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STATE OF NORTH CAROLINA

ACCESS AGREEMENT AND  
ASSIGNMENT OF EASEMENT

MECKLENBURG COUNTY

ACCESS AGREEMENT

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THIS ACCESS AGREEMENT AND ASSIGNMENT OF EASEMENT (hereinafter referred to as "Agreement"), made as of this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **TOWN OF HUNTERSVILLE**, a North Carolina municipal corporation having a mailing address of Post Office Box 664, Huntersville, North Carolina 28070 (the "Town") and **DUKE ENERGY CAROLINAS, LLC**, a North Carolina limited liability company having a mailing address of \_\_\_\_\_, 550 South Tryon Street DEC22A, Charlotte, North Carolina 282024 ("DEC").

WITNESSETH:

**WHEREAS**, pursuant to that certain Right of Way Agreement, dated February 9, 2017, by and between the Town, as Grantee, and Wilson D. Johnston, as Grantor, recorded in Book 31575, pages 50 – 55, Mecklenburg County Register of Deeds (the "ROW Agreement"), the Town has been granted a perpetual easement and right of way to enter and construct, reconstruct, replace, rebuild, enlarge, modify, remove, inspect, repair, maintain, operate and use overhead lines for the purpose of transporting electricity and for communications use over that certain property located in Mecklenburg County consisting of approximately 1.617 acres, as shown on a plat of survey entitled, "EASEMENT PLAT FOR: TOWN OF HUNTERSVILLE COMMERCE SUBSTATION TRANSMISSION ROUTE RIGHT OF WAY", dated February 25, 2015" (the "Plat"), said Plat being attached to and made a part of the ROW Agreement as Exhibit A thereto (the "Easement Property"); and

**WHEREAS**, included in the Easement Property is approximately 0.479 acres labeled on the Plat as "Proposed Duke Energy Right of Way Area in Easement" (the "Duke ROW Area"); and

**WHEREAS**, DEC lacks access to the Duke ROW Area and desires that the Town grant to DEC and easement and access across its property and the Easement Property; and

**WHEREAS**, the Town is desirous of granting DEC an easement and access to the Duke ROW Area upon the terms and conditions set forth herein.

WHEREAS, the ROW Agreement provides that the Town may assign its rights, obligations easements to another entity, and DEC desires that the Town assign a portion of its rights, obligations and easements under the ROW Agreement, and the Town desires to assign a portion of such rights, obligations and easements to DEC upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are acknowledged hereby, the Town does hereby grant, bargain, sell, and convey unto DEC, its successors and assigns, a perpetual, non-exclusive easement and right of way over and along that portion of its property and the Easement Property, located in Mecklenburg County, State of North Carolina, referred to as "PROPOSED ALL WEATHER ACCESS ROAD, TYP." on that certain preliminary construction map entitled "COMMERCE STATION SUBSTATION EROSION AND SEDIMENT CONTROL 95% CONSTRUCTION DOCUMENTS," prepared by Dewberry Engineers, Inc. attached hereto as Exhibit A and incorporated herein by reference (the "Access Easement"). The use of the Access Easement shall be subject to the following terms and conditions.

1. DEC shall be permitted to use the entire area encompassing the Access Easement (the "Access Easement Area") for ingress, egress, and regress by any normal means of transportation, including, but not limited to, trucks, automobiles, tractors, heavy equipment and trailers.
2. Neither DEC nor its agents or employees shall park in the Access Easement Area except in connection with the construction, reconstruction, replacement, rebuilding, enlargement, modification, removal, inspection, repair, maintenance, operation and use of its overhead lines and other facilities located within the Duke ROW Area, and in the case of emergencies
3. DEC shall not construct, permit the construction of or allow to remain on the Access Easement Area any structures, other improvements or other property which prevent or inhibit the use of the Access Easement Area for and by vehicular traffic.
4. DEC shall use the Access Easement Area in a manner consistent with normal standards for vehicular traffic incident to the Access Easement Area, subject to normal wear and tear being permitted.
5. DEC shall, at its sole cost and expense, promptly repair any physical damage to or alteration of the Access Easement Area which results from its, or its agents' and employees', use of the Access Easement Area
6. DEC SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN FROM ANY LOSS, INJURY, DAMAGE, CLAIM, LIEN, COST OR EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, ARISING OUT OF A BREACH OF THIS AGREEMENT BY DEC IN CONNECTION WITH ITS USE OF THE ACCESS EASEMENT AREA, OR RESULTING FROM THE ACTS OR OMISSIONS OF DEC OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE USE OF THE ACCESS EASEMENT AREA.
7. Entire Agreement. No representations or covenants of any kind other than those expressly contained herein have been made by either party hereto. This Agreement may only be modified or amended by an agreement in writing duly executed and delivered by

each of the parties hereto. This Agreement supersedes any provisions of any letter of intent between the parties.

8. Assignment. This Agreement may be assigned by either party hereto with the prior written consent of the non-assigning party, which consent will not be withheld unreasonably.

8-9. Assignment of ROW Agreement. The Town hereby assigns its rights, title and interest as Grantee under the ROW Agreement as to the Duke ROW Area, and DEC hereby assumes all of the obligations and liabilities of Assignor under the Easement as to the Duke ROW Area as fully as though DEC were the original grantee under the Easement except as otherwise provided by the Indemnification Agreement dated \_\_\_\_\_ between the Town and DEC. The Duke ROW Area is also shown on the map of survey labeled "Huntersville Delivery #3 Tap Line," Map: 104212-386316, dated 3/16/2017, attached hereto as Exhibit A and incorporated herein by this reference.

9-10. Governing Law. This Agreement shall be governed and interpreted by the laws of the State of North Carolina. Venue shall be in the State or federal courts of North Carolina. In the event of any litigation hereunder the prevailing party shall be entitled to recover reasonable attorney's fees and court costs.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Town and DEC have caused this Agreement to be executed by their duly authorized representative as of this date, month and year first written above.

**TOWN OF HUNTERSVILLE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DUKE ENERGY CAROLINAS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

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I, \_\_\_\_\_, Notary Public of the County and State aforesaid,  
certify that \_\_\_\_\_ personally appeared before me this day  
and acknowledged that he/she is \_\_\_\_\_ of TOWN OF HUNTERSVILLE and  
that by authority duly given and as the act of the TOWN, the foregoing instrument was signed in its  
name by him/her as its \_\_\_\_\_.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Please print or type name of Notary

My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, \_\_\_\_\_, Notary Public of the County and State aforesaid,  
certify that \_\_\_\_\_ personally appeared before me this day  
and acknowledged that he/she is \_\_\_\_\_ ~~of DUKE ENERGY CAROLNAS,~~  
~~LLC~~ and that by authority duly given and as the act of ~~- DUKE ENERGY CAROLNAS, LLC, a~~  
~~North Carolina~~ ~~the~~ limited liability company, the foregoing instrument was signed in its name by  
him/her ~~as its~~ \_\_\_\_\_.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Please print or type name of Notary

My commission expires: \_\_\_\_\_

Exhibit "A"

