

CITY OF OBERLIN, OHIO

ORDINANCE No. 14-09 AC CMS

AN ORDINANCE ACCEPTING THE BID OF FARABEE MECHANICAL INC. OF HICKMAN, NEBRASKA, FOR THE ENGINE-GENERATOR NO. 5 REMOVAL PROJECT FOR THE CITY OF OBERLIN, OHIO, AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5-7ths) of all members elected thereto concurring:

SECTION 1. That the bid of Farabee Mechanical Inc., of Hickman, Nebraska, for emission control improvements for the City of Oberlin, Ohio, being the lowest and best bid submitted, is hereby accepted, and the City Manager is hereby authorized and directed to enter into a contract for a not to exceed amount of \$66,917.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit: to accept bid for engine-generator no. 5 removal project as soon as possible in order to coordinate work with the emission control improvement project and ensure timely completion of project for upcoming transmission and capacity-shaving operation season and shall take effect immediately upon passage.

PASSED: 1st Reading: March 17, 2014 (E)


2nd Reading: _____

3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



H. SCOTT BROADWELL
PRESIDENT OF COUNCIL

POSTED: 03/18/2014

EFFECTIVE DATE: 03/17/2014

AGREEMENT

This Agreement, made this 18th day of March, 2014, by and between the City of Oberlin, Ohio hereinafter called the "City", acting herein through its City Manager, and

Farabee Mechanical, Inc., doing business as (a corporation), (~~a partnership~~), (~~an individual~~) in the City of Oberlin, county of Lorain, and State of Ohio, hereinafter called the "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will furnish equipment in accordance with the terms of the Contract Documents.
2. The following variations from the Contract Documents and or options have been agreed to:

3. The term "Contract Documents" means and includes the following:

- a.) Advertisement for Bids
- b.) Instruction to Bidders
- c.) General Conditions
- d.) EEO and MBE Documentation
- e.) Bid including all attachments thereto
- f.) Bid Bond
- g.) Delinquent Personal Property Tax Affidavit
- h.) Notice of Award
- i.) Agreement (with Legal & Fiscal Officer's Certificates)
- j.) Specifications
- k.) Addenda:

No. 1, dated February 25, 2014

No. _____, dated _____, 2014

No. _____, dated _____, 2014

4. The City will pay to the Contractor in the manner and at such times as set forth in the Contract Documents, such amounts as required by this Agreement.
5. City's engagement of the Contractor is based upon the Contractor's representations to the City that the Contractor:
 - has reviewed all documents pertinent to its portion or scope of the work and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient;

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- is an organization experienced in and qualified, willing and able to provide equipment of the nature and type necessary to perform its portion or scope of the Work
 - is authorized and licensed to do business in Ohio;
 - has the expertise and ability to meet the City's objectives and requirements
6. The Contractor shall furnish services and labor which expeditiously and economically and properly complete its particular scope of the Work in the manner most consistent with the City's interest and objectives; in accordance with the Contract Documents, and in accordance with the highest standards currently practiced by persons and entities performing comparable labor and services on projects of similar size and complexity.
 7. The Contractor expressly warrants and guarantees to the City that all goods, products, materials, equipment, and systems incorporated in its particular scope of Work conform to applicable specifications, descriptions, instruction, drawings, data and samples; be new (unless otherwise specified or permitted and without apparent damage; be of quality equal to or higher than that required by the Bid Documents; be merchantable; and free from defects.
 8. The Contractor expressly warrants and guarantees to the City that all labor and services required for its particular scope of Work shall comply with the Bid Documents; be performed in a workmanlike manner; and be free from defects.
 9. All warranties and guarantees set forth above shall be in addition to all other warranties, express implied or statutory, and shall survive payment for, acceptance or inspection of, or failure to inspect the Work.
 10. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
 11. With respect to the intent and interpretation of this Contract, the City and the Contractor agrees as follows:
 - (A) This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.
 - (B) Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;
 - (C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the City and any person except the Contractor;

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- (D) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;
- (E) The words “include”, “includes”, or “including”, as used in this Contract, shall be deemed to be followed by the phrase, “without limitation”;
- (F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;
- (G) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittal and shall give written notice to the City of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the City of any shop drawings or other submittal shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor’s compliance with this Contract. The City has requested the Distribution Superintendent to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** The Contractor again hereby acknowledges and represents that is has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the City concerning such documents, as no such representations or warranties have been or are hereby made;
- (H) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:
- (1) As between figures given on plans and scaled measurements, the figures shall govern;
 - (2) As between large scale plans and small scale plans, the large scale plans shall govern;
 - (3) As between plans and specifications, the requirements of the specifications shall govern;

