

**BY-LAWS
OF
BUILDING PERFORMANCE CONTRACTORS ASSOCIATION / NYS**

**A New York State Not-For-Profit Corporation
(Approved by the Board: December 8, 2009)**

ARTICLE I (NAME AND PURPOSE)

§1. **Name.** The name of this incorporated association is Building Performance Contractors Association of New York State (or "BPCA/NYS"). It is an incorporated association with members.

§2. **Location.** The principal office of the Corporation shall be determined by the Board of Directors. The Corporation may also have offices at such other places within the State of New York as the business of the Corporation may require.

§3. **Purpose.** The purposes of the Corporation are to act as a professional association and to conduct on behalf of its members and the public as a whole any activities allowed by law to be undertaken by an organization approved as a tax-exempt organization pursuant to 26 USC section 501 (c)3.

§4. **Conformity.** The Corporation shall take no action not allowed by law to be undertaken by a not-for-profit organization approved as a tax-exempt organization pursuant to 26 USC section 501(c)(3), as a not-for-profit corporation that has been approved as a 501(c)(3) tax exempt organization by the Internal Revenue Service.

ARTICLE II (BOOKS)

§1. There shall be kept at the office of the Corporation correct books of account of the activities and transactions of the Corporation including a minute book, which shall contain a copy of the Certificate of Incorporation, a copy of these By-Laws, and all minutes of the meetings of the Members and of the Board. These shall be freely accessible to Members.

ARTICLE III (MEMBERS)

§1. **Classes of Members; Voting Rights.** There shall be at the minimum two classes of member: (1) Individual members are industry professionals and others with related expertise. *Individual* Members shall have voting rights and may serve as Directors or Officers of the Board. (2) Business Members are organizations, companies or institutions that subscribe to the values and objectives of the Corporation. Additional recognition or benefits to Business members may be added with the approval of the Board. *Business Members* shall not have voting rights and may not serve as Directors or Officers of the Board. Additional classes of members may be added with the approval of the Board.

§3. Applications for Membership. All applicants to become members shall complete an application form provided in print or on line. The Executive Director shall make admission decisions in accordance with policies and procedures established by the Board of Directors.

§4. Resignation. Any member may resign by filing a written resignation with the Board of Directors.

§5. Expulsion for Cause. A member of any category may be expelled for cause by a two-thirds majority of the Board present and voting at a meeting, in person or by proxy,

ARTICLE IV (DUES)

§1. Member Dues, Fees, and Assessments. Dues, fees, and assessments are to be approved by the Board of Directors, and may be changed as required by the Board.

§2. Refunds. No fees, dues, or assessments shall be refunded.

ARTICLE V (MEETINGS OF MEMBERS)

§1. Annual Meeting. There shall be an annual meeting of the Members to include the election of Directors, the presentation to the Members of the annual report required by Section 519 of the Not-for-Profit Corporation Law (the "N-PCL") and such other business as the Members shall determine. The annual meeting of the Members shall be held in the month of April.

§2. Proxies. Every Member entitled to vote at a meeting of Members may authorize another Member to act for him or her by proxy. A proxy is a person authorized to act on behalf of another Member. No Member shall hold more than two proxies at any time. A proxy shall expire within sixty (60) days from its date of issue or sooner if specified in the proxy. The executor of the proxy must use the proxy form provided by BPCA/NYS. Every proxy shall be revocable at the pleasure of the Member executing it, except as otherwise provided in the N-PCL. For the purposes of conducting meetings, all proxies shall be delivered to the Secretary prior to the start of the meeting. Members must use the approved Proxy form, as per Appendix A

§3. Minutes of Meetings. The Secretary shall record the minutes of the meetings and make the draft minutes available to Directors prior to a meeting. The approval of the draft minutes is an agenda topic for the subsequent Regular Meeting.

§4. Order of Business. Order of business at all meetings shall be as follows:

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes
4. Reports of Officers
5. Old Business
6. New Business
7. Adjournment

ARTICLE VI (DIRECTORS)

§1. **Directors.** The sole governing body of the Corporation is the Board of Directors.

