

Membership Bylaws

BYLAWS
OF
TEXAS EXCAVATION SAFETY SYSTEM, INC.

ARTICLE I

Name and Principal Place of Business

Section 1 Name. The name of this Corporation shall be "Texas Excavation Safety System, Inc.".

Section 2 Principal Office. The principal office of this Corporation shall be located at 1410 E Renner Rd #100 Richardson, TX 75082

Section 3 Registered Office. The registered office of this Corporation shall be as specified in the Articles of Incorporation of this Corporation.

ARTICLE II

Meetings of the Corporation

Section 1 Annual Meetings. The first Annual Meeting of the General Members of the Corporation shall be held for the election of Directors and for the transaction of such other business as may properly come before the meeting on September 9, 1986, and each Annual Meeting thereafter shall be held each following year on the day fixed by the Board of Directors. At each such Annual Meeting, the Board of Directors shall submit to the membership a report of this Corporation's business activities during the preceding year and the general financial condition of this Corporation.

Section 2 Other Meetings. Other Meetings of the members of this Corporation may be called at any time by the Board Chair. The Board Chair shall call a meeting of the Members of this Corporation upon an affirmative vote of the majority of the members of the Board of Directors, or on the written request of a minimum of ten percent (10%) of the General Members of this Corporation to the Board Chair. All meetings shall be held at the office of this Corporation or at such other place, or by audio or video conference, or other means deemed appropriate by the Board and as may be designated in the notice.

Section 3 Notice. Notice of meetings of members of this Corporation, Annual or Other, shall specify the time, place, and purpose of the meeting and shall be delivered to all members at their respective addresses on this Corporation's records at least thirty (30) days but not more than forty-five (45) days prior to the date of such meeting.

Section 4 Quorum. At any meeting of the General Members of this Corporation, one-third (1/3) of the votes which may be cast by the General Members of this Corporation voting, either in person or by proxy, shall constitute a quorum for the transaction of business.

Section 5 Proxies. At any meeting of the members, a member is entitled to vote by proxy executed in writing by the member. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it, except as otherwise provided by law.

ARTICLE III

Board of Directors

Section 1 General. The business and affairs of the Corporation shall be managed under the control of the Board of Directors unless otherwise specified or prohibited by the Texas Non-Profit Corporation Act. The Board of Directors shall consist of not less than nine (9) or more than twelve (12) persons. The number of Directors nominated by the Nominating and Board Development Committee shall be determined by the Nominating and Board Development Committee. That number of Directors shall be elected by the General Members of this Corporation at Annual Meetings of members of this Corporation or at special meetings thereof called for said purpose. A General Member may have no more than one representative serving on the Board of Directors at any time.

Section 2 Term. Each Director shall hold office during the term for which he or she is elected and qualified and until a successor is elected and qualified. The Board of Directors shall be divided into two (2) classes of members, one class to be elected in odd numbered years and the second class to be elected in even numbered years.

There shall be no more than seven (7) members of the first class who shall hold office for an initial term of not more than two (2) years. There shall be no more than eight (8) members of the second class who shall hold office for an initial term of not more than two (2) years. At all Annual Meetings thereafter, Directors shall be elected by the General Members for a term of not more than two (2) years to succeed the Directors whose terms then expire provided that nothing herein shall be construed to prevent the reelection of a Director.

Section 3 Vacancies. Vacancies in the Board of Directors occurring between Annual Meetings may be filled

Section 4 Powers. The Board of Directors shall have the general management of the affairs, property, and business of this Corporation and, subject to these Bylaws, may adopt such rules and regulations for that purpose and for the conduct of its meetings, as the Board of Directors may deem proper.

Section 5 Audit. The Board of Directors shall require an annual audit of the Corporation's financial records by an independent auditor. The audit statement shall be available to any General Member upon request.

Section 6 Removal. Any Director may be removed at any time with or without cause by majority vote of the Board of Directors at a meeting called for the purpose of such removal. If any Director shall be so removed, a new Director may be elected at the same meeting.

ARTICLE IV

Meetings of Directors

Section 1 Annual Meetings of Directors. The Annual Meeting of the Board of Directors shall be held immediately following the Annual Meeting of this Corporation for the purposes of electing officers, appointing committees and for the transaction of such other business as may properly come before the meeting. No notice shall be required for the Annual Meeting of the Board of Directors.