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- (4) As between this document and the plans or specifications, this document shall govern.
12. The contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:
- (A) Construction of the Project:
 - (B) The furnishing of any required surety bonds and insurance;
 - (C) The provision of furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project:
 - (D) The creation and submission to the City of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the City upon final completion of Project and receipt of same by the City shall be a condition precedent to final payment to the Contractor.
 - (E) Neither payment to the Contractor, utilization of the Project for any purpose by the City, nor any other act or omission by the City shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract;
 - (F) Prior to being entitled to receive final payment and as a condition precedent hereto, the Contractor shall furnish the City, in the form and manner required by City, if any, with a copy of the Engineer:
 - (1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
 - (2) If required by the City, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the City or the City's property;
 - (3) If applicable, consent(s) of surety to final payment;
 - (4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout;

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13. Termination by the Contractor

If the City repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the contractor may terminate performance under this Contract by written notice to the City. In such event, the Contractor shall be entitled to recover from the City as though the City has terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 15(A) hereunder.

14. City's Right to Suspend Contractor's Performance

The City shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to ten (10) calendar days. If any such suspension is directed by the City, the Contractor shall immediately comply with same.

In the event the City directs a suspension of performance under this Paragraph, through no fault of the Contractor, the City shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (A) Demobilization and remobilization, including such costs paid to subcontractors;
- (B) Preserving and protecting work in place;
- (C) Storage of materials or equipment purchased for the Project, including insurance thereon;
- (D) Performing in a later, or during a longer, time frame than that contemplated by this Contract.

15. Termination by the City

The City may terminate this Contract in accordance with the following terms and conditions:

- (A) The City may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the City or its designee. The Contractor shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

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When terminated for convenience, the Contractor shall be compensated as follows:

- (1) The Contractor shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below.
- (2) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
- (3) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:
 - (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or non-sequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 19(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- (B) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment of materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the City, in addition to any other rights it may have against the Contractor or other, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any

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portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the City for cause pursuant to this Subparagraph B) and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph A) and the provision of Subparagraph (A) shall apply.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies, each of which shall be deemed an original on the date first written above.

City of Oberlin, Ohio

By: [Signature]
Eric Norenberg, City Manager

(Seal)

ATTEST:

[Signature]
Melinda Anderson
City Clerk

[Signature]
Sandra Phillips
(Witness)

Contractor: [Signature] Farabee Mechanical Inc.

By: Christopher D. Farabee

Title: President

Address: PO Box 1748
Hickman, NE 68372

(Seal)

Phone: 402-792-2612

ATTEST:

[Signature]
Deborah Rodnie
(Secretary, if Corporation)

[Signature]
(Witness)

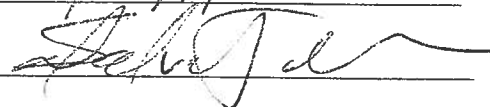
CITY OF OBERLIN, OHIO

FISCAL OFFICER'S CERTIFICATE

Project Identification: **Engine-Generator #5 Removal Project**

I, Sal Talarico, Finance Director hereby certify that I am the qualified and acting Fiscal officer of the City of Oberlin, Ohio, and that the amount of money to wit \$ 66,917.00 required to meet the cost of the attached Agreement between the City of Oberlin and Farabee Mechanical, Inc. (contractor) has been lawfully appropriated for the purpose of said Agreement and the money so appropriated is on deposit (or in process of collection) to the credit of the appropriate fund free from any previous encumbrances.

Date: 3/25/14

Signature: 

Name: Sal Talarico

Title: Finance Director

CITY OF OBERLIN, OHIO

LEGAL OFFICER'S CERTIFICATE

Project Identification: **Engine-Generator #5 Removal Project**

The foregoing Agreement between the City of Oberlin, Ohio (City) and
Farabee Mechanical, Inc. (Contractor) is approved as to form.

3/25/2014

Date



Jon Clark, Law Director

NOTICE TO PROCEED

To: Farabee Mechanical, Inc.
637 Village View Drive
Hickman NE 68372

Date: March 18, 2014

Project: Engine-Generator #5 Removal Project

You are hereby to commence WORK in accordance with the Agreement dated March 18, 2014 on or before April 1, 2014 and you are to complete the WORK within 88 consecutive calendar days thereafter. The date of completion of all WORK is, therefore, June 27, 2014.

Owner: City of Oberlin, Ohio

By:



Title: City Manager

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

By Farabee this 1st day of April 2014.

