

1 **KENTUCKY UNDERGROUND PROTECTION, INC.**
2 **DBA: Kentucky 811**

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4 **A Kentucky Nonstock, Nonprofit Corporation**
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8 **BYLAWS**
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12 **ARTICLE 1**
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14 **Offices**
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- 16 1.1 **Principal Office.** The principal office of Kentucky Underground Protection, Inc., (the
17 "Corporation") shall be located in a city where the directors deem advisable.
18 1.2 **Other Offices.** The Corporation may have offices at other locations, within or without the
19 Commonwealth of Kentucky, as the Board of Directors so designate.
20
21 1.3 **Registered Office.** The registered office of the Corporation may be, but need not be, identical with
22 its principal office in the Commonwealth of Kentucky. The address of the registered office may be
23 changed from time to time by the Board of Directors.
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26 **ARTICLE 2**
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28 **Membership**
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- 30 2.1 **Membership.** Membership in the corporation shall consist of (i) participating general, (ii)
31 sustaining members. Membership in the Corporation shall be open to any individual. Partnership,
32 corporation, association, cooperative, trust, public authority, governmental body, municipality, or other
33 entity which has:
34
35 (a) a recognizable interest in the furtherance of the purpose of the Corporation as specified in the
36 Articles of Incorporation of the Corporation; and
37 (b) tendered the payment of the fees as identified in Section 2.3 herein (and subject to change or
38 adjustment by the Board of Directors) for the class of membership for which such party is
39 eligible.
40
41 2.2 **Classification and Privileges.** The membership of this Corporation shall consist of the following:
42
43 (a) **General Member.** Any individual, partnership, corporation, association, cooperative,
44 public trust, governmental agency, municipal corporation, or any other owner or operator of
45 underground lines, systems or other facilities, and appurtenances thereto, located within the
46 Commonwealth of Kentucky who has elected to participate in the Kentucky Underground
47 Protection Center operated by the Corporation, or which this Corporation has caused to be in
48 operation.
49 (b) **Sustaining Member.** An individual, partnership, corporation, association or other entity
50 which although not an owner or operator of underground facilities and member of the Corporation,
51 nevertheless wishes to promote the purpose of the Corporation as specified in the Articles of
52 Incorporation. Sustaining members shall not have the right to vote.
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56 2.3 Membership Fees.

- 57
58 (a) General Member Fee. Each General Member shall be required to pay periodic Fees
59 determined by the Board of Directors.
60 (b) Sustaining Member Fee. An annual fee, determined by the Board of Directors will be charged
61 each Sustaining Member.
62 (c) Fee establishment and adjustment. The establishment of a fee(s) or the adjustment to any
63 existing fee or charge requires an affirmative vote by a majority of the Board of Directors.
64

65 2.4 Rights of Members.

- 66
67 (a) Property Rights. No member of this Corporation shall have any right or interest in or to
68 the property or assets of the Corporation. All property and assets of the Corporation shall be
69 subject to the direction, control of and expenditure by the Board of Directors (subject to
70 approval by the members, if necessary) of the Corporation in the manner and to the extent
71 provided herein or by the laws of the Commonwealth of Kentucky. If the Corporation is
72 dissolved or otherwise discontinues activity, the property and assets of the Corporation shall
73 be liquidated and distributed in accordance with provisions therefor set forth in Articles of
74 Incorporation, or as provided by Law.
75 (b) Voting. Each general member shall be entitled to one (1) vote at any annual or special
76 meeting in person or by proxy.
77

78 2.5 Termination of Membership. Termination of membership by a General Member shall be by written
79 notice delivered, or sent by registered or certified mail, to the Chief Officer of the Corporation, ninety
80 (90) days prior to termination. Termination shall not eliminate the obligation of the terminating
81 member for outstanding charges. A Sustaining Member may terminate membership at any time by
82 written notification to the Chief Officer of the Corporation.
83

