

**NEW MEXICO REGIONAL COMMON GROUND ALLIANCE
BYLAWS**

ARTICLE I.

Purpose

Section 1.01 *Purpose*. The purpose of the Corporation shall be to prevent damage to underground infrastructure by: (a) fostering a sense of shared responsibility for the protection of underground facilities; (b) supporting research; (c) developing and conducting public awareness and education programs; (d) identifying and disseminating the stakeholder best practices such as those embodied in the Common Ground Study; and (e) to work together to form consensus between stakeholders on the use of best practices in New Mexico.

ARTICLE II.

Members

Section 2.01 *Membership*. Membership in the corporation is open to any individual or organization who has an interest in and who supports the promotion of facility damage prevention, infrastructure protection and the stated purpose of the Corporation. Membership shall be confirmed by the Corporation by the process established by the Board of Directors.

Section 2.02 *Classes of Members*. The members of the Corporation shall consist of classes of members. The classes may range in number from one (1) to twenty (20). The number of classes of members, the number of members in each class, the criteria for membership, the dues or assessments (if any) to be paid by each membership class, and the rights and responsibilities of each class shall be determined by action of the entire Board of Directors.

Section 2.03 *Membership Term*. The term of any membership shall be: (i) the term designated by action of the Board of Directors; and (ii) coterminous with the payment cycle of any dues assessed against such member; provided, however, that if any member shall fail to pay dues or assessments at the time designated by the Board, then such member's membership in the Corporation shall automatically terminate without any further action of the Board or notification to such member, unless such member pays its outstanding dues and any other assessments that may be imposed by the Board. Any member may resign at any time upon written notice to the Secretary of the Corporation (any resignation to take effect as specified or, if not so specified, upon receipt by the Secretary), and any member may be removed at any time, with or without cause, by action of the entire Board of Directors then in office.

Section 2.04 *Annual Meeting*. An annual meeting of the members shall be held on such date as shall be determined by action of the Board of Directors.

Section 2.05 *Special meetings*. Special meetings of the members may be called by the Chair, or by action of the Board of Directors.

Section 2.06 *Place and Time of Meetings*. Meetings of members may be held at such place and at such hour as may be fixed in the notice of the meeting by action of the Board of Directors.

Section 2.07 *Notice of Annual and Special Meetings*. Written or printed notice stating the time and place of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting, either personally, by e-mail, via facsimile, by posting on the Corporation's website, or by mail, by or at the direction of the Chair, or the Secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage thereon prepaid, addressed to the member at its address as it appears on the records of the Corporation.

Section 2.08 *Waiver of Notice*. Whenever any notice is required to be given to any member, a waiver in writing signed by the member entitled to such notice, whether before, at or after the stated time, shall be the equivalent to notice. The presence of any member at a meeting, in person or by proxy, without objection to the lack of notice of such meeting, shall also waive notice by the member.

Section 2.09 *Quorum*. Members having at least one-tenth of the membership interests in each class entitled to vote represented in person or by proxy shall constitute a quorum of the class at a meeting of members for the election of directors. No member or class of members may by participation or failure to participate, boycott or prevent the election of any directors of any other class. Failure to elect a director by a class shall be considered a vacancy with respect to such class' director and shall not preclude the conduct of any business. The members present at a duly organized meeting may continue to elect directors until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when the election of directors may occur as may have been undertaken at the meeting as originally called.

Section 2.10 *Vote*. Each member shall have one vote. The sole matter upon which members may vote shall be the election of directors. Such voting may be conducted in person, by proxy, by mail ballot or such other means determined by the Board of Directors and communicated to the members in advance of the vote. There shall be no cumulative voting in elections for directors.

