



WINTERVILLE

A slice of the good life!

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**TOWN COUNCIL
SPECIAL MEETING AGENDA**

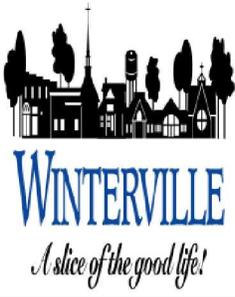
February 22, 2016

5:30 P.M.

Town Hall Executive Conference Room

- I. Call to Order.**
- II. Invocation.**
- III. Welcome.**
- IV. Approval of Agenda.**
- V. Closed Session - Closed Session: §143-318.11(a)(1) – To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or the United States, or not considered a public record within the meaning of Chapter 27-2 of the General Statutes. (Consent Agreement to Power Sales Agreement).**
- VI. Award of Contract - Charles W. Hughes Construction for Winterville Railroad Sidewalk Project.**
- VII. Adjourn.**

SPECIAL NOTICE: The meeting is open to the public; however, public comment will not be received.



Town of Winterville Town Council Agenda

Item Section: Ne

Meeting Date: February 22, 2016

Presenter: Keen Lassiter, Town Attorney and
Terri L. Parker, Town Attorney

Item to be Considered

Subject: Closed Session Item – Consent Agreement to Power Sales Agreement.

Action Requested: Council Approval

Attachments: **CONFIDENTIAL** Consent Agreement (*Redacted Copy will be made available*)

Prepared By: Terri L. Parker, Town Manager

Date: 2/18

ABSTRACT ROUTING:

TC _____

FD _____

TM tlp – 2/18/2016

Final

Supporting Documentation

Closed Session: §143-318.11(a)(1) – To prevent the disclosure of information that is privileged, confidential pursuant to the law of this State or of the United States, or not considered a public record under the meaning of Chapter 132 of the General Statutes. (Consent Agreement to Power Sales)

Terri Parker

From:

Mike Bradley <mbradley@nteenergy.com>

Sent:

Wednesday, February 17, 2016 4:24 PM

To:

Terri Parker

Cc:

sheree@summitua.com; John W. Gulliver

Subject:

Fwd: Winterville - PPA Consent for signature

Attachments:

KMEC _ Consent and Agreement - Winterville PPA Execution Copy REVISED.pdf; ATT00002.htm; Compare_4822-9684-2285v1.pdf; ATT00003.htm

Dear Terri,

This is a follow-up to the original email containing the Lenders Consent and Signature pages provided to NTE. Based on review by Sheree Brown there were a couple of modifications to the Consent in terms of updating the Block 1 and Block 2 capacity tables and adding Minimum Billing Demand equal to 0 for Winterville. For your convenience the instructions for execution and submission are provided below.

We ask that you please print and execute a copy of the attached signature page packet (which contains the correct number of original copies to be executed – three), and email a scanned, executed copy to Jonathan Nasca and Bryan Daly at Latham (jonathan.nasca@lw.com and bryan.daly@lw.com). Please include in your transmission email to Latham that the following terms are acceptable (and please CC: me on that email).

- The signature page will be released on the closing date.
- The date and other missing information may be filled in.
- Addresses and other information in the notice provision may be filled in and corrected.
- Non-material changes may be made to the document (e.g., to fix any typos, errors, dates and other information which are incidental to the date upon which the Agreement and any agreement mentioned within the document is executed). The terms of the credit agreement may be updated; headers and footers may be changed and
- Should a material revision be made to the terms of the document, such as a change in the date upon which the Agreement is agreed upon via email and the same signature page may be used with the revised document.

Please send the original signature page via messenger or overnight courier to Latham & Watkins LLP at the following address:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
Attn: Bryan Daly
Phone: (212) 906-3704

Mike

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT, dated as of _____, “Consent and Agreement”), is executed by The Town of Winterville, North Carolina (the “Party”), and NTE Carolinas, LLC, a Delaware limited liability company (the “Borrower”) for the benefit of MUFG Union Bank, N.A., as first lien collateral agent (in such capacity, together with its successors and assigns in such capacity, the “Collateral Agent”) for the Security Agreement (as defined below). Unless otherwise defined, all capitalized terms have the meaning set forth in the Contract (as defined below).

