

AN ORDINANCE GRANTING FRANCHISE TO
DUKE ENERGY CORPORATION

O-2000-002

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SUMMERFIELD,
as follows:

I. DEFINITIONS

1.1 As used in this Ordinance, the following terms, words and phrases shall have the meanings respectively ascribed to them in this section:

“Duke” shall mean Duke Energy Corporation, a corporation 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 Corporation under this franchise Ordinance.

“Town” or “Town of Summerfield” shall mean the Town of Summerfield, a municipal corporation located in Guilford County, North Carolina; the area within the territorial Town limits of the Town of Summerfield and within the extraterritorial area surrounding the Town to the extent it may be lawfully included as presently or hereafter fixed by law or ordinance; or the Town Council or any officer or agent duly authorized in acting on behalf of the Town as a municipal corporation, as indicated by the context by which the term is used;

“Town Council” shall mean the governing body of the Town of Summerfield;

“The Code of the Town of Summerfield” and “King Code” shall mean the Charter of the Town of Summerfield and the Code of Ordinances adopted by the governing Town Council of the Town of Summerfield as they exist at the time of the adoption of this ordinance and as hereafter amended;

“Rules and Regulations of the Town” shall mean the administrative policies and procedures established by the Town, but not included in the Code of the Town of Summerfield.

II. FRANCHISE GRANTED

2.1 Duke is hereby granted the right to construct, operate and maintain an electrical utilities and telecommunications system within the Town and within the extraterritorial area surrounding the Town to the extent the Town may lawfully do so for the transmission, distribution and sale of electricity and telecommunication services to consumers and users within the Town and to the Town and any and all agencies and departments thereof. Duke 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, its successors and assigns, to exercise all powers, rights and privileges which Duke under and by the terms of its charter, or otherwise is authorized, empowered or permitted 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 telecommunications and the doing of an electrical business generally.

- 2.2 Duke is hereby granted the right, authority, and privilege to construct and install, operate, maintain, renew, replace and repair telecommunications and electrical transmission lines, poles, conduits, transformers, connections and services thereto, in, through, across, along and under streets, avenues, roads, public alleys, lanes, parks, squares, and other public places and ways in the Town for the transmission, distribution and sale of electricity and telecommunication services for any and all purposes, subject to the terms and conditions hereinafter set forth in this Ordinance. If the Municipality determines that it is necessary to expand, widen, or improve a road or other public way, the Municipality may require the Company to relocate its facilities. If the Municipality requests such a relocation, it will provide an acceptable alternate location for the Company's equipment at no cost to the Company. If the Company's equipment is located on private right-of-way, the Municipality shall pay for the cost of relocation. If, however, the Company's facilities were originally located in the public right-of-way which is being changed, expanded or improved, the Company shall bear the expense of relocating its equipment. This section shall not be applicable to any street improvement project that is funded in whole or in part by the State of North Carolina.
- 2.3 Whenever Duke shall cause any opening, excavation or alteration to be made in any street, lane or public place within the Town in the construction, operation or maintenance of any of its transmission lines, poles or other appliances owned or used by it, Duke shall cause such portions of said street, lane or public place to be restored to the same condition in which it found them as nearly as practicable. Additionally, if Duke shall fail to restore the area to its approximate former condition within a reasonable period of time, but no less than thirty working days after notification by the Town, the Town shall proceed to restore such streets, lanes and public places as nearly as practicable to their original condition and the Town shall submit a statement of the costs for this restoration to Duke. Duke agrees to pay the Town for these costs within thirty days.
- 2.4 This franchise is granted for a term of thirty (30) years beginning April 1, 2000, and ending at midnight March 31, 2030. 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 Municipality

may choose their electric supplier then upon the date when such legislative, regulatory or judicial action has the force and effect of law, this Agreement 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 to operate an electrical utilities system in the Town with respect to all acts and things done or admitted to be done, on or after April 1, 2000.

2.5 Duke is hereby granted the right during the existence of this franchise to mortgage or hypothecate this franchise, together with all rights and privileges thereunder 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 and subject to approval by the North Carolina Utilities Commission or other government agency whose approval is required by law. Duke may not assign or transfer its rights under this franchise agreement without the express consent of the Summerfield Town Council and such consent shall not be unreasonably withheld, provided, however, that this provision shall not require Duke to obtain permission from the Summerfield Town Council prior to assigning its rights hereunder to any new corporation created in any corporate reorganization or merger in which Duke is a party.

III. ACCEPTANCE OF FRANCHISE

This ordinance shall take effect from the day of its passage, but only after it has been accepted in all its terms and revisions by Duke, in writing, within sixty days after its passage otherwise, the same shall be null and void and of no effect. The beginning date of Duke's obligation to pay the annual franchise tax to the Town shall be April 1, 2000.

ATTEST:

Phyllis J. Simpson
Corporate Counsel and Secretary
Assistant

(SEAL)

DUKE ENERGY CORPORATION

BY: Epel D. Fenella
Senior Vice President

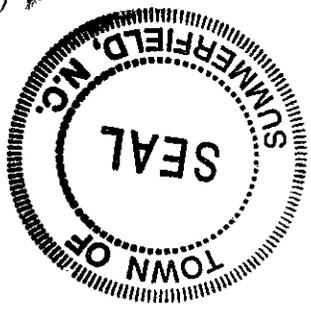
ATTEST:

Jay Aard
Town Clerk

(SEAL)

TOWN OF SUMMERFIELD

BY: John W. [Signature]
Mayor, Town of Summerfield



NORTH CAROLINA

MECKLENBURG COUNTY

I, Carol D. Scott, a Notary Public for said County and State, do hereby certify that Excell O. Fennell, Jr. personally appeared before me this day and acknowledged that she/he is Senior Vice President of Duke Energy Corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its Assistant Secretary, sealed with its corporate seal, and attested by her/himself as its Assistant Secretary.

Witness my hand and official seal, this the 15th day of August, 2000.

Carol D. Scott
Notary Public

My Commission Expires:

12/12/04

NORTH CAROLINA

GUILFORD COUNTY

This is to certify that on the 7 day of August, 2000, personally came before me LARRY HARVELL, Clerk of the Town, who, being by me duly sworn, says that she knows the common seal of the Town of Summerfield and she is acquainted with John WRAY, JR., Chairman of the Interim Council, and that (s)he saw the Chairman sign the foregoing instrument, and that she affixed the Town's seal to the instrument and she signed her name in attestation of the execution of this instrument in the presence of the Chairman of the Interim Council.

Witness my hand and official seal, this the 7 day of August, 2000.

Dawn B. Brorum
Notary Public

My Commission Expires:

12-9-2003