Whenever any election of directors is to be taken by vote of the members, it shall, except as otherwise required by law, be authorized by a majority of the votes cast at a meeting of members by the members entitled to vote. Should only one candidate be nominated in the stakeholder group, that candidate will be ratified by the Board of Directors

Section 2.11 *Entity Authority*. Any member that is legal entity (e.g. corporation, nonprofit organization, partnership, association, Limited Liability Company or other entity) shall

designate the person authorized to vote for the election of directors on the entity's behalf. If any such member shall fail to designate an authorized representative, then anyone who asserts that they have the authority to vote on behalf of such member shall be deemed to have the apparent authority and the requisite actual authority. Furthermore, such vote by someone with either apparent or actual authority shall be absolute, final, and binding on the member.

Section 2.12 *Proxies*. A member may vote by proxy executed in writing by the member or its duly authorized attorney-in-fact. A proxy shall be issued only for one (1) meeting and shall automatically expire at the termination of such meeting. Every proxy shall be revocable by the member executing it.

Section 2.13 *Meetings by Conference Telephone*. Members may participate in a meeting of the members by telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and such participation shall constitute presence in person at a meeting of the members.

ARTICLE III.

Board of Directors

Section 3.01 *Power of Board*. The business and activities of the Corporation shall be managed by the Board of Directors. Directors must be a member in good standing.

Section 3.01 *Number of Directors*. The number of directors of the Corporation shall be between ten (10) and twenty-three (23) as determined by the Board of Directors. Up to twenty (20) directors shall be elected by the members of each respective class pursuant to the authority to elect such directors as determined by the resolution defining the classes of members. Three (3) directors shall be at-large Directors, elected or appointed by the methodology determined by the Board of Directors. The number of directors may be increased or decreased from time to time by action of the entire Board of Directors. No decrease in the number of directors shall have the effect of shortening the term of any incumbent director. The number of directors shall never be less than three.

Section 3.03 *Election and Term of Directors*. The Interim Board shall elect the first full Board of Directors on or before December 31, 2007 who will serve until the first annual meeting of the members. The first full Board of Directors shall hold terms of office pursuant to a lottery to be determined through any mathematically random means chosen by the interim Board of Directors so that each director has an equal chance of either a one (1), two (2), or three (3) year term. Effective for elections held after January 1, 2008, prior to each annual meeting of the members, approximately one-half (1/2) of the directors shall be elected for a two (2) year term. No person may serve as a director for more than three (3) consecutive full terms. Upon the serving of three (3) terms a person may not serve as a director for a minimum of two (2) years.

Section 3.04 *Removal of Directors*. A director may be removed with or without cause by a majority of the members of the class entitled to vote for such director. A director may also be removed with or without cause at any time by 2/3 majority vote of the Board, provided that such action of the entire Board of Directors at a meeting called expressly for that purpose.

Section 3.05 *Resignations*. Except as otherwise required by law, any director of the Corporation may resign at any time by giving written notice to the Board, the Chair, or to the Secretary. The resignation shall take effect at the time specified, and unless otherwise specified, no acceptance of such resignation shall be necessary to make it effective.

Section 3.06 *Vacancies*. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors, may be filled by a majority of the votes cast by the Board of Directors. A director appointed to fill a vacancy shall be appointed for the unexpired term of the director's predecessor in office and until the director's successor is elected and qualified.

Section 3.07 *Meetings of the Board*. Meetings of the Board of Directors, regular or special, may be held at such place, and upon such notice as may be prescribed by action of the Board of Directors. A director's attendance at any meeting shall constitute waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the Board of Directors need be specified in the notice or waiver of such meeting except as provided by Section 3.04.

Section 3.08 *Quorum of Directors*. Unless a greater proportion is required by law, a majority of the number of fixed directors entitled to vote shall constitute a quorum for the transaction of business.

Section 3.09 *Action of the Board*. Whenever these Bylaws refers to action of the Board of Directors, it shall mean the action of two-thirds (2/3) of the directors present at meeting, through written action or telephonic means as provided by these Bylaws. Whenever these Bylaws provide action of the entire Board of Directors; it shall mean an action which requires the vote of two-thirds of the entire number of fixed directors either elected or appointed to the Corporation, regardless of the number actually present at a meeting or through written action or telephonic means.

