



**Underground Service Alert
of
Northern California and Nevada**

Articles of Incorporation & Bylaws

Incorporated July 25, 1986

Amended 7/29/15

TABLE OF CONTENTS

Section		Page
ARTICLES OF INCORPORATION		4-5
BYLAWS		6
ARTICLE I	OFFICES	7
Section 1.	Principal Office	7
Section 2.	Other Offices	7
ARTICLE II.	MEMBERSHIP	7
Section 1.	Classes	7
Section 2.	Voting Rights	8
Section 3.	Membership Dues	9
Section 4.	Transfer of Membership	9
Section 5.	Termination of Membership	9
Section 6.	Good Standing	10
Section 7.	Place of Meetings	10
Section 8.	Annual Meetings	10
Section 9.	Special Meetings	10
Section 10.	Notice of Annual or Special Meetings	10
Section 11.	Quorum	11
Section 12.	Adjourned Meetings and Notice Thereof	11
Section 13.	Voting	11
Section 14.	Record Date	12
Section 15.	Consent of Absentees	12
Section 16.	Action Without a Meeting	13
Section 17.	Proxies	13
Section 18.	Inspectors of Election	13
Section 19.	Conduct of Meeting	14
Section 20.	Associates	14
Section 21.	Stakeholders	14
ARTICLE III.	DIRECTORS	16
Section 1.	Powers	16
Section 2.	Number of Directors	16
Section 3.	Qualifications of Directors	16
Section 4.	Election and Term of Office	17
Section 5.	Vacancies	17
Section 6.	Place of Meeting	17
Section 7.	Regular Meetings	17
Section 8.	Special Meetings	18
Section 9.	Quorum	18
Section 10.	Participation in Meetings by Conference Telephone	18

Section 11.	Waiver of Notice	18
Section 12.	Adjournment	18
Section 13.	Action Without Meeting	19
Section 14.	Rights of Inspection	19
Section 15.	Committees	19
Section 16.	Fees and Compensation	20
ARTICLE IV.	OFFICERS	20
Section 1.	Officers	20
Section 2.	Election	20
Section 3.	Subordinate Officers	20
Section 4.	Removal and Resignation	21
Section 5.	Vacancies	21
Section 6.	Chairman of the Board	21
Section 7.	Vice Chairman	21
Section 8.	General Manager	21
Section 9.	Acting General Manager	21
Section 10.	Board Liaison	21
Section 11.	Secretary	22
Section 12.	Treasurer	22
ARTICLE V.	OTHER PROVISIONS	22
Section 1.	Inspection of Corporate Records	22
Section 2.	Inspection of Articles and Bylaws	23
Section 3.	Endorsement of Documents; Contracts	23
Section 4.	Membership Certificates	23
Section 5.	Representation of Shares of Other Corporations	23
Section 6.	Construction and Definitions	24
Section 7.	Amendments	24
ARTICLE VI.	INDEMNIFICATION	24
Section 1.	Definitions	24
Section 2.	Indemnification in Actions by Third Parties	25
Section 3.	Indemnification in Actions by or in the Right of the Corporation	25
Section 4.	Indemnification Against Expense	25
Section 5.	Required Determinations	26
Section 6.	Advance of Expenses	26
Section 7.	Other Indemnification	26
Section 8.	Forms of Indemnification Not Permitted	26
Section 9.	Insurance	26
Section 10.	Non applicability	27

ARTICLE VII.	EMERGENCY PROVISIONS	27
Section 1.	General	27
Section 2.	Unavailable Directors	27
Section 3.	Authorized Number of Directors	27
Section 4.	Quorum	27
Section 5.	Directors Becoming Available	27
	Certificate of Secretary	29
	Amendments to the Bylaws	30-52
	Participating Member Agreement	53
	Associate Agreement	54
	Return Copy – Participating Member Agreement	55
	Return Copy – Associate Agreement	56

ARTICLES OF INCORPORATION
OF
UNDERGROUND SERVICE ALERT
OF
NORTHERN CALIFORNIA AND NEVADA

I

Underground Service Alert of Northern California and Nevada, an existing unincorporated association, is being incorporated by the filing of these articles. The name of this corporation shall be UNDERGROUND SERVICE ALERT OF NORTHERN CALIFORNIA AND NEVADA.

II

This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

III

A further description of the purposes of this corporation is provided as follows:

- (1) Promoting public service and safety, eliminating costly damage to underground facilities, reducing lost production time due to damages, promoting compliance with State and Federal Legislation and providing help in protecting the underground environment;
- (2) Providing a centralized one-number call system to expedite the location of underground installations, including but not limited to, water, gas, electric, telephone, oil, fuel, and sewer lines, prior to the start of any excavation work or any other work that may affect the subsurface of the earth;
- (3) Receiving reports from the public, contractors, utilities and all other excavators or other entities performing any other work that may affect the subsurface of the earth who call the centralized one-number call system in advance of a planned excavation or similar activity;
- (4) Transmitting information received from such reports to all participating members who may have underground facilities at the location of the excavation or other activity, or who are otherwise concerned with said activity; and
- (5) Engaging in any lawful act or activity in which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may engage.

