

UTILITIES PROTECTION CENTER, INC.

MEMBERSHIP

AGREEMENT

# UTILITIES PROTECTION CENTER MEMBERSHIP AGREEMENT

## I. PREAMBLE

Since 1974, certain Georgia Utilities have jointly operated a program known as the Utilities Protection Center for the purpose of providing a mechanism whereby construction contractors and other persons can determine the location of underground utility facilities prior to engaging in blasting or excavating operations. By providing such information, the Utilities Protection Center is intended to prevent damage to underground utility facilities resulting from such operations, and thereby to prevent injuries to persons and property and interruptions of utility service.

The Utilities Protection Center is structured as a nonprofit membership corporation known as Utilities Protection Center, Inc., the members of which are the participating entities that own, operate, or maintain underground utility facilities. Pursuant to an act of the Georgia General Assembly codified as O.C.G.A. § 25-9-1 et seq., all persons operating or maintaining underground gas, electric, telephone, telegraph, cable, video communications, water, storm drains, or sewage facilities within the State of Georgia must participate in the Center. This Agreement sets forth the rights and obligations as between Utilities Protection Center, Inc. and each member that is a governmental entity.

## II. TERMS AND CONDITIONS.

This Agreement is made and entered into as of \_\_\_\_\_, 20\_\_, by and between Utilities Protection Center, Inc., a Georgia nonprofit membership corporation having its principal offices at 3400 Summit Ridge Parkway, NW, Duluth, Georgia 30096 (hereinafter "UPC"), and \_\_\_\_\_, having its principal offices at \_\_\_\_\_ (hereinafter "Member"). In consideration of the premises and of the mutual covenants and agreements hereinafter set forth, UPC and Member agree as follows:

### A. Definitions.

"**Costs**" means actual direct costs, expenses, liabilities and other financial obligations, and does not include any allowance for depreciation or other indirect cost.

"**Management Agreement**" means the written contract for the provision of services which may be entered into between Management Company (if any) and UPC.

"**Management Company**" means that entity (if any) which contracts with UPC through a Management Agreement to provide Services.

"**Member**" means each entity, including Member, which enters into a Membership Agreement with UPC.

**"Membership Agreement"** means the written contract entered into between UPC and each Member that sets forth the rights and obligations of UPC and each Member with respect to the Utilities Protection Center in a form substantially identical to this Agreement. This Agreement is a Membership Agreement.

**"Services"** means all labor, supervision, materials, services, equipment, supplies and transportation furnished by or through UPC for the operation of the Utilities Protection Center.

**"UPC Procedural Manual"** means that document which describes the Services and the payment and other obligations of Members, as such document may be changed, modified or amended from time to time as provided therein.

**"Utilities Protection Center"** means that program organized among and between owners and operators of underground utility facilities in the State of Georgia, by means of which program information regarding the location of such facilities is furnished upon request to members of the public. The program includes UPC, Management Company and all Members.

**B. Provision of Services.**

UPC shall provide Services as mandated by State law and in accordance with the UPC Procedural Manual and the resolutions of the UPC Board. Services may be provided directly by UPC, or indirectly through a Management Agreement, at the option of UPC.

**C. Reimbursement for Cost of Services.**

Member shall reimburse UPC for Member's share of all Costs incurred by UPC in the course of providing Services. Member's share of such Costs shall be determined, billed and paid in accordance with the Bylaws, the UPC Procedural Manual and the resolutions of the UPC Board.

**D. Cooperation.**

Member shall at all times comply with the provisions of the UPC Bylaws, the UPC Procedural Manual, the resolutions of the UPC Board, and State law, and shall use its best efforts to cooperate with UPC, the Management Company (if any), and other Members to assure the safe, efficient operation of the Utilities Protection Center. .

**E. Audit and Accounting.**

UPC shall ensure that for a period of three (3) years after the payment of any bill rendered to Member for its share of Costs, Member, its auditor(s) or other authorized representative(s) shall be afforded access at reasonable times to accounting records of

UPC and Management Company relative to such bill.

**F. Indemnification.**

Except to the extent prohibited by law or regulation enacted pursuant to law, and pursuant to the Bylaws, Member shall indemnify and hold harmless UPC, other Members, and Management company, and the officers, directors and employees of each, from all losses, expenses, liabilities, demands, claims, and judgments, including all court costs and reasonable attorneys fees, arising out of injury (including death) to any person or damage to any property to the extent resulting from the act or omission of Member. Member covenants not to sue UPC, its officers, directors or employees, under any circumstances or upon any grounds with respect to the Services, any part thereof, or any injury, damage or loss, whether physical or economic, to persons or property resulting therefrom. Notwithstanding the foregoing, nothing herein shall be construed as a waiver of sovereign immunity by Member. Should UPC choose to make use of the services of a Management Company, this provision shall not be interpreted to apply to such Management Company.