84 2.6 Failure to Pay Charges. A member who fails to pay any fees as they become due may be
85 suspended and not be entitled to any of the benefits or rights set out herein until such time as the
86 member is current on its debt to the Corporation. Any member whose fees are in arrears by more than
87 ninety (90) days is subject to removal by the Board of Directors.
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90 **ARTICLE 3**

91 **Meetings of Members**

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94 3.1 Annual Meetings. There shall be an annual meeting of the members of the Corporation. Every
95 member shall be furnished at least fourteen (14) days' advance notice of any such membership
96 meeting.
97

98 3.2 Special Meetings. Special meetings of the members may be necessary from time to time; this shall
99 be determined by not less than forty percent (40%) of the general members, by a majority of the Board
100 of Directors or by the Chief Officer of the Corporation.
101

102 3.3 Notice. Written or electronic notice stating the purpose, place, day, and hour of any membership
103 meeting shall be delivered not less than fourteen (14) days before the date of the meeting, either
104 personally or by mail or by electronic devices.
105

106 3.4 Quorum. Fifty (50) percent of KUPI Board of Directors with a minimum of five (5) other general
107 membership voting members at any duly conducted membership meeting shall constitute a quorum. If
108 a quorum of members is present, the affirmative vote of a majority of the members present shall be an
109 act of the members for purposes of deciding any issue presented by the Board of Directors.
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112 **ARTICLE 4**

113 **Board of Directors**

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116 4.1 General Powers. The control for the business and the affairs of the Corporation shall be in the
117 Board of Directors. The Board of Directors shall have governance and control of the affairs, property
118 and business of the Corporation, including but not limited to, the assessment of the fees to Members
119 and, subject to these Bylaws, may adopt such rules and regulations for that purpose and for the conduct
120 of its meetings as the Board of Directors may deem proper.
121

122 4.2 Numbers.

123
124 a) Voting Directors

125 Effective 1/1/2021 and thereafter, The Board of Directors shall consist of not less than ten (10)
126 and no more than twenty (20) persons. The Board of Directors shall consist of at least one (1) but
127 not more than two (2) general members, employed on a full-time basis, from each of the following
128 categories:
129

- 130 1) Telecommunications
- 131 2) Natural Gas Distribution
- 132 3) Electric
- 133 4) Water & Sewer
- 134 5) Transmission Pipeline (Gas or Liquid)
- 135 6) Private/Municipal/s/Other
- 136 7) Rural Telecommunications
- 137 8) Electric Cooperatives
- 138 9) Rural Water
- 139 10) Contractor/Excavator

140
141 b) Ex Officio Non-Voting Directors

142 The Board of Directors may elect "Ex Officio Directors" to assist the Board on a regular basis,
143 with no voting power. Ex-Officio Directors must be approved by a majority vote from each
144 category of board members as specified in Section 4.2(a). The term of each Ex Officio Director
145 will expire on December 31st of each calendar year. The Ex Officio Director will be eligible for
146 additional terms upon re-appointment by the Voting Board of Directors. The number of Ex Officio
147 Board Members will be limited to a maximum of (6) and no more than (1) from any of the
148 following categories:
149

- 150 1) Government/Regulatory
- 151 2) Contract Locator
- 152 3) National Association Electrical Contractors
- 153 4) Associated General Contractors of Kentucky
- 154 5) Kentucky Association of Master Contractors
- 155 6) Homebuilders Association of Kentucky

156
157 The number of directors may be increased or decreased from time to time by the Board of Directors by
158 amendment to the bylaws.
159

160 4.3 Tenure. Directors shall be elected by the members of the Corporation each year at the annual meeting
161 of the members. Except as set forth herein, each director shall serve three (3) years. Directors may
162 serve consecutive terms.
163

164 4.4 Removal or Resignation of Director. At a meeting of the members called expressly for that purpose
165 any director may be removed, with or without cause, by a majority vote of the members present
166 (subject to the quorum requirements). Any member may resign from the Board of Directors at any
167 time by giving written or electronic notice to any officer of the Corporation.