IV

The name and address in the State of California of this corporation's initial agent for service of process is:

MICHAEL W. HEYER
4090 Nelson Avenue, Suite A
Concord, CA 94520-1232

Dated: June 17, 1986

V

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation.

Incorporator

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

Incorporator

BYLAWS
OF
UNDERGROUND SERVICE ALERT

UNDERGROUND
SERVICE ALERT
OF
NORTHERN CALIFORNIA AND NEVADA

A California Nonprofit
Mutual Benefit Corporation

ARTICLE 1 OFFICES

Section 1. Principal Office. The corporation's principal office is fixed and located at such place as the Board of Directors (herein called the "Board") shall determine located within any county of the State of California. The Board is granted full power and authority to change said principal office from one location to another. Any such change shall be noted by the Secretary in the minutes, but shall not be considered an amendment of these Bylaws.

Section 2. Other Offices. Branch or subordinate offices may be established at any time by the Board at any place or places.

ARTICLE II MEMBERSHIP

Section 1. Classes. There shall be three classes of members: Charter Members, Participating Members, and Stakeholder Members.

Charter Members include Frontier (a Citizens Communications Company), a corporation; City of Antioch, a municipal corporation; City of Oakland, a municipal corporation; Contra Costa Water District, a county water district; County of Sacramento, a political subdivision of the State of California; Verizon, a corporation; Pacific Bell, a corporation; Pacific Gas and Electric Company, a corporation; Consolidated Communications, a corporation; Sacramento Municipal Utility District, a municipal utility district. Amendments to Charter Members shall be in accordance with Article V Section 7.

Participating Members of the Corporation shall be all persons, firms, corporations, associations, and governmental or public entities or agencies who join the Corporation and represent, own or work closely with the operation of underground facilities in the area served by the corporation, as such geographic area is determined by the Board from time to time. Each person or entity having satisfied this requirement is entitled to one Participating Membership.

Stakeholder Members shall be non Charter and/or Participating Member persons, entities, or affiliates who are responsible for the protection of, detection of, excavation of, and education about, underground facilities in the area served by the corporation, as such geographic area is determined by the Board from time to time, and shall be comprised of eight (8) members, selected by the Board of Directors, consistent with Article II, Section 21 as follows: one (1) representative shall be selected from the Nevada excavation industry; one (1) representative shall be selected from the California excavation industry (collectively, the "Excavators"); one (1) representative shall be selected from a Nevada locator service; one (1) representative shall be selected from a California locator service (collectively, the "Locators"); one (1) representative shall be selected from the Nevada design engineering industry, one (1) representative shall be selected from the California design engineering industry (collectively, the "Engineers"), one (1) representative shall be selected from the Nevada Public Utilities Commission; and one (1) representative shall be selected from the California Public Utilities Commission. With respect to the Excavators, Locators and Engineers, in no event shall a single entity or affiliate be represented by more than one representative.

For purposes of these Bylaws, Underground Facilities means underground pipes, pipelines, conduits, cables, ducts, wires, manholes, vaults, tanks, tunnels and any encasements to furnish or transport member's services or materials.

Two or more persons or entities may have indivisible interests in a single membership of any class, provided each of them meets the requirements of such class and provided all such persons or entities shall have the rights and responsibilities of a single member unless otherwise provided. Members of each class shall have the right to vote, as set forth in Section 2 of this Article II, for the election of directors and on a disposition of substantially all of the assets of the corporation and on a merger and on a dissolution. Additionally, members of each class shall have all of the rights afforded members under the California Nonprofit Mutual Benefit Corporation Law. In the event of dissolution of the corporation, the known debts and liabilities of the corporation shall be actually paid or adequately provided for, or paid or adequately provided for as far as the corporation's assets permit, and in accordance with all applicable law. Any remaining assets of the corporation after payment of all corporate debts and liabilities shall be distributed pro rata among the, Charter and Participating members in the ratio which their capital contribution bears to the total capital contributions made by all Charter and Participating Members.

Nothing in this Section 1 shall be construed as limiting the right of the corporation to refer to persons or entities associated with it as "members" even though such persons or entities are neither Charter nor Participating Members as defined above nor members, and no such reference shall constitute such person or entity a member, within the meaning of Section 5056 of the Nonprofit Corporation Law or the foregoing provisions of this Section 1, unless such persons or entities shall have qualified for membership as set forth above. The corporation may admit, as Sustaining members, those persons, firms, corporations, associations or public agencies who share the concern and objectives of the corporation in protection of Underground Facilities. Sustaining Members shall pay the fee established by the Board from time to time but shall not have the right to vote on any of the matters set forth in the fifth paragraph of this Section 1, and shall not be a member within the meaning of said Section 5056.

Section 2. Voting Rights. This section regarding voting rights is subject to the provisions of Section 7612 of the California Non-profit Mutual Benefit Corporation Law and Section 5, 6 and 13 of this Article II.

The Underground Service Alert Committee (hereinafter referred to as a "Committee") shall consist of one (1) representative from each Charter and Participating Member.