RECITALS:

WHEREAS, the Borrower is developing a natural gas-fired combined-cycle power generation facility in Cleveland County, North Carolina in the city of Kings Mountain with an expected generation capacity of approximately 470 MW (the “Project”);

WHEREAS, Third Party and the Borrower have entered into that certain Power Purchase Agreement, dated June 24, 2015 (as amended, restated, supplemented or modified from time to time in accordance with the terms hereof and thereof, the “Contract”);

WHEREAS, the Borrower, the lenders party thereto from time to time (the “Lenders”), MUFG Union Bank, N.A., as administrative agent (in such capacity, together with its successors and assigns in such capacity, the “Administrative Agent”) and the other parties thereto have entered into a Credit Agreement, dated as of _____, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), pursuant to which the Lenders and the issuing banks thereunder have made loans and other extensions of credit to the Borrower on the terms and subject to the conditions set forth therein; and

WHEREAS, pursuant to the first lien security agreement, dated _____, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), between the Borrower and the Collateral Agent, for the benefit of the First Lien Secured Parties (as defined in the Security Agreement (collectively, the “Secured Parties”), the Borrower has collaterally assigned all of its right, title and interest in, to and under, and granted a first priority security interest in, the Contract

NOW THEREFORE, Third Party hereby agrees as follows:

SECTION 1. Acknowledgment; Consent to Assignment.

Third Party consents to the pledge and assignment to the Collateral Agent of the Borrower’s right, title and interest in, to and under the Contract. In connection therewith,

the receipt of such notice to take all actions and exercise all rights of the Borrower under the Contract.

(b) Third Party will not terminate the Contract on account of any default or breach by the Borrower thereunder without prior written notice to the Collateral Agent and first to the Collateral Agent (i) not less than 30 days from the date notice of default or breach is delivered to the Collateral Agent to cure such default or breach if such default or breach is a failure to pay amounts to Third Party which are due and payable by the Borrower under the Contract or (ii) a reasonable period of time, but not more than 60 days, to cure such breach if such default or breach cannot be cured by the payment of money to Third Party. If the Collateral Agent or its designee is prohibited by any court order or bankruptcy or insolvency proceedings from curing any such non-monetary default or breach, the time period specified in (b)(ii) shall be extended by the period of such prohibition (but not to exceed 180 days).

(c) In the event the Contract is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Borrower, the Third Party will, at the option of Collateral Agent exercised within 45 days after such rejection or termination, enter into a new agreement with the Collateral Agent or its designee having terms identical to the Contract (subject to any conforming changes necessitated by the substitution of parties and other terms as the parties may mutually agree), provided that the term under such new agreement shall not be longer than the remaining balance of the term specified in the Contract.

(d) Third Party consents to the transfer of the Borrower's interest under the Contract to the Secured Parties, the Collateral Agent, or any of them or any designee or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by the Borrower in lieu of foreclosure (or other similar exercise of remedies) and agrees that upon such foreclosure, sale or conveyance, Third Party shall recognize the Secured Parties, the Collateral Agent or any designee or any of them or other purchaser or grantee as the party under the Contract (provided that such purchaser, designee or grantee shall assume the obligations of the Borrower under the Contract, including without limitation those obligations set forth in Article 10 – Credit Matters).

SECTION 2. Payment; Other Agreements; Contract Stipulations and Clarifications

Notwithstanding any provision contained in the Contract to the contrary:

(a) Third Party will pay all amounts payable by it under the Contract directly to the appropriate account specified on Exhibit A hereto, or to such other account as shall be specified from time to time by the Collateral Agent to Third Party in writing.

(b) Third Party agrees that it will not, without the prior written consent of the Collateral Agent (i) assign or otherwise transfer any of its material obligations

(d) Third Party confirms that (i) Alliance for Cooperative Energy Services Power Marketing LLC has been selected as the Load Following Service Provider, (ii) the Agreement between Alliance for Cooperative Energy Services Power Marketing LLC and Borrower dated October [___], 2015 is the Load Following Agreement and (iii) capacity to purchase electric energy from the Project and any other capacity and electric energy that is of a firm nature and is coordinated, arranged or provided by the Load Following Service Provider is a Load Following Resource, in each case in accordance with the definition of such term in the Contract.

(e) Borrower and Third Party agree that Contract is hereby amended to delete the definitions of "Hydro Capacity Credit" and "Lockhart Hydro Resource" therein and all references to "Hydro Capacity Credit," "Hydro Capacity credits," "Lockhart Power Credits" and "Lockhart Hydro Resource" shall be deemed to be deleted throughout the Contract and surrounding language interpreted consistent with the deletion of such terms.

(f) Borrower and Third Party agree that the definition of Billing Demand is hereby amended and restated to incorporate the following changes:

"Billing Demand: shall mean Buyer's Monthly Coincident Peak Demand less a Diesel Generator Capacity Credits, ~~Hydro Capacity credits,~~ and SEPA Capacity Credits subject to Seller's Capacity Obligation as described in Section 3.1 for each Billing Month during the Operating Term, ~~except as calculated in Section 5.3-~~ ~~the period prior to the Operating Term,~~ as measured in KW. Billing Demand may not be reduced by more than 5% of Buyer's average Billing Demand from the prior Contract Year as the result of Buyer's installation of any rotating fossil fuel generating resources on the load side of Buyer's Delivery Substation."