Section 2 Regular Meetings of Directors. Regular Meetings of the Board of Directors shall be held at a time and place set by the Board Chair. On the written request of a majority of the members of the Board of Directors, or as the Board Chair determines appropriate, the Board Chair shall call a special meeting of the Board of Directors. Meetings shall be held at the office of this Corporation, or at such other place, or by audio or videoconference, or other means deemed appropriate by the Board and as may be designated in the notice.

Section 3 Notice. Except for the Annual Meeting of the Board of Directors, notice of the time, place, and purpose of any meeting of the Board of Directors shall be given to each member of the Board of Directors, in writing or in person, by mail, e-mail, facsimile transmission or by telephone not later than three (3) business days prior to such meeting.

Section 4 Quorum. At all meetings of the Board of Directors, a majority of the number of Directors in office shall constitute a quorum for the transaction of business.

Section 5 Proxies. At any meeting of the Board of Directors, a Director shall be entitled to vote by proxy executed in writing by the Director. No Proxy shall be valid for more than one meeting.

ARTICLE V

Committees

Section 1 Executive Committee. The Executive Committee shall consist of the Board Chair, the Immediate Past Chair and First Vice Chair. In the absence of action by the Board of Directors and to the extent permitted by law, the Executive Committee may exercise any and all powers of the Board of Directors in the management of the Corporation. The Executive Committee shall meet at the call of the Chair of the Board. Action by the Executive Committee shall be by unanimous vote. Meetings of the Executive Committee may be held by telephone conference. The Board Chair shall chair the Executive Committee.

Section 2 Nominating and Board Development Committee. The Nominating and Board Development Committee is responsible for developing and implementing strategies for recruitment, orientation evaluation and professional development of all Board members. The Board of Directors shall elect the Board members to serve on the Nominating and Board Development Committee for the following year at the Board meeting following the Annual Meeting. The Nominating and Board Development Committee shall provide recommendations for candidates for election to the Board of Directors. No later than three months prior to each year's Annual Meeting, the Nominating Committee shall solicit nominations from the General Membership of the Corporation for the election to the Board of Directors. The Nominating and Board Development Committee shall submit a suggested slate of Directors as provided herein to be acted upon at the Board meeting following the Annual Meeting of members of the Corporation.

Section 3 Other Committees. The Board of Directors shall establish such committees, as it deems appropriate to advise it on matters affecting the business affairs of this Corporation and the notification center. The members of these committees need not be Directors of this Corporation. Each committee shall have the number of members and such duties, as the Board of Directors shall deem appropriate. Each such committee shall meet at the call of its Chair.

ARTICLE VI

Duties of Officers and Directors

Section 1 Officers. The officers of this corporation shall consist of a Board Chair, Immediate Past Chair or more Vice Chairs, a President, a Treasurer, and a Secretary. The Board Chair and Vice Chairs shall be elected from the membership of the Board of Directors at the annual meeting, except for the Board Chair and Vice Chair no other officers need to be a Director of this Corporation. Any vacancy in any office shall be filled by the Board of Directors at any Regular Meetings, or at any Special Meeting called for such purpose. This Corporation may also have such other officers or agents as the Board of Directors may deem necessary, who shall hold office at the pleasure of the Board of Directors and who shall have such authority and perform such duties as the Board of Directors may prescribe. With the exception of the President, Secretary and Treasurer all officers of this corporation shall represent General Members of the corporation.

Section 2 Board Chair. The Board Chair shall chair the Board of Directors. The Board Chair may execute such obligations or instruments for and in the name of this Corporation as may be authorized from time to time by the Board of Directors. The Board Chair shall chair the Executive Committee and shall serve as an honorary member of all other committees. The Board Chair shall perform all such other duties as are incidental to the office or as are properly required by the Board of Directors.

Section 3 Vice Chairs. The First Vice Chair shall serve on the Executive and Finance Committees. The Second Vice Chair shall serve on the Policy and Bylaws Committee and shall serve as the Parliamentarian of the Corporation. Each Vice Chair shall have such other powers and discharge such other duties as may be assigned from time to time by the Board of Directors or the Board Chair.