The Committee shall meet at least once per year at a time fixed by the Board of Directors to elect the fifteen (15) Participating Members to the Board of Directors, at least three (3) of which will represent the Participating Members associated with the State of Nevada. The total number of the State of Nevada Participating Members on the Board of Directors shall be calculated by the General Manager not less than 10 nor more than 90 days before the date of meeting, in accordance with the following procedure:

STEP 1: DETERMINATION OF THE STATE OF NEVADA'S PARTICIPATING MEMBERSHIP PERCENTAGE OF THE TOTAL CHARTER AND PARTICIPATING MEMBERSHIP OF THE CORPORATION:

CALCULATION

The total number of the State of Nevada Participating Members of the corporation, divided by the total number of Charter and Participating members of the corporation.

STEP 2: DETERMINATION OF THE TOTAL NUMBER OF THE STATE OF NEVADA PARTICIPATING MEMBERS ON THE BOARD OF DIRECTORS OF THE CORPORATION:

CALCULATION

The State of Nevada's Participating Membership percentage of the total Charter and Participating membership of the corporation, times the total "number of directors". The results of the foregoing multiplication calculation shall be rounded up, 0.5 or higher, to the next whole number.

The Board of Directors shall consist of ten (10) Charter Members who shall each have one (1) vote and fifteen (15) Participating Members who shall each have one (1) vote.

Any Member who fails to remain in good standing, as defined in Section 6 of this Article II, shall not be entitled to vote on any matters brought before the Members.

Section 3. Membership Fees / Dues. Each member shall be billed a sum in accordance with the USA Membership Fee Schedule, Exhibit I of the USA Operating Procedures, hereby appendaged and incorporated to the Bylaws of the Corporation. Assessments will be based on an annual flat rate fee billed to all members, and an annual % of tickets fee billed to those members who receive more than the defined number of tickets in the previous year; as set by the Board.

Section 4. Transfer of Membership. The Board may provide for the transfer of memberships, subject to such restrictions or limitations as the Board deems appropriate, including transfer upon the death, dissolution, merger or reorganization of a member.

Section 5. Termination of Membership. The Board may terminate or suspend a membership or expel or suspend a member for nonpayment of fees, periodic dues or assessments, or for conduct which the Board shall deem inimical to the best interests of the corporation, including, without limitation, violation of any provision of these Bylaws or the Operating Procedures or failure to satisfy membership qualifications. In addition, the membership and all rights of membership shall automatically terminate on the occurrence of any of the following causes: (1) the voluntary resignation of a member with notice as prescribed by these Bylaws; (2) the death of a member; (3) the dissolution of corporate member; and (4) the nonpayment of dues or assessments. The Board shall give the member who is the subject of the proposed action fifteen days' prior notice of the proposed expulsion, suspension or termination and the reasons therefor. The member may submit a written statement to the Board regarding the proposed action not less than five days before the effective date of the proposed expulsion, suspension or termination. Prior to the effective date of the proposed expulsion, suspension or termination, the Board shall review any such statement submitted and shall determine the mitigating effect, if any, of the information

contained therein on the proposed expulsion, suspension or termination. A suspended member shall not be entitled to exercise any of the voting rights set forth in Section 2 of this Article II. The membership of any member of the Corporation shall automatically terminate on such member's written request for such termination delivered to the General Manager or Secretary of the Corporation personally or deposited in United States first-class mail, postage prepaid.

All rights of a member in the Corporation and in its property shall cease on the termination of such member's membership. Termination shall not relieve the member from any obligation for charges incurred, services or benefits actually rendered, dues, assessments, or fees, or arising from contract or otherwise. The Corporation shall retain the right to enforce any such obligation or obtain damages for its breach.

Section 6. Good Standing. Any member who shall be in arrears in the payment of any installment of fees, periodic dues or assessments more than 30 days after their due date shall not be in good standing and shall not be entitled to vote as a member.

Section 7. Place of Meetings. Meetings of members shall be held either at the principal office of the corporation or at any other place within or without the State of California which may be designated either by the Board or by the written consent of all persons entitled to vote thereat, given either before or after the meeting and filed with the Secretary.

Section 8. Annual Meetings. Annual meetings of members shall be held on such dates and at such times as may be fixed by the Board. In any year in which directors are elected, the election shall be held at the annual meeting. Any other proper business may be transacted at the meeting.

Section 9. Special Meetings. Special meetings of members may be called at any time by the Board, the Chairman of the Board, the General Manager or not less than five percent of the members. Upon request in writing to the Chairman of the Board, the General Manager, any Acting General Manager or the Secretary by any person (other than the Board) entitled to call a special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the Board, not less than 35 nor more than 90 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice.

Section 10. Notice of Annual or Special Meetings. Written notice of each annual or special meeting of members shall be given, not less than 10 nor more than 90 days before the date of the meeting, to each member entitled to vote thereat; provided, however, that if notice is given by mail, and the notice is not mailed by first class, registered, or certified mail, the notice shall be given not less than 20 days before the meeting. Such notice shall state the place, date and hour of the meeting and (a) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (b) in the case of the annual meeting, those matters which the Board, at the time of the mailing of the notice, intends to present for action by the members, but, subject to the provisions of applicable law, any proper matter may be presented at the meeting for such action. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is sent to members.