- 168 4.5 Vacancies. Vacancies on the Board of Directors will be filled for the unexpired term at the next
169 available annual membership meeting in accordance with Section 4.3, unless the Board of Directors
170 determines by affirmative vote by a majority of the Board of Directors that the vacant position should
171 be filled prior to the next annual membership meeting.
172
- 173 4.6 Committees. The Board of Directors shall establish any such committee as it deems appropriate to
174 advise it on matters affecting the business and affairs of the Corporation. The members of these
175 committees need not be Directors of the Corporation.
176
- 177 4.7 Annual and Special Meetings. The annual meeting of the Board of Directors shall be held without
178 other notice than this bylaw in conjunction with, and at the same place as, the annual meeting of the
179 members. All special meetings of the Board of Directors shall be provided by notice stating the time,
180 place and reason for meeting(s).
181
- 182 4.8 Notice. Special meetings of the Board of Directors may be called by, or at the request of, The
183 Chairman of the Corporation or any four (4) directors. Any special meetings shall be held at the
184 location specified in the notice of the meeting. Notice of any special meeting of the Board of Directors
185 shall be given at least seven (7) days prior thereto.
186
- 187 4.9 Quorum. A majority of the Board shall constitute a quorum for the transaction of business. The act of
188 the majority of directors present or by proxy at a meeting at which a quorum is present shall be the act
189 of the Board of Directors.
190 (a) Proxy Voting. At all meetings of the Board of Directors, a director may vote by proxy
191 executing in writing or electronically, filed with the Chief Operating Officer of the
192 Corporation before or at the time of such meeting. The proxy shall be valid for the meeting
193 for which the proxy was executed.
194

195 ARTICLE 5

196 Officers

- 199 5.1 Officers. The officers of the Corporation shall consist of a Chairman, a Vice-Chairman, a
200 Treasurer, a Secretary and Chief Operating Officer; all of whom shall be chosen by the directors. This
201 Corporation may also have such other officers as the Board of Directors may deem necessary, who
202 shall hold office at the pleasure of the Board of Directors and who shall have such authority and
203 perform such duties as the Board of Directors may prescribe.
204
- 205 5.2 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or
206 otherwise may be filled by the Board of Directors for the unexpired portion of the term.
207
- 208 5.3 Election and Term of Office. Officers of the Corporation shall be elected by the Board of Directors at
209 a meeting to be held not more than one hundred twenty (120) days prior to the end of current fiscal
210 year. The offices of Chairman and Secretary will be elected in the odd numbered years to take office
211 on January 1, of the following year. Vice Chairman and Treasurer will be elected on even numbered
212 years and take office on Jan 1, of the following year. Candidates for officer positions will be
213 announced to the board by a Nominating committee selected by the Executive committee.
214
- 215 Chairman. The chairman shall be the chief executive officer of the Corporation and, subject to the
216 control of the Board of Directors, shall have general charge of the Corporation, its officers, agents and
217 employees, if any. The chairman, except as the Board of Directors may from time to time otherwise
218 provide by resolution and in accordance with the Corporation's financial policies and procedures, shall
219 sign, when necessary, contracts and other instruments in the ordinary business of the Corporation and
220 for and in the name of the Corporation may execute such other obligations or instruments as may be
221 authorized from time to time by the Board of Directors. The chairman shall perform all such other
222 duties as are incident to the chairman's office or as properly are required of the chairman by the Board
223 of Directors