(g) Borrower and Third Party agree the definition of "Buyer's Energy Requirement" is hereby amended by deleting the second sentence of such definition.

(h) Borrower and Third Party agree that the definition of "Buyer's Block Capacity Limit" shall have the meaning as set forth in Attachment E.

(i) Borrower and Third Party agree that the definition of "Buyer's Block Capacity Limit" shall have the meaning as set forth in Attachment E.

(j) Borrower and Third Party agree that the definition of "Power Supply Package Block 1 Contract Capacity Limit" shall have the meaning as set forth in Attachment E.

(k) Borrower and Third Party agree that the definition of "Power Supply Package Block 2 Contract Capacity Limit" shall have the meaning as set forth in Attachment E.

(l) Borrower and Third Party agree the definition of Power Supply Package

(m) Third Party confirms that each of (i) the Load Following Agreement, (ii) the Natural Gas Supply Agreement and (iii) the Interconnection Agreement, each delivered to Third Party on or before the date hereof, are reasonably satisfactory to Third Party and meet the conditions set forth in Sections 2.2(b)(iii) and (iv) of the Contract.

(n) Third Party agrees that the reference to June 1, 2016 in Section 2.2(b)(iii) of the Contract is to be replaced by a reference to the date hereof and accordingly is deemed satisfied as of the date hereof.

(o) Borrower and Third Party hereby agree that the third sentence of Section 5.1 of the PPA is hereby deleted and replaced in its entirety with the following:

In the event Seller is unable to provide all or a portion of the Contract Capacity from the Combined Cycle Designated Capacity Resource, the Duct Burner Designated Capacity Resource, or the Load Following Resource, Seller shall provide that portion of the Contract Capacity not provided from the Combined Cycle Designated Capacity Resource, the Duct Burner Designated Capacity Resource, or the Load Following Resource, from an Alternate Capacity Resource or the Wholesale Purchase Resource. If Seller provides all or a portion of the Contract Capacity from an Alternate Capacity Resource or the Wholesale Purchase Resource, the cost of Contract Capacity and Contract Energy will be equivalent to the cost of Contract Capacity and Contract Energy that would have been provided by the Combined Cycle Designated Capacity Resource, the Duct Burner Designated Capacity Resource, or the Load Following Resource, as applicable and calculated in accordance with Section 5.1 or 5.2, as applicable.

(p) Borrower and Third Party agree that Section 3.1.5 of the Contract is hereby amended by adding at the end of the first sentence the following:

“Provided, however, that Buyer’s Block 1 Contract Capacity shall not exceed Buyer’s Block 1 Contract Capacity Limit as set forth in Attachment E for each Contract Year, and further provided, however, that:

(i) if, during any Contract Year, Buyer’s Block 1 Contract Capacity exceeds Buyer’s Block 1 Contract Capacity Limit and Seller has additional Block 1 Contract Capacity at the Combined Cycle Designated Capacity Resource that has not been committed to another party, or if Seller or an affiliate of Seller has developed a second natural gas-fired combined cycle electric generation facility in either North Carolina or South Carolina that can furnish additional capacity similar to Block 1 Contract Capacity from the Combined Cycle Designated Capacity Resource, Seller shall provide such additional capacity for

than the Load Following Resource, then Buyer may purchase additional capacity on either a short term or long terms basis, equal to the amount by which Buyer's Block 1 Contract Capacity exceeds Buyer's Block 1 Contract Capacity Limit from a third party resource, at Buyer's sole cost and expense. Seller shall work with Buyer to dispatch such additional resource in accordance with Economic Dispatch; and

(iii) if, during any Contract Year, the total of the Power Supply Participants' Block 1 Contract Capacity is less than the total of the Power Supply Participants' Block 1 Contract Capacity Limit, as set forth in Attachment E, then the Block 1 Contract Capacity Limit for each Power Supply Participant in the Contract Year shall not apply. If, in any Contract Year, the total of the Power Supply Participants' Block 1 Contract Capacity is greater than the total of the Power Supply Participants' Block 1 Contract Capacity Limit, then the Block 1 Contract Capacity for each Power Supply Participant whose Block 1 Contract Capacity is greater than its Block 1 Contract Capacity Limit shall be reduced on a pro rata basis, in accordance with Operating Procedures determined by the Operating Committee."