Notice of a members' meeting shall be given either personally or by mail or by other means of written communication, addressed to a member at the address of such member entitled to vote appearing on the books of the corporation or given by the member to the corporation for the purpose of notice, or, if no such address appears or is given, at the place where the principal office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal offices is located. Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient.

No meeting of members may be adjourned more than 45 days. If a meeting is adjourned to another time or place, and thereafter a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member of record who, on the record date for notice of the meeting, is entitled to vote at the meeting.

Section 11. Quorum. A majority of the total voting power of the members must be represented at any meeting of the members in person or by proxy in order to constitute a quorum at any meeting of members. If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members, unless the vote of a greater number or voting by classes is required by law, by the Articles or by these Bylaws, except as provided in the following sentence. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum.

Section 12. Adjourned Meetings and Notice Thereof. Any members' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the votes represented, but in the absence of a quorum (except as provided in Section 11 of this Article II) no other business may be transacted at such meeting.

It shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat, other than by announcement at the meeting at which such adjournment is taken; provided, however, when any members' meeting is adjourned for more than 45 days or, if after adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given as in the case of the meeting as originally called, whether annual or special.

Section 13. Voting. The members entitled to notice of any meeting or to vote at any such meeting shall be only persons in whose name memberships stand on the records of the corporation on the record date for notice determined in accordance with Section 14 of this Article II.

Elections need not be by ballot; provided, however, that all elections for directors must be by ballot upon demand made by a member at the meeting and before the voting begins.

In any election of directors, the candidates receiving the highest number of votes are elected.

The Committee members' vote shall be by the official member's representative or his designated proxy.

Voting shall in all cases be subject to the provisions of Chapter 6 of the California Nonprofit Mutual Benefit Corporation Law.

Section 14. Record Date. The Board may fix, in advance, a record date for the determination of the members entitled to notice of any meeting of members. The record date so fixed shall be not more than 60 days nor less than 10 days prior to the date of the meeting. When a record date is so fixed, only members of record on that date are entitled to notice of the meeting for which the record date was fixed. A determination of members of record entitled to notice of a meeting of members shall apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting. The Board shall fix a new record date if the meeting is adjourned for more than 45 days.

The Board may fix, in advance, a record date for the determination of members entitled to vote at a meeting of members or to cast written ballots or to exercise any rights in respect of any other lawful action. The record date so fixed shall be not more than 60 days before the date of the meeting or before the date on which the first written ballot is mailed or solicited or before such other action, as the case may be. A determination of members of record entitled to vote at a meeting shall apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting.

If no record date is fixed by the Board, the record date for determining members entitled to notice of a meeting of members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held. If no record date is fixed by the Board, members on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting of members or, in the case of an adjourned meeting, members on the day of the adjourned meeting who are otherwise eligible to vote are entitled to vote at the adjourned meeting of members. The record date for determining members for any purpose other than set forth in this Section 14 or Section 10 or 16 of this Article II shall be at the close of business on the day on which the Board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later.

Section 15. Consent of Absentees. The transactions of any meeting of members, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the members entitled to vote not present signs a written waiver of notice or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance of a member at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by the California Nonprofit Mutual Benefit Corporation Law to be included in the notice but not so included, if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, except as provided in Section 7511(f) of the California Nonprofit Mutual Benefit Corporation Law.

Section 16. Action Without Meeting. Subject to Section 7513 of the California Nonprofit Mutual Benefit Corporation Law, any action, except election of directors, which, under any provision of the California Nonprofit Mutual Benefit Corporation Law, may be taken at any regular or special meeting of members, may be taken without a meeting if the written ballot of every member entitled to vote is solicited, if the required number of signed approvals in writing, setting forth the action so taken, is received, and if the number of ballots cast within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast. Unless a record date for voting purposes be fixed as provided in Section 14 of this Article II, the record date for determining members entitled to cast written ballots pursuant to this Section 16, when no prior action by the Board has been taken, shall be the day on which the first written ballot is mailed or solicited, whichever is first.

Section 17. Proxies. Every member entitled to vote a membership has the right to do so either in person or by one or more persons authorized by a written proxy executed by such member and filed with the Secretary. Any proxy duly executed is not revoked and continues in full force and effect until revoked by the person executing it prior to the vote pursuant thereto. Such revocation may be effected either (i) by a writing delivered to the Secretary of the Corporation stating that the proxy is revoked, (ii) by a subsequent proxy executed by the person executing the prior proxy and presented to the meeting, or (iii) as to any meeting, by attendance at the meeting and voting in person by the person executing the proxy; provided, however, that no proxy shall be valid after the expiration of 11 months from the date of its execution unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three years from the date of execution.

Section 18. Inspectors of Election. In advance of any meeting of members, the Board may appoint inspectors of election to act at such meeting and any adjournment thereof. If inspectors of election be not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairman of any such meeting may, and on the request of any member or member's proxy shall, make such appointment at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more members or proxies, the majority of members represented in person or by proxy shall determine whether one or three inspectors are to be appointed.

The duties of such inspectors shall be as prescribed by Section 7614 (b) of the California Nonprofit Mutual Benefit Corporation Law and shall include: determining the number of memberships outstanding; determining the memberships represented at the meeting; determining the existence of a quorum; determining the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining when the polls shall close; determining the results; and doing such acts as may be proper to conduct the election or vote with fairness to all members. If there are three inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all.

