of this Section, where Duke Energy proposes to (1) install high voltage transmission lines; or (2) conduct a major infrastructure initiative, within Public Ways pursuant to this Ordinance, Duke Energy shall provide a minimum of one hundred twenty (120) days advance written notice to the City (120 days in advance of completion of construction drawings), indicating its intent to install such high voltage transmission lines, and the proposed location(s) within the City limits, for City feedback and coordination with City plans and projects.

(c) If Duke Energy is approached by a non-electric provider that would like to attach or collocate with Duke Energy on any facilities in place pursuant to this Ordinance, then Duke Energy agrees to engage in good faith negotiations with the other utility to permit the attachment or collocation pursuant to appliable law and Duke Energy's then-applicable practices.

(d) Nothing herein shall be deemed to authorize the Duke Energy to install or operate electrical facilities, poles, equipment, and appurtenances in public parks in the City limits.

(e) No Public Way used by the Duke Energy in the exercise of its authority herein to install, repair, modify and replace electrical poles, facilities, equipment and their appurtenances shall be obstructed longer than reasonably necessary, in Duke Energy's opinion, to fully exercise of its rights hereunder. Additionally, when installing new electrical poles, facilities, equipment or their appurtenances in new locations pursuant to this Ordinance, Duke Energy shall use reasonable efforts to do so in a manner that will not directly cause a violation of the American's With Disabilities Act ("ADA") or the Public Rights-of-Way Accessibility Guidelines ("PROWAG"). When replacing any existing electrical poles, facilities, equipment or their appurtenances in a location that causes a violation of the ADA or PROWAG, Duke Energy shall consider if any reasonably alternative location exists that it can relocate to at no additional cost to Duke Energy.

(f) If the City determines that it is necessary to construct, expand, widen, or improve a road or other Public Way, or to construct, expand, widen or improve a public greenway, the City may require Duke Energy to relocate its facilities that are in place on or after the date this Ordinance is passed and in conflict with such construction, expansion, widening or improvement. If the City requests such a relocation, it will provide an acceptable alternate location for Duke Energy's facilities at no cost to Duke Energy. If Duke Energy's facilities are, or were originally, located on private property, the City shall pay for the cost of relocation and shall obtain adequate rights on private property for Duke Energy to relocate to. If, however, Duke Energy's facilities were originally located within an existing Public Way pursuant to this Ordinance which is being expanded, widened, or improved, Duke Energy shall bear the expense of relocating its facilities. If Duke Energy's facilities are located within an area proposed for the construction of a new Public Way or public greenway which is being constructed by the City, the City shall pay for the cost of relocation and provide adequate rights on private property for Duke Energy to relocate to. If any street improvement project is to be funded in whole or in part by the State of North Carolina or the federal government, or an agency thereof, the City will cooperate with Duke Energy in

obtaining reimbursement for its relocation cost to the extent allowable under state and federal law. Such reimbursement, when received, shall be an offset against the cost of relocation to be paid by the City if any relocation cost is required by this Ordinance to be borne by the City. The relocation cost and reimbursement for relocation costs for facilities installed to provide electric service to the City, including street and area lighting and traffic signals wherever located, shall be determined and paid by the City in accordance with the Applicable Rate Schedules and Service Regulations of Duke Energy on file with the Commission, as the same now exist or as they or any of them may be hereafter amended, modified, changed or annulled in accordance with the laws and regulations pertaining thereto. All relocations of Duke Energy's poles, equipment, facilities and their appurtenances shall be completed in a timely manner and without undue delay. Duke Energy shall provide a general, non-binding, schedule of its work prior to beginning work. If it is reasonably feasible from both a technological and financial standpoint for the relocated Duke Energy infrastructure to be placed underground, Duke Energy shall do so if (i) the City (or another party other than Duke Energy) pays the difference between the cost of a like for like relocation and the cost to underground the facilities in the new location, and (ii) undergrounding is in line with Duke Energy's then existing policies, procedures, and filings with the Commission.

(g) Whenever Duke Energy shall cause any opening, excavation or alteration to be made in any Public Way within the City in the construction, operation or maintenance of any of its electrical and communications facilities including but not limited to lines, cables, towers, poles, conduits, transformers, connections and services owned or used by it, Duke Energy shall cause such portions of said Public Way to be replaced or repaired to the same condition or better, which it found them in as nearly as practicable. Additionally, if Duke Energy shall fail to comply with this section 2.6 within a reasonable period of time, but no less than thirty working days after notification by the City, the City may proceed to replace or repair the Public Ways as required of Duke Energy by this Section 2.6 and the City shall submit a statement of the costs to Duke Energy. Duke Energy agrees to pay the City for these costs within thirty days.

(h) From time to time, but not more than once every five years, the City may request an inventory of all known Duke Energy stub poles within the City's limits. Duke Energy agrees to provide that inventory within ninety (90) days of the City's request. Following the inventory, Duke Energy shall make reasonable efforts to remove any stub poles in the inventory which are owned by duke and wholly unoccupied.