(q) Borrower and Third Party agree that Section 3.1.6 of the Contract is amended, by adding at the end of the first sentence the following:

"Provided, however, that Buyer's Block 2 Contract Capacity shall not exceed Buyer's Block 2 Contract Capacity Limit as set forth in Attachment E for each Contract Year, and further provided, however, that:

(i) if, during any Contract Year, Buyer's Block 2 Contract Capacity exceeds Buyer's Block 2 Contract Capacity Limit and Seller has additional Block 2 Contract Capacity at the Combined Cycle Designated Capacity Resource that has not been committed to another party, or if Seller or an affiliate of Seller has developed a second natural gas-fired combined cycle electric generation facility in either North Carolina or South Carolina that can furnish additional capacity similar to Block 2 Contract Capacity from the Combined Cycle Designated Capacity Resource, Buyer may purchase such additional capacity for that particular Contract Year on the same terms and conditions as Block 2 Contract Capacity as set forth in the Contract; and

(ii) if, during any Contract Year, Buyer's Block 2 Contract Capacity exceeds Buyer's Block 2 Contract Capacity Limit, and if Seller is unable to satisfy Buyer's remaining Block 2 Contract Capacity requirement from any source other than the Load Following Resource, then Buyer may purchase additional capacity

(iii) if, during any Contract Year, the total of the Power Supply Participants' Block 2 Contract Capacity is less than the total of the Power Supply Participants' Block 2 Contract Capacity Limit, as set forth in Attachment E, then the Block 2 Contract Capacity Limit for each Power Supply Participant in the Contract Year shall not apply. If, in any Contract Year, the total of the Power Supply Participants' Block 2 Contract Capacity is greater than the total of the Power Supply Participants' Block 2 Contract Capacity Limit, then the Block 2 Contract Capacity for each Power Supply Participant whose Block 2 Contract Capacity is greater than its Block 2 Contract Capacity Limit shall be reduced on a pro rata basis, in accordance with Operating Procedures determined by the Operating Committee."

(r) Borrower and Third Party agree that Section 3.2.2 is hereby amended to add the following sentence at the end of such section: "For the avoidance of doubt, in the event of an outage or unavailability of all or any portion of the Energy Resource Blocks for any Seller, Seller may provide electric energy from the Load Following Resource, the Wholesale Purchase Resource, or an Alternative Capacity Resource to satisfy Seller's Energy Obligation and, in such case, payments in respect of Capacity therefor shall be calculated in accordance with Section 5.2.3.2, and payments in respect of Energy therefor shall be calculated in accordance with Section 5.2.3.2, Section 5.2.3.3, and Section 5.2.3.4, as applicable (it being understood that all payments in respect of electric energy provided from the Load Following Resource shall be calculated in accordance with Section 5.2.3.4), and (ii) the determination of whether such energy is provided from the Load Following Resource, Wholesale Purchase Resource, or an Alternative Capacity Resource shall be made by Seller in its sole discretion."

(s) Borrower and Third Party acknowledge that the definition "Estimated Remaining Monthly Capacity Payments" is a net present value calculation using a 10% discount rate that deducts the portion of Monthly Capacity Payments attributable to the Energy Resource Blocks and Load Following and thus, certain language in Section 3.4.2(a) is duplicative of aspects of the definition. Accordingly, Borrower and Third Party hereby agree that Section 3.4.2(a) of the Contract is hereby amended and restated to incorporate the changes reflected below:

~~"(a) The net present value, using a 10% discount rate, of Buyer's Estimated Remaining Monthly Capacity Payments, less the net present value, using a 10% discount rate, of the portion of the Buyer's Estimated Remaining Monthly Capacity Payments attributable to (i) Buyer's owned capacity purchased in accordance with Section 3.4.1 and (ii) Energy Resource Block 3 - Load Following;"~~

(t) Borrower and Third Party acknowledge and agree that Borrower will not acquire RECs for Third Party pursuant to Section 4.9 of the Contract by acting as

(v) Borrower and Third Party agree that Section 5.2 of the Contract amended by replacing the reference to “Section 5.2.6” with a reference to “Section 5. first sentence of such paragraph.

(w) Borrower and Third Party agree that Section 5.3 of the Contract amended by (i) deleting the words and punctuation: “Buyer’s Minimum Billing Demand for New River Light and Power Company shall be 17,937 kW;” and (ii) amending and restating the of Buyer’s Minimum Billing Demand for New River Light and Power Company and Participants Minimum Billing Demand to reflect the revisions set forth below:

Buyer’s Minimum Billing Demand for New River Light and Power Company shall be ~~35,733~~ 31,733 kW, provided, however, that such Minimum Billing Demand for New River Light and Power Company may be reduced by up to 5,000 kW in the aggregate to reflect reductions in demand on the campus of Appalachian State University arising from renewable energy resources, demand side management, and energy efficiency programs carried out by or on behalf of Appalachian State University.