Section 19. Conduct of Meeting. The Chairman of the Board shall preside as chairman at all meetings of the members. The chairman shall conduct each such meeting in a businesslike and fair manner, but shall not be obligated to follow any technical, formal or parliamentary rules or principles of procedure. The chairman's rulings on procedural matters shall be conclusive and binding on all members, unless at the time of a ruling a request for a vote is made to the members entitled to vote and which are represented at the meeting, in which case the decision of a majority of such members shall be conclusive and binding on all members. Without limiting the generality of the foregoing, the chairman shall have all of the powers usually vested in the chairman of a meeting of members.

Section 20. The Corporation may accept Associates who shall be non-members associated with the Corporation on the following basis: Associates shall be non-members, and therefore, non-owners of the Corporation, and shall have no right to vote in any corporate matters, nor to receive assets in the event of dissolution of the Corporation.

Other than being non-members, with no right to vote, nor receive corporate property, Associates of the Corporation shall have all other rights, and fulfill all obligations and responsibilities, including the payment of fees, as set forth in the Corporation's Articles, Bylaws and Operating Procedures for Participating Members.

The Corporation hereby authorizes Associates so that those persons, firms, corporations, associations, and governmental or public entities or agencies who do not desire to become members or who are precluded from membership shall have the opportunity to associate with the Corporation for the mutual benefit of the Associates, the Corporation and the members of the Corporation.

Section 21. Stakeholder Members.

(a) Annual appointment: The Board will review and approve each individual Stakeholder Member at the annual meeting of the Board of Directors.

(b) Term: Stakeholder Members will serve for a period of one (1) year. The Board will consider rotating Stakeholder positions between multiple like industry entities who have requested to participate as a Stakeholder. If none, then the Board may approve consecutive terms of service for one (1) or more of the approved Stakeholder Members. If there are no requests to

participate as a Stakeholder, the position will be left vacant until such time as there may be a request to participate.

(c) No Board Voting Rights: Stakeholders shall not be entitled to vote at any Board meetings.

(d) Voting on Committee. Stakeholder Class Members may serve on Board Committees. The appointment of a Stakeholder to any Board Committee shall be made consistent with the Bylaws of the Corporation and subject to the limitations set forth in Section 21 (c) of the Bylaws. Stakeholders may vote on any and all issues brought before any Board Committee to which they are appointed.

(e) No Membership Fee. Stakeholder Members shall not be charged a Stakeholder Membership fee.

(f) Attendance at Board Meetings. Stakeholders may attend and participate in all general session meetings of the Board, in person or by tele/web conference, or similar communications systems. The Stakeholder Members shall not be entitled to participate in any closed-session meetings of the Board.

(g) Order. Stakeholders shall conduct themselves in a professional manner during general session meetings, adhering to the rules and procedures adopted by the Board.

(h) Automatic Withdrawal. Where a Stakeholder Member fails to attend three (3) Board meetings within their one-year appointment term, (an "Absent Stakeholder"), the Absent Stakeholder and the entity from which the Absent Stakeholder was chosen will be deemed to have tendered his/her/its resignation(s). The Board may, at its discretion, fill the vacated Stakeholder Member position with another representative from a similar category and state. A resigned representative may be reinstated with the approval of the Board.

(i) Limitation of Rights. The Stakeholder Members shall not have any rights or entitlements with respect to:

- (i) Any indemnity provided by the Corporation;
- (ii) Any rights to any distributions from the Corporation at any time;
- (iii) Any right of inspection of the Corporation's corporate records and accounts, notwithstanding the provisions of California Corporations Code § 8330 et seq.;
- (iv) The ability to act on behalf of the Board or the Corporation;
- (v) The transfer of his/her/its membership; and/or
- (vi) The designation of a substitute or proxy in lieu of the approved designated representative.

(j) Duty to Corporation. The Stakeholder shall owe a duty of trust and confidence to the Corporation in order to safeguard and protect any and all confidential information and trade secrets of the Corporation.

ARTICLE III DIRECTORS

Section 1. Powers. Subject to limitations of the Articles, of these Bylaws and of the California Nonprofit Mutual Benefit Corporation Law relating to action required to be approved by the members or by a majority of members, the activities and affairs of the corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of the corporation to any person or persons, a management company or committees, however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws:

- (a) To select and remove all the other officers, agents and employees of the corporation, prescribe powers and duties for them as may not be inconsistent with law, the Articles or these Bylaws, fix their compensation and require from them security for faithful service.
- (b) To conduct, manage and control the affairs and activities of the corporation and to make such rules and regulations therefor not inconsistent with law, the Articles or these Bylaws, as they may deem best.
- (c) To adopt, make and use a corporate seal, and to prescribe the forms of certificates of membership, and to alter the form of such seal and of such certificates from time to time as they may deem best.
- (d) To authorize the issuance of memberships of the corporation from time to time, upon such terms and for such consideration as may be lawful.
- (e) To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor; provided that such power to borrow money and incur indebtedness shall be exercised only upon the affirmative vote of two-thirds (2/3) of the directors present at a duly held meeting with a quorum present.