§2. **Powers and Duties of the Board.** The Board shall manage and control the affairs and property of the Corporation under the guidance of the Members. All corporate powers, except such as are otherwise provided for in the Certificate of Incorporation or the laws of the State of New York, shall be and hereby are vested in and shall be exercised by the Board.

§3. **Number and Qualifications.** The number of Directors shall be no more than fifteen (15) and no less than nine (9). The Board determines the number of directors which cannot be an even number. The number of directors may be increased or decreased by a vote of the majority of the directors. No decrease in number of directors shall shorten the term of any incumbent director. A Director elected to fill a vacancy caused by resignation, death, or removal shall be elected to hold office for the unexpired term of his predecessor. Being an Individual Member in good standing is a prerequisite for being a Director.

§4. **Nomination and Election of Directors.**

(a) **Election Procedure:** The Directors shall be divided as evenly as possible into three classes, based on terms of service. Prior to each annual meeting of the Corporation, an election shall be held to choose one third of the Board of Directors and, if necessary, to fill any other vacancies. All voting for the election of Directors shall be conducted in a private and confidential manner, pursuant to procedures established by the Board. At least forty-five (45) days prior to the election date, the Secretary shall notify the Members of the Election Procedure. The election procedures shall remain in place unless superseded by subsequent election procedures. The election procedures shall include the date, time and location of the election, the nomination process, submission requirements and deadlines, proof of identity, absentee ballot procedures, election monitoring plan, and any other items deemed necessary by the Board.

(b) **Nomination of Candidates.** Candidates must be Individual Members in good standing. The Nominating Committee shall present the Board with candidates to the Board for its approval, which shall not be withheld absent good cause. The Secretary shall announce the nominations of Candidates to the Members at least thirty (30) days prior to the election of Directors.

(c) **Nomination by Petition.** Individual members may nominate a Director candidate. Each petition shall present only one candidate. Petitions shall be received by the Nominating Committee on a date set by the Committee. The names on the petition shall reflect at least ten (10) percent of members as of January 1 of the year in which the election is to be held. Upon receipt of a valid petition, the Nominating Committee shall add the petitioned candidate's name to the Director ballot.

(d) **Director Ballot:** The Nominating Committee shall issue ballots to all eligible Members at least ten (10) business days prior to the election date. The ballots shall be issued to members via the email address of record in the database of members as maintained by the Corporation. In the event that the member has no email address on file, it is the duty of the Executive Director or his or her designee to make every reasonable effort to contact that member and arrange for him or her to have a reasonable opportunity to vote by other means in the election.

(e) **Election:** Pursuant to election procedures established by the Board, the Candidates receiving the most votes for the Director positions available out of the total number of ballots marked and returned shall be elected. In the event of a tie vote in the election of any Director, the Directors shall break the tie by a majority vote of the Board. At each annual meeting of the Members, the Directors shall announce the results of the election of the new Board of Directors.

(f) **Monitoring of Election.** The Board shall be responsible for conducting a confidential election and to ensure fairness for all parties, as outlined in the election procedures approved by the Board. Members shall be entitled to witness the counting of ballots.

§5. **Term of Office.** Elected Directors shall take office at the Board meeting held in conjunction with the annual meeting of Members. Directors shall serve staggered terms of three years or until the election or appointment of a successor. No Director shall have total service of more than two consecutive terms or six consecutive years (whichever is greater) on the Board, without specific action by the Board by vote of a two-thirds majority of the Board present and voting at a meeting, in person or by proxy. Lacking such action, such person shall be ineligible to serve as a Director again for two years.

Section 6. **Vacancies.** In case of a Director's death or resignation or loss of membership, that Director's position shall be vacant *ipso facto*, and such Director shall be replaced by a Member selected by the two-thirds majority of the Board present and voting at a meeting, in person or by proxy, for the remainder of the predecessor's term. In the case of a Director's removal for cause, the same provisions shall govern.