Section 4 President. The President shall be the Chief Executive Officer of this Corporation. The President shall have general and active management of the business affairs of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. The President, except as the Board of Directors may from time to time otherwise provide by resolution, shall sign all contracts and other instruments in the ordinary business of this Corporation. The President may also execute such other obligations or instruments for and in the name of this Corporation as may be authorized from time to time by the Board of Directors. The President shall perform all such other duties as are incidental to the office or as are properly required by the Board of Directors. The President shall report to the Executive Committee.

Section 5 Treasurer. The Treasurer shall collect, have custody of and keep an accurate account of the

funds of the Corporation and shall see that all bills of the Corporation are paid. The Treasurer shall keep, or cause to be kept, full and accurate accounts of all receipts and disbursements of this Corporation. Whenever required by the Board of Directors, the Treasurer shall render, or cause to be rendered, financial

Section 6 Secretary. The Secretary shall keep the minutes of all meetings of the Corporation and, when requested, the Board of Directors and the Executive Committee, shall serve all notices, shall be the custodian of the records of the Corporation and shall perform such other duties as the President or the Board of Directors may assign. The Secretary shall be the custodian of the corporate records and of the corporate seal, and shall when necessary, affix the corporate seal to all documents on behalf of this Corporation, and when so affixed may attest the same.

Section 7 Parliamentarian. The Second Vice Chair shall serve as Parliamentarian. The Parliamentarian shall become familiar with the Bylaws of the Corporation and with "Robert's Rules of Order" and any special rules adopted by the Corporation. The Parliamentarian shall rule on questions of order and procedure during the Annual Meeting of the General Members of the Corporation.

Section 8 Compensation. The officers of this Corporation shall receive such compensation, if any, as may be fixed from time to time by the Board of Directors. In no event, however, shall such compensation exceed that permitted by the Texas Non-Profit Corporation Act.

Section 9 Bonds. The Board of Directors shall have power to require any officer, agent, or employee of this Corporation to give bonds for the faithful discharge of assigned duties in such form and with such surety or sureties as the Board of Directors may deem advisable.

Section 10 Negotiable Instruments. All checks, drafts, bills of exchange, notes, or other obligations or order for the payment of money shall be signed in the name of this Corporation by such officer or officers, person or persons as the Board of Directors of this Corporation may from time to time designate by resolution. In the absence of such resolution by the Board of Directors, such instruments shall be signed by the Treasurer and countersigned by the Board Chair or the President of the Corporation.

ARTICLE VII

Indemnification

Section 1 Indemnification. This Corporation shall indemnify any person who was or is a party or who is threatened to be made a party to any action, suit, or proceeding (including appeals), whether civil, criminal, administrative, or investigative (other than an action by or in the right of this Corporation) by reason of the fact that the person is or was a director, officer, employee, or agent of this Corporation, against expenses (including attorneys' fees), judgments, fines, and amounts paid in connection with such action, suit, or proceeding if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of this Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, shall not, in itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be not opposed to the best interests of this Corporation nor, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful. No indemnification shall, however, be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to this Corporation unless and only to the extent that the District Court, or the court in which such action or suit was brought, shall determine upon application that, despite the adjudication of liability, such person is fairly and reasonably entitled to indemnity for such expenses which the District Court or such other court shall deem proper.

Any indemnification under this Article shall be made by this Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in this Article. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding; or (b) if a quorum is not obtainable or even if such a quorum could be obtained but the Directors who were not parties to such action so direct, the determination may be made by independent legal counsel (who may be regular counsel to this Corporation but who shall not be an employee of this Corporation) in a written opinion; or (c) by a majority vote of a quorum of the General Members.

Section 2 Expenses. Expenses to be incurred in defending a civil or criminal action, suit, or proceeding may be paid by this Corporation in advance of the final disposition of such action, suit, or proceeding as authorized by the Board of Directors in the specific case if the Director, officer, employee, or agent agrees in writing to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by this Corporation. Further, to the extent that a Director, officer, employee, or agent of this Corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to herein or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred in connection therewith.

The indemnification provided by this Article shall apply to acts and transactions occurring heretofore or hereafter and shall not be deemed exclusive of any other rights to which those seeking indemnification are entitled under any statute, certificate, agreement, or otherwise, both as to action in such official capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 3 Indemnity by Members. General Members shall indemnify and hold the Corporation and the other General Members of the Corporation harmless for all valid claims and damages arising as a result of its acts or omissions as a General Member of this Corporation caused by the General Member's sole negligence. A General Member shall not, however, be liable for damages arising from the negligence of any other General Member except for any proportionate part of such damages as were proximately caused by the General Member's own negligence and on the express condition that timely notice shall have been given to that General Member.