(i) Pursuant to N.C.G.S. 160A-319(a) this franchise is granted for a term of thirty (30) years beginning on the effective date as stated hereinbelow, and ending at midnight of the 30th anniversary of the effective date, and thereafter it shall renew and continue in force on a year to year basis up to a maximum total term of sixty (60) years (including all renewals) unless terminated by either party upon ninety days written notification to the other. Notwithstanding the foregoing, in the event that the electric industry in North Carolina is deregulated or restructured by state or federal legislation or regulation, or state or federal judicial action which affects retail distribution to the extent that the inhabitants of the City may choose their electric supplier, then upon the date when such legislative, regulatory or judicial action has the force and effect of law, this franchise may be at any time thereafter terminated by either party upon ninety days written

notification to the other. This franchise supersedes any and all former rights or franchises of Duke Energy to operate an electrical utilities system in the City with respect to all acts and things done or admitted to be done, on or after its effective date.

(j) Duke Energy is hereby granted the right during the existence of this franchise to mortgage or hypothecate this franchise, together with all rights and privileges hereunder and any right or interest therein, as security for indebtedness, subject to acceptance by any legal successor in interest of the obligations, duties, liabilities, limitations and prohibitions set out herein if approved by the Commission and any other government agency whose approval is required by law. Duke Energy may not assign or transfer its rights under this franchise agreement without the express consent of the City Council and such consent shall not be unreasonably withheld; provided, however, that this provision shall not require Duke Energy to obtain permission from the City Council prior to assigning its rights hereunder to any new entity created in any corporate reorganization or merger in which Duke Energy is a party. Duke Energy shall promptly notify the City in writing of any such assignment of its rights hereunder.

(k) Duke Energy shall save the City, Mayor, City Council, and the City officers, agents, servants and employees, harmless from all loss against any and all claims, suites, actions, liability, and judgments for damages (including but not limited to costs and expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith) sustained by the City or the Mayor or the City Council, or the City officers, agents, servants or employees, on account of any suit, judgment, execution, claim, or demand whatsoever resulting or in any manner arising from any act or omission on the part of Duke Energy, its officers, agents, servants and employees in the construction, erection, operation and maintenance of its electric distribution system or the conduct of its business, including but not limited to the following: (a) direct negligence; (b) damage to private property.

(l) This franchise is subject to the constitution and laws of the State of North Carolina, and the United States, and is not a waiver of any present or future law or regulation. This franchise is not a limitation of the authority of the City to enact any ordinance or policy that does not diminish, conflict or impair the rights and authority granted to the Duke Energy in this franchise. Therefore, nothing hereunder shall be construed to exempt Duke Energy from abiding by all other applicable laws, regulations or ordinances, whether statutory or common law, in exercising its rights under the terms of this Ordinance, including but not limited to those in respect of private property rights.

(m) The rights and obligations in this Ordinance accrue exclusively to the City and Duke Energy, their successors and assigns. It is the express intent of the City and Duke Energy that this franchise shall not create any rights in third parties.

SECTION 3. If any provision of this ordinance or its application is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

SECTION 4. It is the intention of the City Council and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Hendersonville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

SECTION 5. This Ordinance shall be effective upon its adoption at two regular meetings of the City Council for the City of Hendersonville, provided however, that if the terms and conditions are not accepted in writing by Duke Energy Carolinas, LLC, within 60 days after the effective date, this Ordinance shall be null and void and of no force and effect.

Adopted by the City Council of the City of Hendersonville, North Carolina, for its first reading on this ___ day of _____, 2026.

Adopted by the City Council of the City of Hendersonville, North Carolina, for its second and final reading on this ___ day of _____, 2026, the effective date.

Attest: _____
Barbara G. Volk, Mayor

_____ _____
Jill Murray, City Clerk

Approved as to form:

_____
Angela S. Beeker, City Attorney

NORTH CAROLINA

COUNTY

This is to certify that on the day of , 2026, personally came before me , Clerk of the City, who, being by me duly sworn, says that (s)he knows the common seal of the City of Hendersonville and (s)he is acquainted with , Mayor, and that (s)he saw the Mayor sign the foregoing instrument, and that (s)he affixed the City's seal to the instrument and (s)he signed her name in attestation of the execution of this instrument in the presence of the Mayor

Witness my hand and official seal, this the day of , 2026.

Notary Public

My Commission Expires:

ACCEPTANCE OF FRANCHISE:

The conditions and stipulations of the above Ordinance are hereby accepted by Duke Energy.

ATTEST: DUKE ENERGY CAROLINAS, LLC

BY:

Assistant Secretary President

(SEAL)

NORTH CAROLINA

COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that _____personally appeared before me this day and acknowledged and she/he is _____of Duke Energy _____, _, and that by authority duly given and as the act of the Duke Energy the foregoing instrument was signed in its name by its _____, sealed with its corporate seal, and attested by her/himself as its _ _____.

Witness my hand and official seal, this the ___day of _____, 2026.

Notary Public

My Commission Expires: