



BYLAWS

of the

Energy Services Coalition, Corporation

Revised February 7, 2011

**ARTICLE 1
OFFICES**

SECTION 1. NAME OF CORPORATION

This corporation shall be known as the Energy Services Coalition, Corporation.

SECTION 2. PRINCIPAL OFFICE

The principal office of the corporation is located in New Castle County, State of Delaware.

SECTION 3. CHANGE OF ADDRESS

The designation of the county or state of the corporation's principal office may be changed by amendment of these Bylaws. The Board of Directors may change the principal office from one location to another within the named county by noting the changed address and effective date below, and such changes of address shall not be deemed, nor require, an amendment of these Bylaws:

_____ Dated: _____, 20 __

_____ Dated: _____, 20 __

_____ Dated: _____, 20 __

SECTION 4. OTHER OFFICES

The corporation may also have offices at such other places, within or without its state of incorporation, where it is qualified to do business, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

**ARTICLE 2
NONPROFIT PURPOSES**

SECTION 1. IRC SECTION 501(C)(3) PURPOSES

This corporation is organized exclusively for charitable and educational purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(.3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

SECTION 2. SPECIFIC OBJECTIVES, PURPOSES, VISION AND MISSION

The specific purposes for which this corporation is organized are to provide education and develop and disseminate information to increase the delivery of energy efficiency for the benefit of the general public. Educational activities will include the development and dissemination of information about energy efficiency and how increased energy efficiency can be provided, encouraged and acquired. Activities of this corporation shall include bringing together all the interested parties for the cooperative work on:

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Identification of barriers to the use of performance contracting as an option for building owners and occupants to acquire building upgrades, energy efficiency, water conservation, renewable energy resources; and combined heat and power, development of solutions that remove these barriers such as developing and disseminating new information and materials where needed; exchange of information, cooperative work by the affected parties; education on the benefits of increased energy efficiency and renewable energy and on how increased energy efficiency, water conservation, and renewable energy can be implemented; and to remove the barriers for building owners and occupants to use performance contracting and other means for acquiring and financing building upgrades, energy efficiency, and renewable energy resources.

Vision Statement

Through the collaborative efforts and diverse knowledge of its public and private members, the Energy Services Coalition aims to make energy performance contracting one of the primary means of increasing energy efficiency, reducing energy consumption, and improving air quality in all types of facilities in every market segment.

Mission Statement

To promote the benefits of, provide education on, and serve as an advocate for the widespread use of energy performance contracting in public and private facilities.

Strategies for Achieving the ESC Mission

- Serve as a national one-stop clearinghouse for information on state level performance contracting, including best industry practices, the procurement and contracting process, case studies, etc.
- Develop and distribute success stories and lessons learned on state program efforts to promote energy efficiency through performance contracting
- Develop and distribute success stories and lessons learned on a wide variety of performance contracting projects
- Develop capacity at the state level, through state energy offices and state departments, to educate about performance contracting and promote best practices
- Offer workshops and training seminars to educate all market segments on the benefits of energy performance contracting
- Promote the use of energy performance contracting through communication, workshops, and marketing resources
- Assist with and provide support of the development of national, state and local policies and procedures that enhance the widespread use of energy performance contracting in all sectors
- Provide ongoing maintenance of a vibrant, interactive web site that provides vital EPC information and self-help tools, such as model documents and templates

(procurement and contract documents), planning and development tools, links to authorizing state laws, PowerPoint presentations, links to state chapters and their respective resources, etc.)

**ARTICLE 3
BOARD OF DIRECTORS**

SECTION 1. NUMBER

The corporation shall have eighteen (18) Director positions and collectively they shall be known as the Board of Directors.

SECTION 2. BOARD QUALIFICATIONS AND MEMBER CATEGORIES

Directors shall be of the age of majority in this state. These Directors are elected to the Directorship from and by the general Energy Services Coalition (ESC) membership. Other qualifications for Directors of this corporation shall be as follows:

- Six (6) Directors - Representing the ESC members that work for energy service companies. These Directors each must work for an energy service company. An energy service company is defined as any business providing turnkey energy services including energy auditing, engineering, project management, project financing, and monitoring and verification of savings.
- Six (6) Directors - Representing the ESC members that work for state energy offices. These Directors each must work for state energy offices or offices that provide services of a state energy office.
- One (1) Director Representing the ESC members that work for organizations that finance building improvement, energy efficiency and renewable energy. This Director must work for building improvement, energy efficiency and renewable energy financing organizations.
- Two (2) Directors - Representing the ESC members that work for building improvement, energy efficiency and renewable energy equipment and energy service providers or companies that provide technical support services. These Directors each must work for building improvement, energy efficiency and renewable energy equipment and services providers or companies that provide technical support services.
- Two (2) Directors - Representing the ESC members that work for building owners, nonprofit organizations involved in energy efficiency, renewable energy and environmental, or any other membership groups not listed in another ESC membership category. These Directors must work for building owners, energy efficiency, renewable energy and environmental nonprofit organizations or any other membership group not listed in another ESC membership category.
- One (1) Director – Representing a member, officer, or Regional Coordinator of the National Association of State Energy Officials.

SECTION 3. POWERS

Subject to the provisions of the laws of this state and any limitations in the Articles of Incorporation and these Bylaws relating to action required or permitted to be taken or approved by the members, if any, of this corporation, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

SECTION 4. DUTIES

It shall be the duty of the Board of Directors to:

- (a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these Bylaws;
- (b) Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the corporation;
- (c) Supervise all officers, agents and employees of the corporation to assure that their duties are performed properly;
- (d) Meet at such times and places as required by these Bylaws or as determined by majority approval of the Board of Directors;
- (e) Register their addresses with the Secretary of the corporation, and notices of meetings mailed or electronically communicated to them at such addresses shall be valid notices thereof.

SECTION 5. TERM OF OFFICE

Each Director shall hold office for a term of two years and until his or her successor is elected and qualifies. Directors can be reelected to additional terms as Director.

SECTION 6. COMPENSATION

Directors shall serve without compensation except that a reasonable fee may be paid to Directors for attending regular and special meetings of the Board. In addition, directors may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their duties.

SECTION 7. PLACE OF MEETINGS

Meetings shall be held at the principal office of the corporation or at such other place as may be designated by majority approval of the Board of Directors. Meetings may be held by conference call, by other electronic means, or face-to-face.

SECTION 8. REGULAR MEETINGS

The Board of Directors may hold one or more meetings for all membership each calendar year. Members shall be notified at least one month in advance of such meeting. Such membership meetings may be held by conference call, by other electronic means, or face-to-face.

SECTION 9. SPECIAL MEETINGS

Special meetings of the Board of Directors may be called by the President, the Vice-President, the Secretary, by any two Directors, or, if different, by the persons specifically authorized under the laws of this state to call special meetings of the Board. Such meetings shall be held at the principal office of the corporation or, if different, at the place designated by the person or persons calling the special meeting.

SECTION 10. NOTICE OF MEETINGS OF THE BOARD

Unless otherwise provided by the Articles of Incorporation, these Bylaws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board of Directors:

- (a) Regular Meetings. Membership shall be notified electronically, by U.S. Mail, or on its website of all meetings of the Board of Directors.
- (b) Special Meetings. One week's prior notice shall be given by the Secretary of the corporation to each Director of each special meeting of the Board. Such notice may be oral or written, may be given personally, by first class mail, by telephone, by email or by facsimile machine, and shall state the place, date and time of the meeting and the matters proposed to be acted upon at the meeting. In the case of email or facsimile notification, the Director to be contacted shall, when possible, acknowledge receipt of the notice by a return message or telephone call within twenty-four hours of the first transmission. All members of the corporation for whom e-mail addresses are available shall be notified electronically or by U.S. Mail of special Board meetings.
- (c) Waiver of Notice. Whenever any notice of a meeting is required to be given to any Director of this corporation under provisions of the Articles of Incorporation, these Bylaws, or the law of this state, a waiver of notice in writing signed by the Director, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

SECTION 11. QUORUM FOR MEETINGS OF THE BOARD OF DIRECTORS

A quorum of the Board of Directors shall consist of seven (7) of the standing members of the Board of Directors.

Except as otherwise provided under the Articles of Incorporation, these Bylaws, or provisions of law, no business shall be considered by the Board at any meeting at which the required quorum is not present, and the only motion which the Chairperson shall entertain at such meeting is a motion to adjourn.

SECTION 12. BOARD ACTIONS

Every act or decision done or made by a simple majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the Articles of Incorporation, these Bylaws, or provisions of law require a greater percentage or different voting rules for approval of a matter by the Board.

SECTION 13. CONDUCT OF MEETINGS

Meetings of the Board of Directors shall be presided over by a Chairperson. The Chairperson shall be the President of the corporation or, in his or her absence, by the Vice President of the corporation or, in the absence of each of these persons, by a Chairperson chosen by a majority of the Directors present at the meeting. The Secretary of the corporation shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

A Director may participate in a Board of Directors meeting by telephone conference, at the discretion of the President, Vice President or designated Chairperson.

Robert's Rules of order shall govern meetings, unless other governing rules agreeable to all Directors are used, insofar as any such rules are not inconsistent with or in conflict with the Articles of Incorporation, these Bylaws, or with provisions of law.

Meetings of the Board shall be open to all the members of the corporation and the members of the corporation may only participate in the discussion of issues at the Board meeting, at the discretion of the Board of Directors. The only exception is that the Board may hold closed sessions to address personnel issues for the corporation.

SECTION 14. VACANCIES

Vacancies on the Board of Directors shall exist (1) on the death, resignation or removal of any Director, and (2) whenever the number of authorized Directors is increased.

Any Director may resign effective upon giving written notice to the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No Director may resign if the corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the Office of the Attorney General or other appropriate agency of this state.

Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of this state.

Unless otherwise prohibited by the Articles of Incorporation, these Bylaws or provisions of law, vacancies on the Board may be filled by approval of the Board of Directors. If the number of Directors then in office is less than a quorum, a vacancy on the Board may be filled by approval of a majority of the Directors then in office or by a sole remaining Director. A person elected to fill a vacancy on the Board shall hold office until the next election of the Board of Directors or until his or her death, resignation or removal from office.

SECTION 15. ELECTION OF DIRECTORS

Directors to fill any openings on the board will be elected by electronic, faxed or mailed ballots during the months of September or October each year following the election procedures specified in Article 12 for member meetings. The new board members' terms will begin in October of each calendar year.

SECTION 16. NONLIABILITY OF DIRECTORS

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

SECTION 17. INDEMNIFICATION BY CORPORATION OF DIRECTORS AND OFFICERS

The Directors and officers of the corporation shall be indemnified by the corporation, to the fullest extent permissible under the laws of the state of incorporation. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or Officer of the corporation or while a Director of the corporation is or was serving at the request of the corporation as a Director, Officer, trustee, employee or agent of another corporation, trust or other incorporated or unincorporated enterprise, whether the basis of such proceeding is alleged action or inaction in an official capacity as a Director, Officer, trustee, employee or agent or in any other capacity while serving as a Director, Officer, trustee, employee or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by applicable Delaware and Federal statutes as the same exists or may hereafter be amended. All such persons shall be indemnified and held harmless by the corporation against all expense, liability and loss (including attorney's fees, judgments, fines, taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection with the indemnified action or inaction, and such indemnification shall continue as to a person who has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors and administrators.

The right to indemnification conferred in this Article shall be a contract right and shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses incurred by a Director or Officer in his or her capacity as a Director or Officer in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such Director or Officer, to repay all amounts so advanced if it shall ultimately be determined that such Director or Officer is not entitled to be indemnified under this Article or otherwise. The corporation may, by action of its Board of Directors, provide indemnification and advance expenses to employees and agents of the corporation and others permitted to be indemnified by the applicable Delaware and Federal statutes with the same scope and effect as the foregoing indemnification and advancement of expenses to Directors and Officers.

If a valid claim pursuant to the above provisions of this Article is not paid in full by the corporation within ninety (90) days after a written claim has been received by the corporation the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of such claim, and, if successful in whole or in part, the claimant shall be entitled to be

paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under applicable Delaware and Federal for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in applicable Delaware and Federal statutes, nor an actual determination by the corporation (including its Board of Directors or independent counsel) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

The right to indemnification and payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article shall not be exclusive of any other right which any person may have or hereinafter acquire under any statute, provision of the Energy Services Coalition Articles of Incorporation, Bylaws, agreement, or disinterested Directors or otherwise.

SECTION 18. INSURANCE FOR CORPORATE AGENTS

Except as may be otherwise provided under provisions of law, the Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the corporation (including a Director, officer, employee or other agent of the corporation) against liabilities 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 Articles of Incorporation, these Bylaws or provisions of law.

SECTION 19. REPRESENTATION

Whenever representing the ESC for outreach activities, members of the corporation shall represent the goals of the corporation and all ESC members rather than their own individual interests.

ARTICLE 4 OFFICERS

SECTION 1. DESIGNATION OF OFFICERS

The officers of the corporation shall be a President, a Vice President, a Secretary, and a Treasurer. The corporation may also have a Chairperson of the Board, one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers, and other such officers with such titles as may be determined from time to time by the Board of Directors.

SECTION 2. QUALIFICATIONS

Any member may be elected to the Board of Directors, and any Director may serve as an officer of this corporation.

SECTION 3. ELECTION AND TERM OF OFFICE

Officers shall be elected by the Board of Directors, at any time, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

The officers will each hold office for one (1) year. The Board shall endeavor to select a President, Vice President, Secretary, and Treasurer who are representative of several membership categories.

SECTION 4. REMOVAL AND RESIGNATION

The Board of Directors at any time may remove any officer, either with or without cause. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract, which has been approved or ratified by the Board of Directors relating to the employment of any officer of the corporation.

SECTION 5. VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board of Directors. In the event of a vacancy in any office other than that of President, such vacancy may be filled temporarily by appointment by the President until such time as the Board shall fill the vacancy.

SECTION 6. DUTIES OF PRESIDENT

The President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, supervise and control the affairs of the corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be prescribed from time to time by the Board of Directors. Unless another person is specifically appointed as Chairperson of the Board of Directors, the President shall preside at all meetings of the Board of Directors and, if this corporation has members, at all meetings of the members. Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, he or she shall, in the name of the corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

SECTION 7. DUTIES OF VICE PRESIDENT

In the absence of the President, or in the event of his or her inability or refusal to act, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the President. The Vice President shall have

other powers and perform such other duties as may be prescribed by law, by the Articles of Incorporation, or by these Bylaws, or as may be prescribed by the Board of Directors.

SECTION 8. DUTIES OF SECRETARY

The Secretary shall certify and keep at the principal office of the corporation or at a location as the Board may determine, the original, or a copy, of these Bylaws as amended or otherwise altered to date.

Keep at the principal office of the corporation or at such other place as the Board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of Committees of Directors and of members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.

See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.

Be custodian of the records and of the seal of the corporation and affix the seal, as authorized by law or the provisions of these Bylaws, to duly executed documents of the corporation.

Exhibit at all reasonable times to any Director of the corporation, or to his or her agent or attorney, on request therefore, the Bylaws, the membership book, and the minutes of the proceedings of the Directors of the corporation.

In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

SECTION 9. DUTIES OF TREASURER

The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the corporation, and deposit all such funds in the name of the corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

Receive, and give receipt for, monies due and payable to the corporation from any source whatsoever.

Keep at the principal office of the corporation or at a location as the Board may determine a book or listing of members containing the name and address of each member, and, in the case where any membership has been terminated, shall record such fact in the membership book or listing together with the date on which such membership ceased to be active.

Disburse, or cause to be disbursed, the funds of the corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.

Keep and maintain adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

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Exhibit at all reasonable times the books of account and financial records to any Director of the corporation, or to his or her agent or attorney, on request therefore.

Render to the President and Directors, whenever requested, an account of any or all of any transactions by the Treasurer and of the financial condition of the corporation.

Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

**ARTICLE 5
COMMITTEES**

SECTION 1. EXECUTIVE COMMITTEE

- (a) The Executive Committee shall be composed of the President, Vice-President, Secretary, and Treasurer.
- (b) The Executive Committee shall, between all regular meetings of the Board of Directors, have all singular rights, powers, and duties of the Board of Directors, except that the Executive Committee shall not:
 - (i) authorize an expenditure of corporate funds in excess of five hundred dollars (\$500) that are in variance from the ESC Budget approved by the Board of Directors;
 - (ii) amend the Bylaws, though they may recommend amendments;
 - (iii) enter into any contracts or agreements with third parties relating to the property or affairs of the Energy Services Coalition for a period of more than one year; and/or
 - (iv) exercise any authority denied them by law.
- (c) The Executive Committee shall report to the Board of Directors its action on any matter affecting the affairs of Energy Services Coalition at the next meeting of the Board of Directors.
- (d) Minutes of all Executive Committee meetings shall be prepared by the Secretary and submitted to the Board of Directors.

SECTION 2. MEMBER CATEGORY COMMITTEES

The corporation may create Committees for each of the member categories identified in Article 11, Section 2(b). All of the members of the corporation that fall in a given member category are members of their respective member category Committee. These member category committees serve several purposes.

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First, these Committees provide a vehicle for the members of individual member categories to identify and develop issues that they believe should be addressed by the corporation and to present such issues to the Board of Directors so they can be addressed.

Second, where the Board of Directors identifies issues to be addressed that need input from specific member categories, the Board can request this input from the appropriate member category Committee(s).

Third, where cooperative effort among members in two or more member categories is needed to address an issue, and formal coordination of this cooperative effort is needed, the appropriate member category Committees can provide this coordination.

The Board member(s) representing each member category Committee are the executive Committee for that category. They may create specific leadership positions for their membership category if supported by the members of their category Committees and approved by the Board. Any member of the corporation can bring issues or topics to the attention of their member category Committee or to the attention of the Board of Directors directly with the request that it be addressed. If any voting is required in the member category Committees, it shall be conducted according to the voting procedures specified in Article 12, Section 7.

There is no requirement that these member category Committees meet unless there is a need for them to meet. If they do meet, preference shall be given to holding any such meetings as part of the regular meetings of the corporation. If and when any of the member category Committees meet and identify issues that the Committee wants to be addressed by the Board and/or by another member category Committee, the Committee shall forward a written request to the Board and/or any other affected member category Committee.

