

**BYLAWS OF  
EMERGENCY ROAD SERVICE COALITION OF  
AMERICA**

As Amended 8/23/18

**BYLAWS  
OF  
EMERGENCY ROAD SERVICE COALITION OF AMERICA**  
*(a California Nonprofit Mutual Benefit Corporation)*

**ARTICLE 1: NAME**

**Section 1.1. Name.** The name of this corporation is the Emergency Road Service Coalition of America, hereinafter referred to as the “Association” for the purposes of these Bylaws.

**ARTICLE 2: PURPOSES**

**Section 2.1. Organization.** The Association is a nonprofit mutual benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Mutual Benefit Corporation Law and is organized for the purposes set forth in Internal Revenue Code section 501(c)(6) or the corresponding provision of any future United States internal revenue law.

**Section 2.2. Specific Purpose.** The specific purpose of this corporation is to facilitate, encourage, and promote the safety and professionalism of towing and recovery companies contracting with motor clubs, as well as to facilitate, encourage, and promote the safety of the public that they serve.

**Section 2.3. Compliance with Internal Revenue Code.** The Association shall hold, and may exercise, all such powers as may be conferred upon a nonprofit corporation by the laws of the State of California and as may be necessary or expedient for the administration of the affairs and attainment of the purposes of the Association. Notwithstanding any other provision in these Bylaws, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that do not further the purpose of the Association, and the Association shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Internal Revenue Code section 501(c)(6) or the corresponding provision of any future United States internal revenue law.

**ARTICLE 3: PRINCIPAL OFFICE**

**Section 3.1. Principal Office.** The Association shall maintain its principal office in the City of Sacramento, State of California. The Board of Directors is granted full power and authority to change said principal office from one location to another.

**Section 3.2. Other Offices.** The Board of Directors may at any time establish branch offices at any place where the Association is qualified to do business.

## **ARTICLE 4: MEMBERSHIP**

**Section 4.1. Qualifications.** This corporation shall have one class of members as follows. Any towing and recovery company that: contracts with motor clubs, subscribes to the purposes and basic policies of the corporation, and whose admission will contribute to the corporation's ability to carry out its charitable purposes, shall be eligible for membership on approval of the membership application by the Board of Directors and on timely payment of such dues and fees as the Board may fix from time to time. No member company shall hold more than one membership. Each company member shall designate in writing one individual representative entitled to vote or exercise its rights and to receive notices on behalf of the member. The member may amend such designation at any time, and all such designations and amendments thereto shall be filed with the records of this corporation.

**Section 4.2. Rights of Membership.** Members shall have the right to vote on the election of directors, the disposition of all or substantially all of the corporation's assets, any merger and its principal terms and any amendment of those terms, any election to dissolve the corporation, and such other matters as set forth in these bylaws and the Law. In addition, members shall have all rights afforded members under the Law and these bylaws. This corporation may benefit, serve, or assist persons who are not members, but may restrict the provision of certain benefits, services, and assistance to members. No member shall be entitled to any dividend or any part of the income of the corporation.

**Section 4.3. Other Persons Associated with the Corporation.** The corporation may refer to persons associated with it as "members," even though those persons do not meet the qualifications for membership as set forth in Section 4.1 of these bylaws, but no such reference shall constitute anyone a member within the meaning of Section 5056 of the California Corporations Code. The Board of Directors of the corporation may grant some or all of the nonvoting rights of members, as set forth in these bylaws, to any person that does not have the right to vote on any of the matters submitted to a vote of the members, but no such person shall be a member within the meaning of Section 5056 of the California Corporations Code.

**Section 4.4. Dues, Fees, and Assessments.** Each member must pay, within the time and on the conditions set by the Board, the dues, fees, and assessments in amounts to be fixed from time to time by the Board. Those members who have timely paid the required dues, fees, and assessments and who are not suspended shall be members in good standing. The Board may require the payment of dues, fees, and assessments, in amounts to be fixed from time to time, by those persons associated with the corporation as described in Section 4.3 of these bylaws.