§ 6. **Resignation.** A Director may resign at any time by giving written notice to the Board, the President, or the Secretary of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board

or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

§7. Removal. Any Director may be removed for cause by a vote of two-thirds of the Board present and voting at a meeting, in person or by proxy. This shall include, but not be limited to, absence from three (3) consecutive Board meetings without a valid excuse. Written notice of an impending removal for cause shall be mailed to the Director no less than fifteen (15) days before the date set for removal, and such Director shall have ten (10) days to reply in writing as to why he or she should not be removed, and the Directors shall give due consideration to such reply in making their final decision.

§8. Meetings of the Board of Directors. Other than the annual meeting, the number of regular meetings of the Board will be fixed by the Board of Directors.

§9. Quorum; Adjournments of Meetings. A majority of the entire number of Directors shall constitute a quorum for the transaction of business. If at any meeting of the Board there shall be less than a quorum present, the Directors present shall adjourn the meeting from that time until a quorum is present. Unless otherwise required by law, or other provisions of the organization, the vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board. Each director present shall have one vote.

§10. Organization and Executive Session. The President, or the Vice-President if the President is absent, of the Corporation shall preside at all meetings of the Board or, in the absence of the President and Vice-President, a Chairperson of the meeting shall be chosen by the Directors present. The Secretary shall act as a secretary at all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting. For those matters considered by the Board in which these procedures require consideration in Executive Session, participation in Executive Session is limited to the Directors plus anyone invited by the Board.

§11. Meeting Venues. The Board may hold its meetings at such place as the Board may from time to time determine.

§12. Meeting Schedule. Other than the annual meeting, the number of regular meetings of the Board shall be fixed by the Board.

§13. Special meetings of the Board. Special meetings of the Board may be called by the President or Executive Director of the Corporation or by a majority of the Board.

§14. Conflict of Interest. Any member of the Board who has a financial, personal, or official interest in, or conflict (or appearance of a conflict) with any matter pending before the Board or a Committee, of such a nature that it prevents or may prevent that member from acting on the matter in an impartial manner, will disclose such interest or conflict and will refrain from discussion on any seconded motion before the Board that can result in financial gain for the Director. The Director will recuse himself/herself from the meeting during voting on said matter.

§15. Participation by Telephonic Communication. Any one or more Directors may participate in a meeting of the Board by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by conference telephone or similar communications equipment shall be considered attendance at the meeting for all purposes, including determination of a quorum.

§16. Minutes of Board Meetings. The Secretary shall record and maintain the minutes of all Board meetings. These minutes shall be made available to the Directors prior to a meeting. The approval of the minutes is always an agenda topic for the subsequent Regular Meeting. Minutes approved by the Board shall be made available to the Members.

§17. Action by Written Consent. Any action required or permitted by the Board may be taken without a meeting if all Directors consent in writing, or in another manner that is legally appropriate, to the adoption of a resolution authorizing the action. The resolution and the written consents thereto shall be filed with the minutes of the proceedings of the Board.

ARTICLE VII (EXECUTIVE DIRECTOR)

§1. Executive Director. The Board of Directors shall select an Executive Director, who is the Chief Executive Officer of the organization and the principal policy advisor to the Board of Directors.

§2. Compensation. The Executive Director shall be a salaried employee of the Corporation. Terms of the salary and/or other compensation for the Executive Director are to be established by the Board of Directors.

§3. Duties and Responsibilities. The Executive Director is responsible for managerial and supervisory work in planning, organizing, and directing the operations of the organization, as defined by the Board.

§4. Resignation. The Executive Director may resign at any time by giving written notice to the Board, the President, or the Secretary of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

§5. Removal. The Executive Director may be removed for cause by a vote of two-thirds majority of the Board present and voting at a meeting, in person or by proxy,

ARTICLE VIII (CHECKS AND BANK ACCOUNTS)

§1. Checks. The Board shall determine who shall be authorized on behalf of the Corporation to sign bills, notes, receipts, acceptances, endorsements, and other documents.

§ 2. Bank Accounts. The Treasurer, or such other Officer or agent as from time to time may be designated by the Board, may be empowered to open and maintain bank accounts in such manner and in such depositories as the Board may determine from time to time.