The proposed budget may be approved or modified as determined by the Board.

Section 2. Number of Directors. The authorized number of directors shall be twenty-five (25) until changed by amendment of the Articles or by Bylaw duly adopted by the members.

Section 3. Qualifications of Directors. Each director shall be either an officer or an employee of a member.

Section 4. Election and Term of Office. Directors shall be elected at each annual meeting of the members, but if any such annual meeting is not held or the directors are not elected thereat, the directors may be elected at any special meeting of members held for that purpose. Each director shall serve until the next annual meeting of members and until a successor has been elected and qualified.

Section 5. Vacancies. Any director may resign effective upon giving written notice to the Chairman of the Board, the General Manager, the Secretary or the Board, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected before such time to take office when the resignation becomes effective.

Vacancies in the Board, except those existing as a result of a removal of a director by the members, may be filled by a majority of the remaining directors, although less than a quorum or by a sole remaining director, and each director so elected shall hold office until the expiration of the term of the replaced director and until such replacement director's successor has been elected and qualified.

A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation or removal of any director, or if the authorized number of directors be increased, or if the members fail, at any regular or special meeting of members at which any director or directors are elected, to elect the full authorized number of directors to be voted for at that meeting.

The Board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, convicted of a felony, or been found by a final order or judgment of any court to have breached any duty arising under Section 7238 of the California Nonprofit Mutual Benefit Corporation Law, or who no longer meets the qualifications set forth in Section 3 of this Article III.

The members may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

Section 6. Place of Meeting. Regular or special meetings of the Board shall be held at any place within or without the State of California which has been designated from time to time by the Board. In the absence of such designation, regular meetings shall be held at the principal office of the corporation.

Section 7. Regular Meetings. Immediately following each annual meeting of members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business.

Section 8. Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the Chairman of the Board, the General Manager, any Acting General Manager, the Secretary or any two directors.

Special meetings of the Board shall be held upon four days' notice by first class mail or 48 hours' notice given personally or by telephone, telegraph, telex or other similar means of communication. Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the corporation or as may have been given to the corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States Mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

Section 9. Quorum. Forty percent (40%) of the number of directors fixed by the Board within the limits authorized by Section 2 of this Article III shall constitute a quorum of the Board for the transaction of business, except to adjourn as provided in Section 11 of this Article III. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number be required by law or by the Articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 10. Participation in Meetings by Tele/Web Conference. Members of the Board may participate in a meeting through use of tele/web conference or similar communications systems..

Section 11. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 12. Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any director's meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be

given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 13. Action without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. Such consent or consents shall have the same effect as a unanimous vote of the Board and shall be filed with the minutes of the proceedings of the Board.

Section 14. Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation.

Section 15. Committees. The Board may appoint one or more committees, each consisting of two or more directors, and delegate to such committees any of the authority of the Board except with respect to:

- (a) The approval of any action for which the California Nonprofit Mutual Benefit Corporation Law also requires approval of the members or approval of a majority of all members;
- (b) The filling of vacancies on the Board or in any committee;
- (c) The fixing of compensation of the directors for serving on the Board or on any committee;
- (d) The amendment or repeal of Bylaws or the adoption of new Bylaws;
- (e) The amendment or repeal or any resolution of the Board which by its express terms is not so amendable or repealable;
- (f) The appointment of other committees of the Board or the members thereof;
- (g) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected;
- (h) Except as provided in Section 7233 of the California Nonprofit Mutual Benefit Law, with respect to any assets held in charitable trust, the approval of any self-dealing transaction;
- (i) The contracting for or purchase of any items in an amount in excess of \$500 during any fiscal year; or
- (j) The incurrence of debt or liability in an amount in excess of \$500 during any fiscal year.

Any such committee must be created, and the members thereof appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided a quorum is present, and any such committee may be designated an Executive Committee or by such other name as the Board shall specify. The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of this Article III applicable to meetings and actions of the Board. Minutes shall be kept of each meeting of each committee. The appointment of a committee Chairperson will be by the Co-chairpersons with approval of the Board. The purpose and duration of each committee will be given in writing to the committee's Chairperson within twenty (20) days of its creation and made a matter of record in the minutes of the Board meeting establishing the committee.

An Audit Committee shall be established consisting of two (2) active members. Each member of the committee shall be appointed annually to serve until terminated by resignation, removal, disqualification, or until a successor is appointed and qualified.

The duties to be performed by the Audit Committee shall be to: 1) arrange to audit the corporation's books at the end of each business year; 2) make full report to the directors at the next board meeting; and 3) perform such other duties as are usually required of such a committee in accordance with the law.

Section 16. Fees and Compensation. Directors and members of committees shall not receive any compensation for their services.

ARTICLE IV OFFICERS

Section 1. Officers. The officers of the corporation shall be a Chairman of the Board, a Vice Chairman of the Board, a General Manager, a Secretary, a Treasurer and a Board Liaison. The corporation may also have, at the discretion of the Board, one or more Acting General Managers, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be elected or appointed in accordance with the provisions of Section 3 of this Article IV. Any number of offices may be held by the same person unless the Articles or these Bylaws provide otherwise.