**Section 4.5. Termination of Membership.** A membership shall terminate on occurrence of any of the following events:

- (a) Resignation of the member, on reasonable notice to the corporation;
- (b) Expiration of the period of membership, unless the membership is renewed on the renewal terms fixed by the Board;
- (c) Failure of the member to pay dues, fees, or assessments as set by the Board within thirty (30) days after they become due and payable;
- (d) Occurrence of any event that renders the member ineligible for membership, or failure to satisfy membership qualifications; or
- (e) Expulsion of the member under Section 4.7 of these bylaws based on the good faith determination by the Board, or a committee or person authorized by the Board to make such a determination, that the member has failed in a material and serious degree to observe the rules of conduct of the corporation, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the corporation.

**Section 4.6. Suspension of Membership.** A member may be suspended under Section 4.7 of these bylaws, based on the good faith determination by the Board, or a committee or person authorized by the Board to make such a determination, that the member has failed in a material and serious degree to observe the corporation's rules of conduct, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the corporation. A person whose membership is suspended shall not be a member during the period of suspension.

**Section 4.7. Procedure for Expulsion or Suspension.** If grounds appear to exist for expulsion or suspension of a member under Sections 4.5 or 4.6 of these bylaws, the procedure set forth below shall be followed:

- (a) The member shall be given fifteen (15) days notice, by any method reasonably calculated to provide actual notice, of the proposed expulsion or suspension and the reasons therefore. Any notice given by mail shall be sent by first-class, registered, or certified mail to the member's last address as shown on the corporation's records.
- (b) The member shall be given an opportunity to be heard, either orally or in writing, at least five (5) days before the effective date of the proposed expulsion or suspension. The hearing shall be held, or the written statement considered, by the Board or by a committee or person authorized by the Board to determine whether the expulsion or suspension should take place.
- (c) The Board, committee, or person shall decide whether or not the member should be suspended, expelled or sanctioned in some other way. The decision of the Board, committee or person shall be final.

(d) Any action challenging an expulsion, suspension, or termination of membership, including a claim alleging defective notice, must be commenced within one (1) year after the date of the expulsion, suspension, or termination.

**Section 4.8. Transfer of Membership.** No membership or right arising from membership shall be transferred. All membership rights cease on the member's dissolution or sale to a new owner, or termination of membership pursuant to Section 4.5 of these bylaws.

**Section 4.9. Liability for Debts or Obligations.** A member of the corporation is not, as such, personally liable for the debts, liabilities, or obligations of the corporation.

**Section 4.10. Place of Meeting.** Meetings of the members shall be held at any place within or outside California designated by the Board of Directors. In the absence of any such designation, members' meetings shall be held at the corporation's principal office.

**Section 4.11. Regular Meeting.** An annual meeting of members shall be held on such date and at such time as may be fixed by the Board. There will be no mandatory rule for location of the annual meeting. Any proper business may be transacted at the annual meeting.

**Section 4.12. Special Meetings.** A special meeting of the members for any lawful purpose may be called at any time by the Board of Directors, the president, or by five percent (5%) or more of the members. A special meeting called by any person, other than the Board, entitled to call a meeting shall be called by written request, specifying the general nature of the business proposed to be transacted, and submitted to the president, or the secretary. The officer receiving the request shall cause notice to be given promptly to the members entitled to vote, in accordance with Section 4.13 of these bylaws, stating that a meeting will be held at a specified time and date fixed by the Board, provided, however, that the meeting date shall be at least thirty-five (35) but no more than ninety (90) days after receipt of the request. If the notice is not given within twenty (20) days after the request is received, the person or persons requesting the meeting may give the notice. Nothing in this Section 4.12 shall be construed as limiting, fixing, or affecting the time at which a meeting of members may be held when the meeting is called by the Board. No business, other than the business the general nature of which was set forth in the notice of the meeting, may be transacted at a special meeting.