Buyer’s Minimum Billing Demand for the Town of Winterville, North Carolina shall be 0.0kW.

Total Participants Minimum Billing Demand shall equal the sum of the Buyer’s Minimum Billing Demand for (i) The City of Concord, North Carolina, (ii) Greenwood Commissioners of Public Works, (iii) The City of Kings Mountain, North Carolina, (iv) New River Power and Light Company~~Lockhart Power Company~~, and (v) The Town of Winterville, North Carolina; and;

(x) Buyer and Third Party acknowledge and agree that Section 19.19.2 amended and restated as follows:

Force Majeure and Outages: In addition to the foregoing, Seller shall use reasonable best efforts to obtain and maintain business interruption insurance including maintaining Buyer as an additional insured on policy, to cover lost revenues, damages, or other losses during Force Majeure or any other outages of the Designated Capacity Resource; provided, however, that Seller shall not be obligated to procure such insurance unless it is available on commercially reasonable terms (including but not limited to process) in the commercial insurance market. Seller upon request by Buyer shall provide evidence of its best efforts to procure such insurance.

(y) Third Party agrees that the value of any Alternative Capacity Rate of Third Party in accordance with the language set forth in item (1) below Table

(z) Borrower and Third Party agree that during the Term, Borrower shall have dispatch control of Third Party's SEPA Energy Allocations. Borrower and Third Party further agree that Third Party will have dispatch control of Third Party's existing diesel generating units located at the load side of Buyer's Delivery Substation; Third Party will receive no reduction in Billing Demand with respect to such existing diesel generator units in addition to the Diesel Generator Capacity Credit; and Third Party is not required to operate Third Party's existing diesel generating units to receive the Diesel Generator Capacity Credit. Third Party will have dispatch control of any Third Party rotating fossil fuel generating resources as referenced in the definition of Billing Demand, and such Third Party rotating fossil fuel generating resources shall be operating at the time of Buyer's Monthly Coincident Peak in order for Third Party to receive a reduction in Billing Demand, pursuant to the definition of Billing Demand. Third Party shall be responsible for all costs associated with the ownership and operation of Third Party's existing diesel generating units, SEPA Energy Allocations, and rotating fossil fuel generating resources.

(aa) Borrower and Third Party agree that the Contract is hereby amended to include a new Attachment E at the end of the Contract as follows:

**Attachment E:
Buyer's Block 1 Contract Capacity Limits and
Buyer's Block 2 Contract Capacity Limits**

Pursuant to Section 3.1.5 and Section 3.1.6, the amount of Buyer's Block 1 Contract Capacity and Buyer's Block 2 Contract Capacity will not exceed the amounts shown below for each applicable Contract Year.

		Power Supply Participants - Buyer's Block 1 Contract Capacity Limit (MW)					Total Power Supply Participants' Block 1 Contract Capacity Limit	Additional Power Supply Participants - Buyer's Block 1 Contract Capacity Limit (MW)				Total Additional Power Supply Participants' Block 1 Contract Capacity Limit
From	To	Concord	Greenwood	Kings Mountain	New River	Winterville	Total	Black Creek	Lucama	Sharpsburg	Stantonsburg	Total
1/1/2018	12/31/2018	0	0	0	0	9.455	9.455	2.235	3.579	3.286	3.731	12.831
1/1/2019	12/31/2019	146.513	51.014	26.411	0	9.653	233.591	2.246	3.596	3.302	3.75	12.895
1/1/2020	12/31/2020	150.03	51.83	26.879	0	9.866	238.605	2.258	3.615	3.319	3.769	12.96
1/1/2021	12/31/2021	153.63	52.711	27.357	0	10.093	243.791	2.269	3.632	3.335	3.787	13.024
1/1/2022	12/31/2022	157.318	53.607	27.844	37.711	10.325	286.805	2.28	3.651	3.352	3.807	13.09
1/1/2023	12/31/2023	161.093	54.518	28.341	38.39	10.562	292.904	2.292	3.669	3.369	3.825	13.155
1/1/2024	12/31/2024	164.959	55.391	28.848	39.081	10.805	299.084	2.303	3.687	3.386	3.845	13.221
1/1/2025	12/31/2025	169.083	56.277	29.365	39.745	11.064	305.534	2.315	3.706	3.403	3.864	13.287
1/1/2026	12/31/2026	173.311	57.121	29.918	40.421	11.33	312.101	2.326	3.724	3.42	3.883	13.353
1/1/2027	12/31/2027	177.643	57.978	30.484	41.067	11.602	318.774	2.338	3.743	3.437	3.903	13.42
1/1/2028	12/31/2028	182.084	58.847	31.061	41.683	11.88	325.555	2.349	3.762	3.454	3.922	13.487
1/1/2029	12/31/2029	186.819	59.73	31.65	42.309	12.177	332.685	2.361	3.78	3.471	3.942	13.555