Section 4 Insurance. This Corporation will attempt to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of this Corporation against any liability asserted against and incurred by the person in any such capacity, or arising out of his or her status as such, whether or not this Corporation would have the power to indemnify him or her against such liability under the provisions of this Article VII.

Section 5 Indemnity. General Members shall indemnify and hold the Corporation harmless from any and all

damages incurred by the General Member, including special, indirect and consequential, or injuries to person or property, or loss of use caused by the acts or omissions of the Corporation in the performance of its duties, and General Members shall not institute or bring any suit, litigation or action of any kind against the corporation for damages or injuries, whether direct or otherwise, incurred by the General Member as a result of acts or omissions of the Corporation.

ARTICLE VIII

Seal of the Corporation

This Corporation shall have a seal, and it shall be in such form as the Board of Directors may designate or approve.

ARTICLE IX

Admission, Qualification, and Other Membership Rights

Section 1 Qualification. Membership in this Corporation shall be open to any entity who:

- (a) Has a recognizable interest in the furtherance of the purpose of this Corporation; and
- (b) Has tendered for payment the fees or dues specified by the Board of Directors for the class of membership for which eligible.

Section 2 Classification of Members. The membership of this Corporation shall consist of the following:

- (a) **General Member.** An individual, partnership, corporation, association, cooperative, public trust, governmental agency, municipal corporation, or any other owner, maintainer, or operator of lines, systems, or other facilities, and appurtenances thereto, located within the State of Texas used for producing, storing, conveying, transmitting, or distributing communications, electricity, power, light, heat, gas, oil, petroleum products, water, steam, sewerage, or other commodities or service who (1) has elected to participate in the notification center operated by this Corporation, or which this Corporation has caused to be in operation.
- (b) **Sustaining Member.** An individual, partnership, corporation, association, or other entity, who also wishes to promote the purpose of the Corporation as specified in Article IV of the Articles of Incorporation of this Corporation and has paid any fee or compensation for this class of membership.
- (c) **Other Classification of Members.** The Board may designate other classifications of Members, as it may deem necessary.

Section 3 Property Rights. No Member of this Corporation shall have any right or interest in or to the property or assets of this Corporation; all property and assets of this Corporation shall be subject to the direction, control of, and expenditure by the Members and/or the Board of Directors of this Corporation in the manner and to the extent provided by the laws of the State of Texas; and should this Corporation be liquidated or dissolved or otherwise discontinued activity, the property and assets of this Corporation shall be distributed in accordance with provisions set forth in the Articles of Incorporation, if any, or as provided by law. All information and reports pertaining to the operation of the notification center, including locate request messages transmitted to the General Members of the corporation or their designees, is the property of the corporation and its General Members and may not be used by any other party for any reason without the express, written consent of the corporation.

Section 4 Voting. Only General Members of this Corporation shall be entitled to vote, in person or by proxy, at any Annual or Other Meeting of the members of this Corporation. Each general member of this Corporation shall be entitled to one (1) vote on all matters submitted, or required to be submitted, to the membership for each One Hundred Dollars (\$100.00), or any portion thereof, paid in membership fees to this Corporation during the twelve (12) month period ending thirty (30) days prior to the date of such meeting. In any election of Directors, General Members may cast all of their votes for one candidate or may allocate their votes to candidates in any manner they desire. Sustaining Members may attend and participate in the Annual or Other Meetings of this Corporation but shall have no voting privileges at such meetings.

Section 5 Marking, Notification and Other Action. This Corporation encourages its member companies to adhere to all local, state, and national rules, laws and statutes, pertaining to marking, notification, and excavation.

Section 6 Facilities Information. The General Member shall be responsible for furnishing such information concerning its underground facilities to this Corporation as may be reasonably required for the operation to the Notification Center. The General Members shall be required to install a TESS-compatible telecommunications device to receive notifications. The Notification Center shall be responsible for notifying the General Member of calls or messages that it has received concerning proposed excavation and shall carry insurance to pay for damages arising from operation of the Notification Center.