SECTION 3. INDIVIDUAL STATE COMMITTEES (State Chapters)

Since the circumstances vary from state to state, a local-state specific problem solving capacity is provided by state-specific Committees. All the members of the ESC corporation that are located in or do business in a state may form and become members of an Individual State Committee (State Chapter) for that state.

Individual State Committees (State Chapters) are to be led, at a minimum, by a public sector co-chair, (a person who works for the state energy office or other public agency in that state) and a private sector co-chair (a person who works for an energy savings performance contracting company doing business in that state). State chapters may elect additional co-chairs or committee chairs as needed to assist the state chapter in carrying out its responsibilities. The co-chairs of the Individual State Executive Committee for each state are to be elected by the general ESC membership residing in the particular state using the voting procedures specified in Article 12, Section 7. Any voting required in an Individual State Committee (State Chapter) shall be conducted according to the voting procedures specified in Article 12, Section 7. Individual State Committees (State Chapters) and Individual State Executive Committees serve several purposes:

- (a) The Individual State Committees (State Chapters) provide a vehicle for the members of the corporation that are located in or do business in a particular state to identify and develop solutions to state-specific issues and to identify issues that are multi-state or regional in nature that should be directed to the ESC Board.

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- (b) Where the ESC Board of Directors identifies issues that affect an individual state or issues that affect multiple states but need to be addressed on an individual state basis, the Board can request that the appropriate Individual State Committees (State Chapters) address such issues.
- (c) Where cooperative effort among members from two or more states is needed to address an issue, and where a formal approach to such cooperative effort is needed, the appropriate Individual State Committees (State Chapters) can provide a forum for coordination.
- (d) The Individual State Executive Committees serve the important function of providing a first point of contact for corporations and individuals to bring questions, issues, or problems related to performance contracting in each state. The Individual State Executive Committees members are co-chairs of their respective Individual State Committees (State Chapters) and represent the activities of their respective Individual State Committees (State Chapters) to the ESC Board.

SECTION 4. STANDING COMMITTEES

The Board of Directors may organize standing Committees from time to time as necessary. Such Committees shall be established by resolution of the Board of Directors. If the Board of Directors so chooses, it may only fill the chair position of a Committee. Standing Committees may also establish a vice chair and secretary. The members and officers of each Committee can be either Board members or non-Board members. These Committees shall work to carry out the objectives of the corporation and act in an advisory capacity to the Board. The standing Committees may include but are not limited to: Membership Development Committee, Procurement and Contracting Document Improvement Committee, Achievement Documentation Committee, Web Site Committee, Speakers Bureau Committee, Meetings and Conferences Committee, Funding Development Committee.

SECTION 5. OTHER COMMITTEES

The Board may establish other Committees as may from time to time be necessary. These Committees may consist of persons who are either Board members or non-Board members and shall act in an advisory capacity to the Board.

SECTION 6. MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of Committees shall be in accordance with the same general provisions of these Bylaws that apply to meetings and actions of the Board of Directors. The Board of Directors may also adopt other rules and regulations pertaining to the conduct of meetings of Committees to the extent that such rules and regulations are not inconsistent with the provisions of these Bylaws.

ARTICLE 6 EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

SECTION 1. EXECUTION OF INSTRUMENTS

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The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, 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 monetarily for any purpose or in any amount.

SECTION 2. CHECKS AND NOTES

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the corporation shall be signed by the Treasurer of the corporation upon approval, by electronic or other means, of the President of the corporation.

SECTION 3. DEPOSITS

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

SECTION 4. GIFTS

The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for the nonprofit purposes of this corporation.

**ARTICLE 7
CORPORATE RECORDS, REPORTS AND SEAL**

SECTION 1. MAINTENANCE OF CORPORATE RECORDS

The corporation shall keep at its principal office or at a location as the Board may determine:

- (a) Minutes of all meetings of Directors and Committees of the Board indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- (b) Adequate and correct books and records of accounts, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- (c) A record of its members, if any, indicating names and addresses and, if applicable, the class of membership held by each member and the termination date of any membership;
- (d) A copy of the corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by any members of the corporation at all reasonable times during office hours.

SECTION 2. CORPORATE SEAL

The Board of Directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office or at a location as the Board may determine of the corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

SECTION 3. DIRECTORS' INSPECTION RIGHTS

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents and to inspect the physical properties of the corporation, and shall have such other rights to inspect the books, records and properties of this corporation as may be required under the Articles of Incorporation, other provisions of these Bylaws, and provisions of state law.