		Power Supply Participants - Buyer's Block 2 Contract Capacity Limit (MW)					Total Power Supply Participants' Block 2 Contract Capacity Limit	Additional Power Supply Participants - Buyer's Block 2 Contract Capacity Limit (MW)					Total Additional Power Supply Participants' Block 2 Contract Capacity Limit
From	To	Concord	Greenwood	Kings Mountain	New River	Winterville	Total	Black Creek	Lucama	Sharpsburg	Stantonsburg	Total	
1/1/2018	12/31/2018	0	0	0	0	1.513	1.513	0.358	0.573	0.526	0.597	2.053	
1/1/2019	12/31/2019	23.442	8.162	3.746	0	1.544	36.895	0.359	0.575	0.528	0.6	2.063	
1/1/2020	12/31/2020	24.005	8.293	3.821	0	1.579	37.697	0.361	0.578	0.531	0.603	2.074	
1/1/2021	12/31/2021	24.581	8.434	3.897	0	1.615	38.526	0.363	0.581	0.534	0.606	2.084	
1/1/2022	12/31/2022	25.171	8.577	3.975	6.034	1.652	45.409	0.365	0.584	0.536	0.609	2.094	
1/1/2023	12/31/2023	25.775	8.723	4.055	6.142	1.69	46.385	0.367	0.587	0.539	0.612	2.105	
1/1/2024	12/31/2024	26.393	8.863	4.136	6.253	1.729	47.374	0.368	0.59	0.542	0.615	2.115	
1/1/2025	12/31/2025	27.053	9.004	4.218	6.359	1.77	48.405	0.37	0.593	0.544	0.618	2.126	
1/1/2026	12/31/2026	27.73	9.139	4.307	6.467	1.813	49.456	0.372	0.596	0.547	0.621	2.137	
1/1/2027	12/31/2027	28.423	9.276	4.397	6.571	1.856	50.523	0.374	0.599	0.55	0.624	2.147	
1/1/2028	12/31/2028	29.133	9.416	4.49	6.669	1.901	51.609	0.376	0.602	0.553	0.628	2.158	
1/1/2029	12/31/2029	29.891	9.557	4.584	6.769	1.948	52.75	0.378	0.605	0.555	0.631	2.169	
1/1/2030	12/31/2030	30.668	9.7	4.685	6.864	1.997	53.915	0.38	0.608	0.558	0.634	2.18	
1/1/2031	12/31/2031	31.496	9.846	4.788	6.96	2.049	55.139	0.381	0.611	0.561	0.637	2.19	
1/1/2032	12/31/2032	32.347	9.993	4.898	7.051	2.102	56.391	0.383	0.614	0.564	0.64	2.201	
1/1/2033	12/31/2033	33.252	10.143	5.011	7.142	2.159	57.708	0.385	0.617	0.566	0.643	2.212	
1/1/2034	12/31/2034	34.117	10.285	5.126	7.235	2.213	58.976	0.387	0.62	0.57	0.647	2.224	
1/1/2035	12/31/2035	34.936	10.45	5.228	7.351	2.268	60.228	0.389	0.623	0.572	0.65	2.235	
1/1/2036	12/31/2036	35.774	10.617	5.333	7.469	2.325	61.466	0.391	0.626	0.575	0.653	2.246	
1/1/2037	12/31/2037	36.633	10.787	5.44	7.588	2.383	62.831	0.393	0.629	0.578	0.656	2.257	
1/1/2038	12/31/2038	37.512	10.96	5.548	7.702	2.443	64.164	0.395	0.633	0.581	0.66	2.268	

SECTION 3. Representations and Warranties

Third Party makes the following representations and warranties to Collateral Agent:

(a) Third Party is duly organized and validly existing under the laws of the State of North Carolina, and has all requisite power and authority, consistent with its constituent documents and otherwise, to enter into and to perform its obligations hereunder and under the Contract.

(b) The execution, delivery and performance by Third Party of the Contract and the Consent and Agreement have been duly authorized by all necessary action on the part of Third Party.

(c) Each of this Consent and Agreement and the Contract is in full force and effect, and has been duly executed and delivered on behalf of Third Party by the appropriate officers of Third Party, and constitutes the legal, valid and binding obligation of Third Party, enforceable against Third Party in accordance with its terms, except as the enforceability thereof may be limited by applicable law.

complied with all conditions precedent (including those set forth in Section 2.2 of the to the respective obligations of such party to perform under the Contract. To the best of the Party's knowledge, no event or condition exists which would either immediately or upon the passage of any applicable grace period or giving of notice, or both, enable Third Party Borrower to cancel or suspend its obligations under the Contract.