ARTICLE IX (OFFICERS)

§1. Number and Qualifications. The Officers of the Corporation shall be a President, one Vice-President, a Secretary, a Treasurer and other such officers, if any, as the Board may from time to time determine to appoint. No person may hold more than one office in the Corporation at the same time. No instrument required to be signed by more than one officer may be signed by one person in more than one capacity. All Officers must be Directors. Officers shall serve without salary.

§2. Election and Term of Office. The officers of the Corporation shall be elected by a majority of the Board Members at the annual meeting of the Board, and shall hold office until the next annual meeting of the Board. Each officer shall hold office for the term for which he/she is elected and until his/her successor has been elected and qualified.

§3. Vacancies. In case of any vacancy in any office, a successor to fill the unexpired portion of the term shall be elected by a majority of the Board.

§4. Removal. Any officer of the Corporation may be removed for cause by a majority of the Board present and voting at a meeting, in person or by proxy,

§5. Resignation. Any officer may resign at any time by giving written notice to the President. If any officer ceases to be a Director for any reason, he or she shall be deemed to have resigned as an Officer.

§6. President: Powers and Duties. The President shall oversee the hiring, monitoring, and evaluating of the performance of the Executive Director. He/she shall ensure that strategic plans, budgets, and long range capital plans are in place. The President presides over the meetings of the Board of Directors. The President and Treasurer shall have the power to sign in the name of the Corporation all contracts authorized either generally or specifically by the Board, unless the Board shall specifically require an additional signature. The President shall perform such other duties as shall from time to time be assigned to him/her by the Board. The President is an ex-officio member of all standing and ad-hoc Committees of the Board.

§7. Vice-President: Powers and Duties. The Vice President shall have such powers and

duties as may be assigned to him or her by the Board. In the absence of the President, the Vice President shall perform the duties of the President.

§8. Secretary: Powers and Duties. The Secretary shall act as secretary at all Board meetings and the annual meeting of Members, shall prepare and maintain the minutes of all such meetings and shall perform all the other duties customarily incident to the office of the secretary of a not-for-profit Corporation. The Secretary shall attend to the giving and serving of all notices of the Corporation, and shall have charge of such books and papers as the Board of Directors may direct; The Secretary shall attend to such correspondence as may be assigned to him or her, and perform all the duties incidental to his/her office. The Secretary shall keep a membership roll containing the names of all persons who are members of the Corporation.

§9. Treasurer: Powers and Duties. The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Corporation, and shall deposit or cause to be deposited all monies and other valuable effects of the Corporation in the name and to the credit of the Corporation and shall perform all the other duties customarily incident to the office of the treasurer of a not-for-profit Corporation. The Treasurer and the President shall have the power to sign in the name of the Corporation all contracts authorized either generally or specifically by the Board, unless the Board shall specifically require an additional signature. At the end of each fiscal year, the Treasurer shall engage an outside auditor to conduct an audit of the financial and other related records of the Corporation and shall present such audit in writing at the next annual meeting of the Members. The Treasurer shall present an annual report setting forth in full the financial conditions of the Corporation at the annual meeting of Members.

§10. Executive Committee. The Executive Committee shall be comprised of the Officers of the Board, along with the Executive Director.

ARTICLE X (COMMITTEES)

§1. Power to Constitute Committees of the Board. The Board may appoint Committees of the Board that shall perform such duties as the Board directs. Members of a Committee of the Board shall not be required to be Directors, but must be Members. All Directors shall serve on at least one Committee. No Director shall serve on more than two Committees unless such service is approved by a majority vote of the Board.

§2. Special Committees of the Board. Special Committees of the Board may be created from time to time by the Board, but such Committees shall not be considered standing Committees and may be discharged by the Board upon the completion of their assigned duties. The Chairperson of the Special Committee, serves at the discretion of the Board and shall appoint the members of such special Committee, determine their tenure, and fill any vacancies in the membership of such Committees.