Section 3.10 *Meetings by Conference Telephone*. Directors may participate in a meeting of the Board or a committee of the Board by means of telephone or by any means of communication by which all persons participating in the meeting are able to hear one another, and such participation shall constitute presence in person at the meeting.

Section 3.11 *Compensation of Directors; Loans to Directors and Officers*. The Corporation shall not pay any compensation to directors for services rendered to the Corporation, except that directors may be reimbursed for expenses incurred in the

performance of their duties to the Corporation, in reasonable amounts as approved by action of the entire Board of Directors. No loans or guaranties of indebtedness shall be made by the Corporation to or for its directors or officers.

Section 3.12 *Ex-Officio, Honorary and Advisory Directors.* The Board of Directors may, by resolution, designate one or more ex-officio, honorary or advisory directors who shall have no rights, voting or otherwise, with respect to any matter concerning the Corporation.

Section 3.13 *Indemnification and Insurance.* Unless otherwise prohibited by law, the Corporation shall indemnify any director or officer, any former director or officer, any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, and may, by action of the entire Board of Directors, indemnify any employee against any and all expenses and liabilities actually and necessarily incurred by it or imposed on it in connection with any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, including appeals) to which it may be or is made a party by reason of being or having been such director, officer, or employee; subject to the limitation, however, that there shall be no indemnification in relation to matters as to which it shall be adjudged in such claim, action, suit, or proceeding to be guilty of a criminal offense or liable to the Corporation for damages arising out of its own gross negligence or intentional or willful misconduct in the performance of a duty to the Corporation.

Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel fees and other fees; costs and disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, such director, officer, or employee. The Corporation may advance expenses to, or where appropriate may itself, at its expense, undertake the defense of, any director, officer, or employee; provided, however, that such director, officer, or employee shall undertake to repay or to reimburse such expense if it should be ultimately determined that it is not entitled to indemnification under this Article.

The provisions of this Article shall be applicable to claims, actions, suits, or proceedings made or commenced after its adoption, whether arising from acts or omissions to act occurring before or after its adoption.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which such director, officer, or employee may be entitled under any statute, Bylaw, agreement, vote of the Board of Directors, or otherwise and shall not restrict the power of the Corporation to make any indemnification permitted by law.

The Board of Directors may authorize the purchase of insurance on behalf of any director, officer, employee, or other agent against any liability asserted against or incurred by it which arises out of such person's status as a director, officer, employee, or agent or out of acts taken in such capacity, whether or not the Corporation would have the power to indemnify the person against that liability under law.

If any part of this Article shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.

ARTICLE IV.

Committees

Section 4.01 *Committees; Authority.* By action of the Board of Directors, the Board may designate and appoint one or more committees, each of which shall consist of two or more directors. Any such committee, to the extent provided in the action, shall have and exercise the authority of the Board of Directors of the Corporation. The designation and appointment of any such committee and any delegation of authority to the Committee shall not operate to relieve the Board of Directors, or any individual director of any responsibility imposed upon the director by law.

Section 4.02 *Executive Committee.* Pursuant to the authority granted in Section 4.01, there shall be an Executive Committee of the Board of Directors. The Executive Committee shall consist of between four (4) and seven (7) directors and shall have such rights and responsibilities as shall be determined by action of the entire Board of Directors. [Revised 11/30/2001]

Section 4.03 *Other Committees.* Other committees not having and exercising the authority of the Board of Directors in the management of the Corporation may be designated and appointed by action of the Board of Directors. Such committees shall have a director as the chairperson and may be comprised of persons who may or may not be directors or members of the Corporation.

Section 4.04 *Nominating Committee.* Pursuant to the authority granted in Section 4.03, there shall be a Nominating Committee. The Nominating Committee shall consist of such number of members, be chaired by such director, and have such rights and responsibilities as shall be determined by action of the Board of Directors.