(e) Third Party has no notice of, and has not consented to, any previous assignment by the Borrower of all or any part of its rights under the Contract.

(f) Third Party has not exercised, or given Borrower any notice of its exercise, its option to purchase equity interests in Borrower pursuant to Section 2.3 of the Contract.

SECTION 4. Notices

All notices required or permitted hereunder shall be in writing and shall be delivered (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by telephone, (c) by e-mail and (d) if otherwise delivered, upon the earlier of receipt or two business days after being sent registered or certified mail, return receipt requested, with proper postage thereon, or by private courier or delivery service with charges prepaid, and addressed as follows:

If to Third Party:

The Town of Winterville, North Carolina
Electric Utilities
2571 Railroad Street
Winterville, NC 28590
Attn: Terri Parker
Tel: (252) 215-2340
E-Mail: terri.parker@wintervillenc.com
Fax: (252) 215-2451

If to Collateral Agent:

MUFG Union Bank, N.A.
1251 Avenue of the Americas
New York, NY 10020
Attn: Corporate Trust Department c/o Account Administration
Tel: (646) 452-4783
E-Mail: AccountAdministration-Corporate.Trust@unionbank.com

If to Borrower:

NTE Carolinas, LLC
24 Cathedral Place, Suite 303
St. Augustine, FL 32084
Attn: Mark Mirabito
Tel: 904-436-6898
E-Mail: mmirabito@nteenergy.com
Fax: 866-861- 3220

SECTION 5. Assignment, Termination, Amendment and Governing Law

This Consent and Agreement shall be binding upon and benefit the successors and permitted assigns of Third Party, the Borrower and the Collateral Agent, for the benefit of the Secured Parties. The Collateral Agent may assign its rights and obligations hereunder to a lender, collateral agent and/or other entity that purchases, refinances, replaces or supplies all or any portion of any indebtedness under the Credit Agreement and (b) any replacement collateral agent for the Secured Parties. Any purported assignment or transfer of the Credit Agreement in conjunction with the foregoing shall be null and void. No amendment, modification or waiver of any provisions of this Consent and Agreement shall be effective unless in writing and signed by Third Party, the Collateral Agent and the Borrower.

This Consent and Agreement and the rights and duties of the parties hereunder shall be governed by and performed in accordance with the laws of the State of North Carolina, except in regard to principles of conflicts of law.

SECTION 6. Waiver of Jury Trial

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THIRD PARTY, THE BORROWER AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT AND AGREEMENT IN ANY MATTER ARISING HEREUNDER.

SECTION 7. Counterparts

This Consent and Agreement may be executed in any number of counterparts by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

SECTION 8. Severability

SECTION 9. Entire Agreement

This Consent and Agreement and any agreement, document or instrument attached or referred to herein integrate all the terms and conditions mentioned herein or incidentally and supersede all oral negotiations and prior writings in respect of the subject matter. In the event of any conflict between the terms, conditions and provisions of this Consent and Agreement and the Contract, the terms, conditions and provisions of this Consent and Agreement shall prevail.

SECTION 10. Headings

The headings of the several sections and subsections of this Consent and Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent and Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the year first above written.

THE TOWN OF WINTERVILLE, NORTH
CAROLINA

By: _____
Name:
Title:

MUFG UNION BANK, N.A.,
as Collateral Agent

By: _____
Name:
Title:

NTE CAROLINAS, LLC

By: _____

Name:

Title:

Payment Instructions

Until the Term Conversion Date (such date to be notified by the Collateral Agent to the Party):

Pay To: MUFG Union Bank, N.A.

ABA Number: 122000496

Account Number: 6712158301

Account Name: Construction Account, or such other account as directed in writing by the Collateral Agent.

Reference: NTE Carolinas Construction Account, Attention: CTNY2@unionbank.com

After the Term Conversion Date (such date to be notified by the Collateral Agent to the Party):

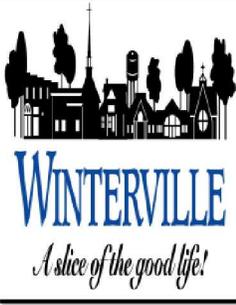
Pay To: MUFG Union Bank, N.A.

ABA Number: 122000496

Account Number: 6712158302

Account Name: Revenue Account, or such other account as directed in writing by the Collateral Agent.