**G. Term and Termination.**

This Agreement shall become effective as of the date hereof and shall continue in effect until the end of such calendar year, and from year to year thereafter unless terminated upon thirty (30) days written notice to the other party, except that a Federal Agency participating on a voluntary basis (as in the case of Federal facilities within the exclusive jurisdiction of the United States) may elect in writing to condition the renewal of its membership on the execution of a new instrument. Termination by either party shall not relieve either party of any obligation or liability incurred prior to such termination, regardless of whether the same be known or unknown prior to such termination. The provisions of Subsections E, F, and L of Section II of this Agreement shall survive any termination of this Agreement.

**H. Notices.**

All notices provided for in this Agreement shall be sent to the following addresses:

If to UPC:

\_\_\_\_\_  
3400 Summit Ridge Parkway, NW  
Duluth, Georgia 30096

If to Member:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I. Insurance.**

During the term of this Agreement, and to the extent such insurance does not exceed the maximum insurance authorized by the Member, Member shall, at its sole cost and expense, maintain insurance of the types and in the amounts normally maintained by entities engaged in the Member business or occupation. Such insurance, at minimum, shall be for the following amounts:

Comprehensive General Liability less, the (including broad form contractual Member under liability)	\$1,000,000 per occurrence, or, if maximum authorized by the local law.
Workers Compensation	Amount sufficient to meet statutory requirements
Automotive Liability bodily (for owned, non-owned and damage, or, if less, the hired vehicles authorized by the Member	\$1,000,000 combined single limit injury and property maximum under local law).
Comprehensive All Risk Property less, the authorized by the Member	\$1,000,000 per occurrence, or, if maximum under local law.

Notwithstanding the foregoing provisions of this Agreement to the contrary, Member, upon demonstrating the financial ability to do so, by way of providing a current financial statement or similar financial record, shall have the right to self-insure for all liability, up to the amount set forth above arising out of this Agreement.

**J. Applicable Law.**

This Agreement and the rights of the parties hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

**K. No Waiver.**

The failure by either party to insist on performance of any term, condition or instruction, or to exercise any right or privilege included in this Agreement, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, right or privilege. No waiver shall be valid unless confirmed in writing by the party granting such waiver.

**L. Third Party Beneficiaries.**

The provisions of this Agreement are for the benefit of the parties hereto, and the other Members and Management Company to the extent provided herein, and not for any other person. The obligations of UPC and Member hereunder may be enforced by any Member (or Management Company, if any) to the extent of their interest in the matter as if each of them were a party to this Agreement. UPC will assure that Member may enforce the Management Agreement against Management Company and UPC as if Member were a party to that agreement. Member and UPC agree to consult (to the extent practicable) with each other, other Members and Management Company prior to instituting any lawsuit arising out of the Utilities Protection Center against any Member, UPC or Management Company, and to cooperate in the conduct of any such lawsuit in order to resolve amicably all disputes, minimize the impact of any dispute on the Utilities Protection Center, and avoid unnecessary, harassing or duplicative litigation.

**M. Changes, Modifications and Amendments.**

No changes, modifications or amendments of any of the terms and conditions hereof shall be valid unless agreed to by the parties in writing and signed by their authorized representatives. However, this agreement shall be subject to the currently effective provisions of the bylaws (including the resolutions of the Board of Directors of UPC adopted pursuant to the Bylaws), and, in addition, changes, modifications or amendments to the UPC Procedural Manual may be made as provided therein. This agreement shall be construed under the laws of the State of Georgia.

**N. Compliance with Laws.**

The parties shall each comply with all federal, state and local laws and regulations.

**O. Validity of Provisions.**

In the event any section or any part or portion of any section of this Agreement shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that section, or any other section hereof, provided that such remaining parts, portions or sections can thereafter be applicable and effective without material prejudice to either party.

**P. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same agreement.

**Q. Assignment.**

This Agreement may be assigned in whole or in part by Member only with the prior written consent of UPC.

**R. Headings.**

The headings and subheadings of the various sections of this Agreement are inserted for convenience only and shall not be considered in interpreting or construing the provisions hereof.

**S. Entire Agreement.**

This Agreement embodies the entire agreement between UPC and Member. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date hereof.

Utilities Protection Center, Inc.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Title: Executive Director

\_\_\_\_\_ ("Member")

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_