Section 2. Election. The officers of the corporation, except such officers as may be elected or appointed in accordance with the provisions of Section 3 or Section 5 of this Article IV, shall be chosen annually by, and shall serve at the pleasure of, the Board, and shall hold their respective offices until their resignation, removal, or other disqualification from service, or until their respective successors shall be elected.

Section 3. Subordinate Officers. The Board may elect, and may empower the Chairman of the Board to appoint, such other officers as the business of the corporation may require, each of

whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4. Removal and Resignation. Any officer may be removed, based on sufficient cause, by the Board at any time or, except in the case of an office chosen by the Board, any officer upon whom such power of removal may be conferred by the Board. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

Any officer may resign at any time by giving written notice to the corporation, but without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 6. Chairman of the Board. The Chairman of the Board is the chief executive officer of the corporation and has, subject to the control of the Board, general supervision, direction and control of the business and officers of the corporation. The Chairman shall preside at all meetings of the members and at all meetings of the Board. The Chairman has the general powers and duties usually vested in the office of chief executive officer of a corporation and such other powers and duties as may be prescribed by the Board.

Section 7. Vice Chairman. The Vice Chairman of the Board will assume the duties of the Chairman of the Board in his absence.

Section 8. General Manager: Under administrative direction of the USA Board of Directors, to be charged with the administrative and operational affairs of the USA Center. To represent the Board policies and programs with employees and the general public. To review budget requests and make recommendations to the Board on final expenditure levels, to be responsible for employer-employee relations, and to perform other job related work as required.

Section 9. Acting General Manager. In the absence or disability of the General Manager, the Board Liaison shall perform all the duties of the General Manager and, when so acting, shall have all the powers of and be subject to all the restrictions upon the General Manager. The Board Liaison shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 10. Board Liaison. Under the direction of the General Manager and Marketing & Education Manager, to be charged with the responsibility to serve as Board Liaison with the general membership and all stakeholder; participates in and networks with industry related organizations on the local, state, national and international level; provides leadership in

developing excavation legislation, best practice and Center procedures; educates and promotes underground damage prevention safety practices and standards to all stakeholders; and performs other responsibilities as required.

Section 11. Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of members, the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, the number of members present or represented at members' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the corporation's Articles and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the members and of the Board and of any committees thereof required by these Bylaws or by law to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 12. Treasurer. The Treasurer or a management company under the direction of the Board is the chief financial accountant of the corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, and shall send or cause to be sent to the members of the corporation such financial statements and reports as are required by law or by these Bylaws to be sent to them. The books of account shall at all times be open to inspection by any member.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the corporation as may be ordered by the Board, shall render to the General Manager and the directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the corporation. The annual cost to operate the notification center shall not exceed the budgeted amount approved by the Board. A management company shall be entitled to an amount so approved by the Board for all expenses incurred in the annual budget as the management company's profit. The Treasurer shall have such other powers and perform such other duties as may be prescribed by the Board.

ARTICLE V OTHER PROVISIONS

Section 1. Inspection of Corporate Records. Subject to Sections 8330, 8331, and 8332 of the California Nonprofit Mutual Benefit Corporation Law, a member may do either or both of the following for a purpose reasonably related to such member's interest as a member:

- (i) Inspect and copy the record of all the members' names, addresses and voting rights, at reasonable times, upon five business days' prior written demand upon the corporation, which demand shall state the purpose for which the inspection rights are requested; or

(ii) Obtain from the Secretary of the corporation, upon written demand and tender of a reasonable charge, a list of the names, addresses and voting rights of those members entitled to vote for the election of directors, as of the most recent record date for which it has been compiled or as of a date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The Secretary shall make the membership list available on or before the later of ten business days after the demand is received or after date specified therein as the date as of which the list is to be compiled.

The corporation may, within 10 business days after receiving a demand, as set forth above in paragraph (i) or (ii) of this Section 1, deliver to the person(s) making the demand a written offer of an alternative method of achieving the purpose identified in said demand without providing access to or a copy of the membership list. Any rejection of the corporation's offer shall be in writing and shall indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand made pursuant to paragraph (i) or (ii) of this Section 1.

The accounting books and records and minutes of proceedings of the members and the Board and committees of the Board shall be open to inspection upon written demand on the corporation of any member at any reasonable time for a purpose reasonably related to such person's interests as a member.

Section 2. Inspection of Articles and Bylaws. The corporation shall keep in its principal offices in the State of California the original or a copy of its Articles and of these Bylaws as amended to date, which shall be open to inspection by members at all reasonable times during office hours. If the corporation has no office in the State of California, it shall, upon the written request of any member, furnish to such member a copy of the Articles or Bylaws as amended to date.

Section 3. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance or other instrument in writing and any assignment or endorsement thereof executed or entered into between the corporation and any other person, when signed by the Chairman of the Board, the General Manager or any Acting General Manager and the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the corporation shall be valid and binding on the corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 4. Membership Certificates. The corporation shall not issue and shall be under no obligation to issue membership certificates.

Section 5. Representation of Shares of Other Corporations. The General Manager or any other officer or officers authorized by the Board or the General Manager are each authorized to vote, represent and exercise on behalf of the corporation all rights incident to any and all shares of any

other corporation or corporations standing in the name of the corporation. The authority herein granted may be exercised either by any such officer in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officer.