- 224 5.5 Vice-Chairman. The vice-chairman shall have such powers and discharge as may be assigned from
225 time to time by the Board of Directors or the chairman and shall assume the duties of the chairman in
226 their absence.
227
- 228 5.6 Treasurer. The treasurers shall have general supervision over the care and custody of the funds and
229 securities of the Corporation and shall execute or cause to be executed, the financial policies and
230 procedures of the Corporation. The treasurer shall keep or cause to be kept full and accurate accounts
231 of all receipts and disbursements of the Corporation and whenever required by the Board of Directors,
232 the treasurer shall render or cause to be rendered financial statements of the Corporation. The treasurer
233 shall ensure compliance of any annual report or reports, statement or statements, which may be
234 required by law.
235
236
- 237 5.7 Secretary. The secretary shall ensure that minutes are kept and act as secretary of all meetings of the
238 Corporation and of the Board of Directors. The secretary shall be the custodian of the corporate
239 records and of the corporate seal, and shall see that the corporate seal is affixed to, where necessary, all
240 documents, execution of which, on behalf of the Corporation, under the seal is duly authorized, and
241 when so affixed may attest the same. The secretary shall in general perform all duties usually incident
242 to the office of the secretary, and such other duties as may from time to time be assigned by the Board
243 of Directors.
244
- 245 5.8 Executive Director. The Board may appoint an Executive Director. For so long as the corporation is
246 a member of USA, Inc., the Board shall appoint the Executive Director of USA, Inc. as its Executive
247 Director. In addition to such other duties as may be assigned to the Executive Director by the Board,
248 the Executive Director shall serve as Chief Operating Officer, Assistant Secretary and Assistant
249 Treasurer of the corporation.
250
- 251 5.9 Bonds. The Board of Directors shall have the power to require any officer, agent or employee of
252 the Corporation to provide bonds for the faithful discharge of their duties in such form and with such
253 surety or sureties as the Board of Directors may deem advisable.
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ARTICLE 6

Indemnification and Release

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- 260 6.1 Good Faith Actions. The Corporation shall indemnify any person who was or is party or is threatened
261 to be made a party to any threatened, pending or completed action, suit or proceeding (including
262 appeals), whether civil, criminal, administrative or investigative (other than an action by or in the right
263 of the Corporation) by reason of the fact that he is or was a director or officer of the Corporation
264 against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually
265 and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good
266 faith and in a manner he reasonably believed to be in or not opposed to the best interest of the
267 Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe
268 his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order,
269 settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a
270 presumption that the person did not act in good faith and in a manner which he reasonably believed to
271 be in, or not opposed to, the best interest of the Corporation, and with respect to any criminal action or
272 proceeding, had reasonable cause to believe that his conduct was unlawful.
273
- 274 6.2 Exclusion for Negligence or Misconduct. The Corporation shall indemnify any person who was
275 or is a party or is threatened to be made a party to any threatened, pending or completed action or suit
276 (including appeals) by or in the right of the Corporation to procure a judgment in its favor by reason of
277 the fact that he is or was a director or officer of the Corporation, against expenses (including attorney's
278 fees) actually and reasonably incurred by him in action or suit if he acted in good faith and in a manner
279 he reasonably believed to be in or not opposed to the best interest of the Corporation and except that no

280 indemnification shall be made in respect of any claim, issue or manner as to which such person shall
281 have been adjudged to be liable for negligence misconduct in the performance of his/her duty to the
282 Corporation unless and only to the extent that the District Court or the court in which such action or
283 suit was brought shall determine upon application that, despite the adjudication of liability but in view
284 of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such
285 expenses which the District Court or such other court shall deem proper.

286
287 6.3 Fee and Expenses. To the extent that a director or officer of the Corporation has been successful on
288 the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 6.1 or 6.2 of
289 this Article or in defense of any claim, issue or matter therein, he shall be indemnified against expenses
290 (including attorney's fees) actually and reasonably incurred by him in connection therewith.

291
292 6.4 Coverage Determined by Board of Directors. Any indemnification under Section 6.1 or 6.2 of this
293 Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific
294 case upon a determination that indemnification of the officer or director is proper in the circumstances
295 because he has met applicable standards of conduct set forth in Sections 6.1 or 6.2 of this Article.
296 Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum
297 consisting of directors who were not parties to such action, suit or proceeding; or (b) if such a quorum
298 is not obtainable, or, even if obtainable a quorum of disinterested directors so direct, by independent
299 legal counsel (who may be regular counsel to the Corporation but who shall not be an employee of the
300 Corporation) in a written opinion, or (c) by the members.