Section 7 Membership Agreements. Membership Agreements are made pursuant to and shall be governed by the laws of the State of Texas applicable to agreements made and to be entirely performed within Texas. In the event that any provision of a Membership Agreement shall be held to be invalid or unenforceable, the remainder of the Membership Agreement, other than that which is held invalid or unenforceable, shall not be affected thereby. The term Membership Agreement as used herein shall include the Application for Membership, these Bylaws, and the Articles of Incorporation of the Corporation.

Section 8 Applications for Membership. Applications for the various classifications of membership shall be subject to such conditions and on forms as may be required by the Board of Directors. The Corporate Secretary or an officer designated by the Board of Directors shall process the applications for membership. If the Corporate Secretary or the designated officer determines that the applicant is eligible for the membership requested, and the Board of Directors has approved the fee schedule of the application, a Certificate of Membership shall be prepared and sent to such Member. If the membership application is not approved, the applicant may request, in writing, that the Board of Directors at its next Regular Meeting determine if the applicant should be admitted as a General Member.

Section 9 Charter Member's Prepayment. Charter Members are General Members who have provided the Corporation any prepayment funds to assist in the formation of the Corporation prior to January 7, 1986. The Corporation will apply prepayment funds to satisfy the amount of any fee or assessment hereunder until the full amount of such prepayment has been offset, at a rate and time to be determined by the Corporation's Board of Directors.

ARTICLE X

Fees, Assessments, and Conditions of Membership

Section 1 Fees, Dues, and Assessments. Members must pay all fees and dues specified by the Board of Directors, for the operation of the Notification Center and the Corporation during the term of its membership agreement. General Members are required to pay to the corporation any per-message fee as set by the Board of Directors for all locate request messages that include a reference to that General Member, because of the Member's facility location.

The Corporation shall submit an invoice to each General Member for all fees due by such General Member. The General Member shall pay Corporation within forty-five (45) days following receipt of an invoice.

The Board of Directors in its sole discretion shall determine per-message fees and/or refunds, if any, of per-

message fees as the Board of Directors deems to be appropriate.

Assessments other than regular dues and fees shall only be made by a majority vote of the General Members of the Corporation.

The obligation to pay any fees, dues, and assessments as provided for in this Article is a mutual obligation of the Members that may be enforced by either the Corporation or any other General Member.

Section 2 Suspension or Termination of Membership and Survival of Obligations. Any Member of the Corporation that fails to pay any fees or assessments as they become due or is found to have flagrantly violated the rules and regulations of its membership agreement is subject to suspension or termination of its membership by a majority vote of the Board of Directors providing the Board of Directors of the Corporation have given the Member thirty (30) days' written notice and the matter has not been corrected within that period.

A member of the Corporation may terminate its membership only by giving thirty (30) days' written notice to the Corporation in accordance with the provision of these Bylaws, delivered by registered or certified mail, proper postage attached thereto, to the Secretary of this Corporation.

Section 3 Obligations After Suspension or Termination. No suspension or termination of membership shall discharge the General Member of any other obligation under the Membership Agreement including, but not limited to, the obligation to pay all fees and assessments by the Corporation which shall be incurred or arise (or the circumstances, events, or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination.

Section 4 Amendment of Article X. . If any material provision of this Article X is amended, it may be accepted or rejected by any General Member that voted against said amendment within sixty (60) days of the date the amendment passed. Failure to give written notice of rejection of any such amendment within sixty (60) days from the date of passage will be considered to be acceptance of the amendment and modification of each General Member's Membership Agreement. If notice is given by a General Member of refusal to accept such material amendment, then it may, within thirty (30) days, terminate its membership by giving written notice of termination to the Corporation. Any such termination shall not relieve the member of the obligation to pay its fees, dues, and assessments prior to the date of such termination.

ARTICLE XI

Amendment of Bylaws

These Bylaws may be altered or amended, repealed, or new Bylaws adopted by a majority vote of the General Membership of the Corporation at a meeting of the membership provided previous written notice has been given, and copies of the proposed amendments have been sent by mail to the General Membership.

ARTICLE XII

Governing Rules of the Organization

The rules contained in Robert's Rules of Order (Current Edition) shall govern this organization in all cases to which they are applicable, and in which they are not inconsistent with these Bylaws and any special rules of order that this organization may adopt.

Revised 10/17/2022