Section 6. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Mutual Benefit Corporation Law shall govern the construction of these Bylaws.

Section 7. Amendments. These Bylaws may be amended or repealed by approval of the members or by the approval of the Board; provided, however, that members must approve any action that would: (1) materially and adversely affect the rights of members as to voting, dissolution, or redemption, or transfer of memberships; (b) increase or decrease the number of memberships authorized in total or for any class; (c) effect an exchange, reclassification or cancellation of all or any part of the memberships; (d) authorize a new class of membership; or, (e) specify or change a fixed number of directors or the maximum or minimum number of directors or change from a fixed to a variable number of directors or vice versa. The power of members to approve the repeal or amendment of Bylaws is subject to the further approval of the members of a class if such action would: (a) materially and adversely affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such action affects another class; (b) materially and adversely affect such class as to voting, dissolution, redemption, or transfer of memberships by changing the rights, privileges, preferences, restrictions, or conditions of another class; (c) increase or decrease the number of memberships authorized for such class; (d) increase the number of memberships authorized for another class; (e) effect an exchange, reclassification or cancellation of all or part of the memberships of such class; or, (f) authorize a new class of memberships.

A Bylaw conferring some or all of the rights of a member of any class upon any person or entity who does not have the right to vote on any of the matters set forth in Section 1 of Article II may be adopted only by approval of the members.

ARTICLE VI INDEMNIFICATION

Section 1. Definitions. For the purposes of this Article VI, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under Sections 4 or 5 (c) of this Article VI.

Section 2. Indemnification in Actions by Third Parties. The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interest of the corporation or that the person has reasonable cause to believe that the person's conduct was unlawful.

Section 3. Indemnification in Actions by or in the Right of the Corporation. The corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the corporation, or brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Section 3:

(a) In respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;

(b) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless such action concerns assets held in charitable trust and is settled with the approval of the Attorney General.

Section 4. Indemnification Against Expenses. To the extent that an agent of the corporation has been successful on the merits in defense of any proceeding referred to in Section 2 or 3 of this Article VI or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Section 5. Required Determinations. Except as provided in Section 4 of this Article VI any indemnification under this Article VI shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Sections 2 or 3 of this Article VI, by:

- (a) A majority vote of a quorum consisting of directors who are not parties to such proceeding.
- (b) Approval of the members, with the persons to be indemnified not being entitled to vote thereon; or
- (c) The court in which such proceeding is or was pending upon applications made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the corporation.

Section 6. Advance of Expenses. Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Article VI.

Section 7. Other Indemnification. No provision made by the corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the Articles, Bylaws, a resolution of members or directors, an agreement or otherwise, shall be valid unless consistent with this Article VI. Nothing contained in this Article VI shall affect any right to indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.

Section 8. Forms of Indemnification Not Permitted. No indemnification or advance shall be made under this Article VI, except as provided in Sections 4 or 5 (c), in any circumstances where it appears:

- (a) That it would be inconsistent with a provision of the Articles, these Bylaws, a resolution of the members or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- (b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 9. Insurance. The corporation through the contractor shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this Article VI.

Section 10. Non applicability to Fiduciaries of Employee Benefit Plans. This Article VI does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent of the corporation as defined in Section 1 of this Article VI. The corporation shall have power to indemnify such trustee, investment manager or other fiduciary to the extent permitted by subdivision (f) of Section 207 of the California General Corporation Law.

ARTICLE VII EMERGENCY PROVISIONS

Section 1. General. The provisions of this Article VII shall be operative only during a national emergency declared by the President of the United States or the person performing the President's functions, or in the event of a nuclear, atomic or other attack on the United States or a disaster making it impossible or impracticable for the corporation to conduct its business without recourse to the provisions of this Article VII. Said provisions in such event shall override all other Bylaws of the corporation in conflict with any provisions of this Article VII, and shall remain operative as long as it remains impossible or impracticable to continue the business of the corporation otherwise, but thereafter shall be inoperative; provided that all actions taken in good faith pursuant to such provisions shall thereafter remain in full force and effect unless and until revoked by action taken pursuant to the provisions of the Bylaws other than those contained in this Article VII.

Section 2. Unavailable Directors. All directors of the corporation who are not available to perform their duties as directors by reason of physical or mental incapacity or for any other reason or who are unwilling to perform their duties or whose whereabouts are unknown shall automatically cease to be directors, with like effect as if such persons had resigned as directors, so long as such unavailability continues.

Section 3. Authorized Number of Directors. The authorized number of directors shall be the number of directors remaining after eliminating those who have ceased to be directors pursuant to Section 2.

Section 4. Quorum. The number of directors necessary to constitute a quorum shall be the number bearing the same proportional relationship to the number of directors remaining pursuant to Section 2 as the quorum established in Article III. Section 8 bears to the authorized number of directors set forth in Article III, Section 2.

Section 5. Directors Becoming Available. Any person who has ceased to be a director pursuant to the provisions of Section 2 and who thereafter becomes available to serve as a director shall automatically resume performing the duties and exercising the powers of a director unless the term of office of such person has expired in accordance with its original terms and a successor has been selected and qualified.