Reference: NTE Carolinas Revenue Account, Attention: CTNY2@unionbank.com



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: Ne

Meeting Date: February 18, 2016

Presenter: Travis Welborn, Public Works
Director

Item to be Considered

Subject: Approval of Contract with Charles W. Hughes Construction for Downtown Sidewalks

Action Requested: Approve Contract in the amount of \$49,475.00

Attachments: Certified Bid Tab

Prepared By: Travis Welborn, Public Works Director

Date: 2/15

ABSTRACT ROUTING:

TC _____

FD _____

TM tlp – 2/18/2016

Final

Supporting Documentation

A bid opening was held on February 11 for the Downtown Sidewalks project from Main St. to D west side of Railroad Street. There were four (4) bids received, the lowest being from Charles Construction in the amount of \$49,475.00. Public Works staff recommends approval of the co

TOWN OF WINTERVILLE
RAILROAD ST. SIDEWALK IMPROVEMENTS
TWC PROJECT NO. 2853-Z

THE W
ENGINEERING
301 WIND
252

RE-BID DATE AND TIME: February 11, 2016 at 2:00 p.m.

	CONTRACTORS	LIC. NO.	CLASS	BID BOND	DBE Aff. A or B	TOTAL BID	
1	Charles W. Hughes Construction, LLC La Grange, NC	74643	U/ B/H/PU	5%	B	\$49,475.00	
2	Lanier Construction Co., Inc. Snow Hill, NC	18152	U/ B/H/PU	5%	A	\$50,560.00	S
3	Carolina Earth Movers, Inc. Greenville, NC	38881	Interm./ Hwy	5%	A & B	\$51,325.00	
4	Jymco Construction Company, Inc. Smithfield, NC	76371	U/U	5%	A & B	\$65,780.00	

This is to certify that the bids received herein were opened and read at 2:00 p.m. on February 11, 2016 at Winterville Town Hall, 2571 Railroad Street,



Town of Winterville - Railroad St. Sidewalk Improvements Bid Date: February 11, 2016 @ 2:00 p.m. TWC Project No. 2853-Z				Charles W. Hughes Construction, LLC La Grange, NC		Lanier Construction Co., Inc. Snow Hill, NC		Carolina Earth Movers, Inc. Greenville, NC		Jymco Construction Company, Inc. Smithfield, NC		Average of All Bids	
Item No.	Description	Est. Quantity	Unit	Unit Price	Total Extended Price	Unit Price	Total Extended Price	Unit Price	Total Extended Price	Unit Price	Total Extended Price	Unit Price	Total Extended Price
1	Remove Existing Concrete Sidewalk	3,400	SF	\$2.20	\$7,480.00	\$2.25	\$7,650.00	\$2.05	\$6,970.00	\$3.00	\$10,200.00	\$2.38	\$8,075.00
2	New Concrete Sidewalk	2,900	SF	\$6.50	\$18,850.00	\$6.75	\$19,575.00	\$5.80	\$16,820.00	\$9.55	\$27,695.00	\$7.15	\$20,735.00
3	New Decorative Concrete Sidewalk	500	SF	\$15.00	\$7,500.00	\$20.00	\$10,000.00	\$18.00	\$9,000.00	\$12.00	\$6,000.00	\$16.25	\$8,125.00
4	New Handicap Ramp	2	EA	\$1,500.00	\$3,000.00	\$1,800.00	\$3,600.00	\$2,250.00	\$4,500.00	\$1,700.00	\$3,400.00	\$1,812.50	\$3,625.00
5	Inlet Protection	1	EA	\$500.00	\$500.00	\$150.00	\$150.00	\$500.00	\$500.00	\$500.00	\$500.00	\$412.50	\$412.50
6	Concrete and Geotechnical Testing Allowance	1	LS	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
7	Pavement Marking	1	LS	\$3,500.00	\$3,500.00	\$3,000.00	\$3,000.00	\$3,500.00	\$3,500.00	\$9,800.00	\$9,800.00	\$4,950.00	\$4,950.00
8	Replace Water Meter Box	7	EA	\$300.00	\$2,100.00	\$200.00	\$1,400.00	\$450.00	\$3,150.00	\$300.00	\$2,100.00	\$312.50	\$2,187.50
9	Replace Clean Out Service Box	4	EA	\$400.00	\$1,600.00	\$200.00	\$800.00	\$550.00	\$2,200.00	\$400.00	\$1,600.00	\$387.50	\$1,550.00
10	New Valve Box and Cover	2	EA	\$480.00	\$960.00	\$200.00	\$400.00	\$350.00	\$700.00	\$250.00	\$500.00	\$320.00	\$640.00
11	CSX One Time License Fee	1	LS	\$1,485.00	\$1,485.00	\$1,485.00	\$1,485.00	\$1,485.00	\$1,485.00	\$1,485.00	\$1,485.00	\$1,485.00	\$1,485.00
TOTAL					\$49,475.00		\$50,560.00		\$51,325.00		\$65,780.00		\$54,285.00