SECTION 4. MEMBERS' INSPECTION RIGHTS

Each member of this corporation shall have the following inspection rights for a purpose reasonably related to such person's interest as a member:

- (a) To inspect and copy the record of all members' names, addresses and voting rights, at reasonable times, upon written request to the Secretary of the corporation, which request shall state the purpose for which the inspection rights are requested.
- (b) To obtain, upon written request, within a reasonable time or after a date specified therein from the Secretary of the corporation, and upon payment of a reasonable charge to the Secretary of the corporation 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 the list has been compiled or as of the date specified by the member subsequent to the date of demand. The request shall state the purpose for which the list is requested.
- (c) To inspect at any reasonable time the books, records, or minutes of proceedings of the members or of the Board or Committees of the Board, upon written request of the Secretary of the corporation by the member, for a purpose reasonably related to such person's interests as a member.
- (d) Members shall have such other rights to inspect the books, records and properties of this corporation as may be required under the Articles of Incorporation, provisions of these Bylaws, and provisions of law.

SECTION 5. RIGHT TO COPY AND MAKE EXTRACTS

Any inspections under the provisions of this Article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

SECTION 6. PERIODIC REPORT

The Board shall cause any annual or periodic report required under law to be prepared and delivered to an office of this state or to any member of this corporation, to be so prepared and delivered within the time limits set by law.

**ARTICLE 8
IRC 501(C)(3) TAX EXEMPTION PROVISIONS**

SECTION 1. LIMITATIONS ON ACTIVITIES

No substantial part of the activities of this corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation [except as otherwise provided by Section 501(h) of the Internal Revenue Code], and this corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provisions of these Bylaws, this corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

SECTION 2. PROHIBITION AGAINST PRIVATE INUREMENT

No part of the net earnings of this corporation shall inure to the benefit of or be distributable to any of its members, Directors, trustees, officers, or other private persons.

SECTION 3. DISTRIBUTION OF ASSETS

Upon the dissolution of this corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or shall be distributed to the federal government, a state government or a local government for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of this state.

SECTION 4. PRIVATE FOUNDATION REQUIREMENTS AND RESTRICTIONS

In any taxable year in which this corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code, the corporation 1) shall distribute its income for said period at such time and manner so as not to subject it to tax under Section 4942 of the Internal Revenue Code; 2) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; 3) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; 4) shall not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Internal Revenue Code; and 5) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

**ARTICLE 9
AMENDMENT OF BYLAWS**

Subject to the power of the members of this corporation to adopt, amend or repeal the Bylaws of this corporation and except as may otherwise be specified under provisions of law, these

Bylaws may be altered, amended, or repealed only by ratification by ESC members. The membership shall be notified in person, by mail or electronic means at least 5 business days in advance of the date votes are due and have the opportunity to vote by mail or electronically. Any Bylaw amendments shall be ratified by majority vote of responding members.

**ARTICLE 10
CONSTRUCTION AND TERMS**

If there is any conflict between the provisions of these Bylaws and the Articles of Incorporation of this corporation, the provisions of the Articles of Incorporation shall govern.

Should any of the provisions or portions of these Bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holding.

All references in these Bylaws to the Articles of Incorporation shall be to the Articles of Incorporation or other founding document of this corporation filed with an office of this state and used to establish the legal existence of this corporation.

All references in these Bylaws to a section or sections of the Internal Revenue Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

**ARTICLE 11
MEMBERS**

SECTION 1. DETERMINATION AND RIGHTS OF MEMBERS

No member shall hold more than one membership in the corporation. Except as expressly provided in or authorized by the Articles of Incorporation, the Bylaws of this corporation, or provisions of law, all memberships shall have the same rights, privileges, restrictions and conditions.

SECTION 2. QUALIFICATIONS AND ADMISSION OF MEMBERS

The qualifications for membership in this corporation are as follows:

- (a) Membership is limited to individuals rather than organizations. With the one exception that where government entities are not allowed to pay for individual memberships of their staff members, the government entity can be the member and pay for as many membership slots as they so choose at the same rate per membership slot as would be paid for by an individual member in the same membership category.
- (b) Members in this corporation must specify which one of the following categories they are in:
 - (i) Members that work for an energy service company
 - (ii) Members that work for a state energy office or offices that provide the services of a state energy office.
 - (iii) Members that work for building improvement, energy efficiency or renewable energy project financing organizations.

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- (iv) Members that work for building improvement, energy efficiency or renewable energy equipment and services providers or professional energy engineering companies.
 - (v) Members that work for building owners
 - (vi) Members that work for energy efficiency, renewable energy or environmental nonprofit organizations or members not included in one of the specific member categories.
- (c) Members must provide the name, address and contact information of the organization they represent in order to establish placement in the correct membership category. Members are required to provide the corporation with updated information on the organization when this information changes.