§3. Standing Committees of the Board. The Board shall, by resolution adopted by a majority of the entire Board, designate standing Committees to include, but not limited

to, the following: Finance, Nominating, Governance. Other Standing Committees shall be created by the Board as necessary. The Chairperson of a standing Committee shall be a Director. The Chairperson of the Committee shall appoint the members of such Committee and fill any vacancies in the membership of such Committees. Each member of a standing Committee of the Board shall hold office until the next annual meeting of the Board following his or her appointment and until his or her successor is appointed, unless he or she shall sooner resign or be removed from such Committee.

§ 4. Chairpersons of Committees of the Board. The Chairperson of each Committee shall be elected by a majority vote of the Committee members; by a majority vote of the Board; or simply appointed by the President, The Chairperson serves at the discretion of the Board.

§5. Committees of the Board: Resignation or Removal. Any member of a Committee of the Corporation may resign at any time by giving written notice of such resignation to the Chairperson of such Committee, or to the President of the Board. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Chairperson of the Committee or the President of the Board. The Board may remove any person from a Committee of the Corporation, for cause.

§6. Reports; Duties. It shall be the duty of each Committee to make such reports as from time to time may be requested by the Board, or the President, or as required by these By-Laws. In addition to the respective duties specifically assigned to Committees by these By-Laws, each Committee shall perform such other duties as may be requested by the Board.

§7. Procedure. Subject to the provisions of these By-Laws, and to any relevant action of the Board, each Committee shall establish its own rules and procedures.

§8. Meetings. Except as otherwise provided in these By-Laws, each Committee shall meet upon the call of the Chairperson thereof, which shall indicate the date, time, and place of the meeting, and be made no less than three days prior to such meeting. If duly recorded in the minutes of the meeting, each Committee member in attendance may waive such notice of the meeting.

§9. Quorum and Voting Requirements and Rules of Order. The presence of a majority of the members of a Committee shall be sufficient to constitute a quorum for the transaction of business. Action by a majority of the Committee members present at such meeting shall constitute action of the Committee of the Board

§10. Minutes. All Committees shall maintain minutes of the meetings, which shall be available to Members upon request. The approval of the draft minutes is an agenda topic for the subsequent meeting.

§11. Action by Written Consent. Any action required or permitted to be taken by a Committee may be taken without a meeting if all members of such Committee

consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of such Committee shall be filed with the minutes of the proceedings of the Committee.

§12. Participation by Telephonic Communication. Any one or more members of any Committee may participate in a meeting of such Committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time.

ARTICLE XI (ADVISORY BODIES)

§1. **Advisory Councils.** The Corporation may establish one or more Advisory Councils, subject to approval of the Board.

ARTICLE XII (AGENTS AND EMPLOYEES)

§1. **Appointment.** The Board may by resolution secure the services of outside agents, consultants or sub-contractors as it may deem advisable. All such agents shall hold office at the pleasure of the Board. The Board may engage employees as it or he/she may deem advisable. Subject to any contractual obligations of the Corporation that the Board may authorize, all employees shall be “at will” employees.

§2. **Compensation; Expenses.** Agents and employees of the Corporation shall receive only such compensation, or emoluments for service rendered to the Corporation as authorized by a majority vote of the Board. Agents and employees shall be entitled to reimbursement for reasonable expenses incurred in the service of the Corporation.

ARTICLE X111 (ADMINISTRATION)

§1. **Policies and Procedures.** Committees shall submit recommendations based upon their deliberations to the Board. The Board of Directors shall approve all new or changed policies and Procedures. Approval shall be by simple majority vote of the Board, and the Board may be polled by appropriate means . The Executive Director shall oversee the application of these policies.

§2. **Amendments.** Amendments to these By-laws may be made by a two-thirds vote of the Board of Directors. Votes may be tallied either in person or other appropriate means.

§3. **Indemnification.** The Board of Directors shall obtain and maintain required insurances as advised by their Legal Counsel or required by law.

ARTICLE XV (FISCAL YEAR)

The fiscal year for the Corporation shall be shall be coincident with each calendar year, beginning on January 1 and ending on December 31.