ARTICLE V.

Officers, Agents and Employees

Section 5.01 *Officers.* The Board of Directors shall elect or appoint a Chair, a Vice-Chair, a President, Secretary, and a Treasurer, and it may, if it so determines, elect or appoint one or more Vice-Presidents and such other officers and assistant officers as may be deemed necessary. If the Board of Directors so determines, the officers of the Corporation may be designated by such other titles as may be provided in the Articles of Incorporation or these Bylaws. Any two or more offices may be held by the same person except the offices of President and Secretary

Section 5.02 *Term of Office and Removal.* Each officer, with the exception of the Executive Director shall be elected or appointed to office annually and shall serve until the officer's successor has been elected or appointed and qualified. Unless otherwise provided by action of the Board of Directors, all officers shall be elected or appointed at the annual meeting of the Board. Any officer may be removed by the Board of Directors whenever in its judgment the best interest of the Corporation will be served thereby; provided, however, that removal of an officer shall be without prejudice to the officer's contract rights, if any, and the election or appointment of an officer, including the President, shall not of itself create contract rights.

Section 5.03 *Powers and Duties of Officers.* Subject to the control of the Board of Directors, all officers as between themselves and the Corporation shall have such authority and perform such duties in the management of the property and affairs of the Corporation as may be provided in these Bylaws or by action of the Board of Directors and, to the extent not specifically provided, as generally pertain to their respective offices as follows:

A. *Chair.* The Chair shall be active in management of the business and, when present, shall preside at all meetings of the Board of Directors, see that all orders and resolutions of the Board of Directors are carried into effect, execute and deliver in the name of the Corporation deeds, mortgages, bonds, contracts and other interests in the name of the Corporation except as otherwise directed in a resolution of the Board of Directors. The Chair shall have such other duties and exercise such other powers as the Board of Directors shall prescribe from time to time.

B. *Vice-Chair.* In the absence of the Chair or in the event of the Chair's inability or refusal to act, the Vice-Chair shall perform the duties of the Chair, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair. The Vice-Chair shall perform such other duties and have such other powers as the Board of Directors may prescribe from time to time, or as the Chair may from time to time provide, subject to the powers and the supervision of the Board of Directors.

C. *Secretary.* The Secretary shall be responsible for the maintenance of the records of the meetings of the Corporation and its committees, for the preparation and the issuance of notices of all meetings of the Board of Directors and the members, and for the reparation of any written reports for all general activities of the Corporation, in addition to any other duties usually pertaining to the office of Secretary or designated by the Board of Directors

D. *Treasurer.* The Treasurer of the Corporation shall oversee the financial affairs and records of the Corporation either directly or through the use of employees, agents, accountants, advisors or volunteers. The Treasurer shall perform other duties requested by the Board of Directors, Chair or by the President. The Treasurer may also be designated as the Chief Financial Officer. In the event, for any reason, that the Corporation shall fail to elect a Treasurer, the President shall serve in such capacity until a successor is duly elected and qualified.

E. *President.* The President of the Corporation shall be an officer of the Corporation. It is anticipated that the President shall be the senior staff person of the Corporation and in such capacity shall oversee all line item functions, report to the officers of the Corporation and the Board of Directors and have such other duties as may be prescribed from time-to-time by the Chair of the Corporation and the Board of Directors.

ARTICLE VI.

Miscellaneous

Section 6.01 *Fiscal Year*. The fiscal year of the Corporation shall be the calendar year or such other period as may be determined by action of the Board of Directors.

Section 6.02 *Corporate Seal*. The Corporation shall not have a corporate seal.

Section 6.03 *Amendment of Articles and Bylaws*. The Articles of Incorporation may be amended by action of the entire Board of Directors. Bylaws of the Corporation may be adopted, amended or repealed by action of majority of the membership.