Applicants can be admitted to membership once they have paid dues submitted an application for membership that:

- (a) States their support of the objectives of the corporation
- (b) States which membership category they belong to
- (c) Provides the name, address and contact information of the organization they represent in order to document their placement in the correct membership category.

SECTION 4. FEES AND DUES

The Board of Directors shall set the fee for making application for membership in the corporation, annual membership dues, and for corporate sponsorships. The Board may set different fees for different categories of members including associate and student rates.

SECTION 5. NUMBER OF MEMBERS

There is no limit on the number of members the corporation may admit.

SECTION 6. MEMBERSHIP BOOK

The corporation shall keep a membership book or listing containing the name and address of each member. Termination of the membership of any member shall be recorded in the book, together with the date of termination of such membership. Such book or listing may be kept in either paper or electronic form and shall be kept at the corporation's principal office or at a location as the Board may determine.

SECTION 7. NONLIABILITY OF MEMBERS

A member of this corporation is not, as such, personally liable for the debts, liabilities, or obligations of the corporation.

SECTION 8. TRANSFERABILITY OF MEMBERSHIPS

During their current membership period, a member from one organization may transfer that membership to another individual. For such transfers, the new individual must register with the ESC.

SECTION 9. TERMINATION OF MEMBERSHIP

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The membership of a member shall terminate upon the occurrence of any of the following events:

- 1) Upon his or her notice of such termination delivered to the President or Secretary of the corporation personally or by mail, such membership to terminate upon the date of delivery of the notice or date of deposit in the mail. When a member leaves the organization they work for, the balance of the membership period can be used by both the former member and a new representative of the organization for which they worked. When membership renewal is due both individuals will need to renew their memberships separately.
- 2) Upon a failure to renew his or her membership by paying dues on or before July 1 of each year, such termination to be effective thirty (30) days after a written notification of delinquency is sent to such member by the Secretary of the corporation. A member may avoid such termination by paying the amount of delinquent dues within a thirty (30) day period following the member's receipt of the notification of delinquency.
- 3) After providing the member with reasonable notice and an opportunity to be heard either orally or in writing, upon a determination by the Board of Directors that the member has engaged in conduct materially and seriously prejudicial to the interests or purposes of the corporation. Any person expelled from the corporation shall receive a refund of dues already paid for the current dues period prorated to the time remaining in their current membership period.

All rights of a member in the corporation shall cease on termination of membership as herein provided.

**ARTICLE 12
MEETINGS OF MEMBERS**

SECTION 1. PLACE OF MEETINGS

Meetings of members shall be held at the principal office of the corporation or at such other place or places as may be designated from time to time by approval of the Board of Directors. All meetings may be held by conference call, by other electronic means, or face-to-face.

SECTION 2. ANNUAL MEETINGS

An annual meeting of the general membership may be held by conference call, by other electronic means, or face-to-face for the purpose of recognizing the newly elected Directors and providing information to the attending members. Such annual membership meeting can be rescheduled by an announcement 30 days in advance of the meeting. Other meetings of the members may be held as determined by the Board of Directors. If the day scheduled for the annual meeting falls on a legal holiday, such meeting shall be held at the same hour and place on the next business day.

SECTION 3. SPECIAL MEETINGS OF MEMBERS

Special meetings of the members shall be called by the Board of Directors, the Chairperson of the Board, or the President of the corporation, or, if different, by the persons specifically authorized under the laws of this state to call special meetings of the members.

SECTION 4. NOTICE OF MEETINGS

Unless otherwise provided by the Articles of Incorporation, these Bylaws, or provisions of law, notice stating the place, day and hour of the annual meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be provided not less than ten (10) days before the date of the meeting, either personally, electronically or by mail, by or at the direction of the President, the Secretary, or the person(s) calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the corporation, with postage prepaid. If emailed, such notice shall be deemed to be delivered when sent by Internet addressed to the member at his or her address as it appears on the records of the corporation. If sent by facsimile, such notice shall be deemed to be delivered when sent by the facsimile addressed to the member at his or her address as it appears on the records of the corporation.

The notice of any meeting of members at which Directors are to be elected shall also state the names of all those who are nominees or candidates for election to the Board at the time notice is given.

Whenever any notice of a meeting is required to be given to any member of this corporation under provisions of the Articles of Incorporation, these Bylaws, or the law of this state, a waiver of notice in writing signed by the member, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

SECTION 5. QUORUM FOR MEETINGS

Since all membership votes will be conducted as necessary through the year by mail or electronic means and since the member meetings are purely informational for attending members, a quorum of members is not needed for the informational meetings. However, if at any time it is determined that that official business be conducted at membership meetings, the quorum required to proceed shall consist of fifty-one percent (51%) of the voting members of the corporation, including proxies. Except as otherwise provided under the Articles of Incorporation, these Bylaws, or provisions of law, no business shall be considered by the members at any meeting at which the required quorum is not present, and the only motion which the Chair shall entertain at such meeting is a motion to adjourn.