301
302 6.5 Advance Payment for Fees and Expenses. Expenses incurred in defending a civil or criminal
303 action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such
304 action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of
305 an undertaking by or on behalf of the director or officer to repay such amount unless it shall ultimately
306 be determined that he is entitled to be indemnified by the Corporation as authorized in this Article.

307
308 6.6 Nonexclusive Remedy. The indemnification provided by this Article shall apply to acts and
309 transaction occurring heretofore or hereafter and shall not be deemed exclusive of any other rights to
310 which those seeking indemnification are entitled under any statute, certificate or articles of
311 incorporation, bylaw, agreement, vote of the Members or disinterested directors, or otherwise, both as
312 to action in his official capacity and as to action in another capacity while holding such office, and
313 shall continue as to a person who has ceased to be a director or officer and shall inure to the benefits of
314 the heirs, executors and administrators of such a person.

315
316 6.7 Insurance Coverage. The Corporation shall purchase or cause to be purchased and maintained
317 insurance on behalf of any person who is or was a director or officer of the Corporation, against any
318 liability asserted against him or incurred by him in any such capacity, or arising out of his status as
319 such, whether or not the Corporation would have the power to indemnify him against such liability
320 under the provisions of this Article.

321
322 6.8 Release. The members shall release and hold harmless the Corporation, and its officers and
323 directors from any and all liability based upon claims, demands, damages, or actions resulting from or
324 arising out of any transactions involving the members and Corporation, directly, indirectly or
325 derivatively or, whether by contract or by reason of contribution or indemnity.

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333 **ARTICLE 7**

334 **Finances**

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 337 7.1 Revenues. Revenues shall be derived from membership fees and other means as set by the Board of
 338 Directors.
 339
 340 7.2 Fiscal Year. Fiscal year shall be from January 1 to December 31.
 341
 342 7.3 Contracts. The Board of Directors may authorize any officer or officers, agent(s), to enter into any
 343 contract and execute and deliver any instruments in the name of and on behalf of the corporation.
 344 Such authority may be general or confined to specific instances.
 345
 346 7.4 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other
 347 evidence of indebtedness issued in the name of the Corporation shall be signed by such officer or agent
 348 as authorized by resolution of the Board of Directors from time to time.
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350
 351 **ARTICLE 8**

352
 353 **Miscellaneous**

- 354
 355 8.1 Severability. In the event any one or more of the provisions contained herein shall for any
 356 reason be held to be unenforceable in any respect under the applicable law, such unenforceability shall
 357 not affect any other provision of these Bylaws, but these Bylaws shall then be construed as if such
 358 unenforceable provision or provisions had not been contained herein.
 359
 360 8.2 Legal Services. The Board of Directors may acquire legal services as deemed necessary.
 361
 362 8.3 Amendments. The Board of Directors shall have the power and authority to alter, amend or
 363 rescind the bylaws of the Corporation at any regular or special meeting at which a quorum is present
 364 by a vote of the majority of the Board of Directors subject to the power of the members to change or
 365 repeal such bylaws at any annual or special meeting of the members, by a vote of a majority of the
 366 members represented at such meetings.
 367
 368 8.4 Conduct of Meetings. All meetings of members and the Board of Directors shall be conducted in
 369 accordance with Robert's Rules of Order.
 370
 371 8.5 Construction. Unless the context specifically requires otherwise any reference in these Bylaws
 372 to any gender shall include all other genders; any reference to the singular shall include the plural; and
 373 any reference to the plural shall include the singular.
 374

375 These Bylaws have been amended and approved by the Board of Directors of the Corporation on
 376 the twenty-fifth day of July 2018, as certified by the Secretary of the Corporation.
 377

378 By _____
 379 Secretary