Farabee Mechanical Inc

By:

Christopher D. Farabee

Title:

President

EXPERIENCE STATEMENT

The bidder is required to state in detail in the space provided below, what work he has done of a character similar to that included in the proposed Contract, to give references and such other detailed information as will enable the Owner to judge of his responsibility, experience, skills and financial standing. Among other things, this statement shall include the following:

A record of similar work performed and evidence to the effect:

1. That the bidder maintains a permanent place of business.
2. That the bidder has adequate facilities and equipment available for the work under the proposed contract.
3. That the bidder has suitable financial means to meet obligations incidental to the work.
4. That the bidder has appropriate technical experience and possesses sufficient skill and experience.
5. That the bidder maintains a service department qualified to make all repairs to adjustments that may be required on the equipment to be used under the proposed contract.
6. That references list below with phone numbers can be contacted.

See Attached

(Use additional sheet, if necessary)

FMI

Farabee Mechanical Inc.

**P.O. Box 1748
Hickman, NE 68372-1748
Phone (402) 792-2612
Fax (402) 792-2712**

Partial List of Past Demolition Experience

Tower, MI – Woverine Power Supply Cooperative, Eric Baker or
Dave Robinette 231-775-5700

Winterset, IA – Winterset Municipal Utilities, Jay Gibson 515-
462-1422

Various Locations - SMMPA Todd Machin 507-285-0478 Cell
507-254-4134

BID BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Farabee Mechanical, Inc.

PO Box 1748, Hickman, NE 68372

as Principal, and the EMPLOYERS MUTUAL CASUALTY COMPANY, a corporation organized and existing under the laws of the State of Iowa and authorized to do business in the State of Ohio

, as Surety, are held and firmly bound unto the

City of Oberlin, 85 South Main Street, Oberlin, OH 44074

as obligee, in the sum of -----Ten Percent of Amount Bid-----

----- DOLLARS, lawful money of the United States of America, to the payment of which sum of money well and truly to be made, the said Principal and Surety bind themselves, their and each of their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Obligee shall make any award to the Principal for:

Engine-Generator #5 Removal Project

according to the terms of the proposal or bid made by the Principal therefor, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of such proposal or bid and award and shall give bond for the faithful performance thereof, with the EMPLOYERS MUTUAL CASUALTY COMPANY as Surety or with other Surety or Sureties approved by the Obligee; or if the Principal shall, in case of failure so to do, pay to the Obligee the damages which the Obligee may suffer by reason of such failure not exceeding the penalty of this bond, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

Signed, Sealed and Dated this 4th day of March, 20 14.

Deborah Ritchie
Witness

Kelli Kunt
Witness

Farabee Mechanical, Inc.
Principal

By: [Signature]
Christopher Farabee, President
Employers Mutual Casualty Company

By: [Signature]
Carol A. Dorn
Attorney-in-Fact



P.O. Box 712 • Des Moines, IA 50306-0712

No. A50140

CERTIFICATE OF AUTHORITY INDIVIDUAL ATTORNEY-IN-FACT

WE ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation
- 7. Hamilton Mutual Insurance Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint: CAROL A. DORN, JEFFREY C. GREENWALD, ROHN P. LOYD

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute its lawful bonds, undertakings, and other obligatory instruments of a similar nature as follows:

In an amount not exceeding Ten Million Dollars.....\$10,000,000.00

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire APRIL 1, 2015 unless sooner revoked.

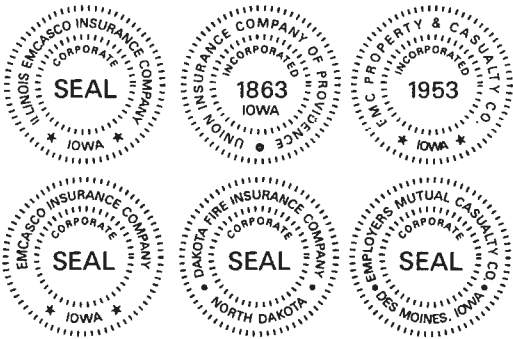
AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at a regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company, in addition as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 21st day of MARCH, 2012.

Seals



Bruce G. Kelley
Bruce G. Kelley, Chairman
of Companies 2, 3, 4, 5 & 6; President
of Company 1; Vice Chairman and
CEO of Company 7

Michael Freel
Michael Freel
Assistant Vice President

On this 21st day of MARCH AD 2012 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Michael Freel, who, being by me duly sworn, did say that they are, and are known to me to be the Chairman, President, Vice Chairman and CEO, and/or Assistant Vice President/Assistant Secretary, respectively, of each of The Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Michael Freel, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of each of the Companies.
My Commission Expires March 13, 2014.

Laurel A. Bloss
Notary Public in and for the State of Iowa

LAUREL A. BLOSS
Commission Number 183662
My Comm. Exp. Mar 13, 2014

CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on MARCH 21, 2012 on behalf of: CAROL A. DORN, JEFFREY C. GREENWALD, ROHN P. LOYD

are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 4th day of March, 2014.

J D Clough
Vice President