SECTION 6. MAJORITY ACTION AS MEMBERSHIP ACTION

Every act or decision done or made by a majority of all members of the corporation shall be considered binding on the corporation and its Directors and officers.

SECTION 7. VOTING RIGHTS AND PROCEDURES

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Voting at duly held meetings shall be by either a show of hands or by written ballot. Members of the corporation absent from duly held meetings may provide written assignment of their vote to a proxy representative. Proxy representatives shall be qualified and certified by the Secretary of the corporation prior to voting.

Balloting must be conducted by auditable means including mail, fax, e-mail and hand delivery. Directors shall be elected by written ballot. Such ballots for the election of Directors shall list the persons nominated at the time the ballots are mailed, faxed, emailed or hand delivered. In order to ensure inclusion in corporate decision making of the views of members that work for both large and small organizations and to ensure inclusion in corporate decision making of the views of members that work different kinds of organizations the following voting rules apply:

- (a) In all votes of the corporation's members, in order to ensure representation of the views of those who work for organizations with a small number of employees who are members of the corporation as well as the views of those who work for large organizations with a large number of employees who are members of the corporation, voting on the election of Directors and all other issues will be carried out in the following way:
 - (i) All members can cast a vote, with their name and the name of the organization they work for stated on the ballot.
 - (ii) In counting the votes, no more than five (5) votes from members who work for one organization will be included in the final tally of votes. Where more than five votes are cast by members who work for one organization, the five votes will be allocated proportionally according to all the votes by members who work for that organization. This means that where more than five votes are cast by members who work for one organization, the votes included in the final tally for members that work for that organization will be as follows for each position: five (5) x {number of votes for a given position / total number of votes cast by member that work for that organization}.
- (b) In elections of Directors:
 - (i) All members can cast one vote for each position on the Board and these votes will be counted as described in part (a) of this section 7,
 - (ii) Directors will be selected from among the candidates receiving the majority of votes within each membership category,
 - (iii) If there is a tie vote between candidates in a Board election, such ties will be settled by a flip of a coin at the next Board meeting,
 - (iv) Election of Directors shall be conducted in a manner that is auditable.

When ballots are used, ballots shall:

1. set forth the proposed action;
2. provide an opportunity to specify approval or disapproval of each proposal;
3. indicate the number of responses needed to meet the quorum requirement and, except for ballots soliciting votes for the election of Directors, state the

percentage of approvals necessary to pass the measure submitted; and

4. shall specify the date by which the ballot must be received by the corporation in order to be counted. The date set shall afford members a reasonable time within which to return the ballots to the corporation.

Approval of action by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action.

SECTION 8. CONDUCT OF MEETINGS

Meetings of members shall be presided over by the Chairperson of the Board, or, if there is no Chairperson or, in his or her absence, by the President of the corporation or, in his or her absence, by the Vice President of the corporation or, in the absence of all of these persons, by a Chairperson chosen by a majority of the voting members, present at the meeting. The Secretary of the corporation shall act as Secretary of all meetings of members, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

Meetings shall be governed by Robert's Rules of order as such rules may be revised from time to time, unless other governing rules agreeable to all members present are used insofar as such rules are not inconsistent with or in conflict with the Articles of Incorporation, these Bylaws, or with provisions of state law.

ADOPTION OF BYLAWS

We, the undersigned, are the current Directors of this corporation, and we consent to, and hereby do, adopt the foregoing Bylaws, consisting of the preceding pages, as the Bylaws of this corporation.

_____ Date: _____
Joel Asrael, Board Member

_____ Date: _____
Perry Been, Board Member

_____ Date: _____
Rhonda Courtney, Board Member

_____ Date: _____
Doug Dahle, Board Member

_____ Date: _____
David Godfrey, Board Member

_____ Date: _____
Dale Hahs, Board Member

_____ Date: _____
Chuck Hall, Board Member

_____ Date: _____
Ray Hinson, Board Member

_____ Date: _____
Brad Jenkins, Board Member

_____ Date: _____
Eileen McHugh, Board Member

_____ Date: _____
Karen Keeler Pelzer, Board Member

_____ Date: _____
Jim Ploger, Board Member

_____ Date: _____
Bill Skosky, Board Member

_____ Date: _____
Tom Walther, Board Member

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_____ Date: _____
Open Position, Board Member

_____ Date: _____
Open Position, Board Member

_____ Date: _____
Open Position, Board Member

Amended this 26th day of May 2010.