**Section 4.13. Notice of Meetings.**

(a) Written notice of each annual or special meeting of members shall be given not less than 10 nor more than 90 days before the date of the meeting to each member entitled to notice thereof: provided, however, that if the notice is given by mail, and the notice is not mailed by first-class, registered, or certified mail, the notice shall be given not less than 20 days before the meeting. Such notice shall state the place, date and hour of the meeting and (1) in the case of a special meeting, the general nature of business to be transacted, and no other business may be transacted, or (2) in the case of the

annual meeting, those matters which the Board, at the time of mailing the notice intends to present for action by the members, but, subject to the provisions of applicable law, any proper matter may be presented at the meeting for action. The notice of any meeting at which officers are to be elected shall include the names of all those who are nominees at the time the notice is sent to members.

(b) Notice of a members' meeting shall be given either personally or by mail or by other means of written communication and shall be addressed to a member at the address of such member appearing on the books of the Association or given by the member to the Association for the purpose of notice; or, if no such address appears or is given, at where the principal office of the Association is located or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for the transmission or is transmitted by the person giving notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

**Section 4.14. Quorum.** Two percent (2%) of the voting power shall constitute a quorum for the transaction of business at any meeting of members provided, however, that if any regular meeting is actually attended in person by less than one-third (1/3) of the voting power, the only matters that may be voted on are those of which notice of their general nature was given pursuant to Article 4, Section 4.13, of these bylaws. Subject to the foregoing, the members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken, other than adjournment, is approved by at least a majority of the members required to constitute a quorum, or such greater number as required by the Articles of Incorporation, these bylaws, or the Law.

**Section 4.15. Adjournment.** Any member meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the members represented at the meeting. No meeting may be adjourned for more than forty-five (45) days. When a member meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which adjournment is taken. If after adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting.

**Section 4.16. Voting.** Members entitled to vote at any meeting of members shall be those members in good standing as of the record date determined under Section 4.20

of these bylaws. At a meeting, voting may be by voice or ballot, except that any election of directors must be by ballot if demanded by any member at the meeting before the voting begins. Each member entitled to vote shall be entitled to cast one vote on each matter submitted to a vote of the members. Cumulative voting is prohibited. If a quorum is present, the affirmative vote of a majority of the voting power represented at the meeting, entitled to vote and voting on any matter, shall be the act of the members, unless the vote of a greater number or voting by classes is required by the Articles of Incorporation, these bylaws, or the Law. In any election of directors, the candidates receiving the highest number of votes are elected. Each member shall have the right to vote for as many nominees as there are vacancies on the Board of Directors to be filled by the members.

**Section 4.17. Waiver of Notice or Consent by Absent Members.** The transactions of any meeting of members, however called or noticed and whenever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each member entitled to vote signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice, consent, or approval need not specify either the business to be transacted or the purpose of any meeting of members, except that if action is taken or proposed to be taken for approval of any of those matters specified in the last paragraph of Section 4.13 of these bylaws, the waiver of notice, consent, or approval shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. A member's attendance at a meeting shall also constitute a waiver of notice of and presence at that meeting, unless the member objects at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so included, if that objection is expressly made at the meeting.

**Section 4.18. Action by Unanimous Written Consent.** Any member action may be taken without a meeting and without prior notice, if all members consent in writing to the action. The written consents shall be filed with the minutes of the member proceedings. The action by written consent shall have the same force and effect as the unanimous vote of the members.

**Section 4.19. Action by Written Ballot Without a Meeting.** Any action, including the election of directors, which may be taken at any meeting of members, may be taken without a meeting and without prior notice by complying with the provisions of this Section 4.19 concerning written ballots.

The corporation shall distribute one written ballot to each member entitled to vote on the matter. Such ballots shall be mailed or delivered in the manner required by the first paragraph of Section 4.13 of these bylaws. All solicitations of votes by written ballot shall (a) indicate the number of responses needed to meet the quorum requirement; (b) with respect to ballots other than for election of directors, state the percentage of

approvals necessary to pass the measure or measures; and (c) specify the time by which the ballot must be received in order to be counted.

Each ballot so distributed shall (a) set forth the proposed action; (b) provide the members an opportunity to specify approval or disapproval of each proposal; and (c) provide a reasonable time within which to return the ballot to the corporation. In any election of directors, a written ballot that a member marks "withhold", or otherwise marks in a manner indicating that authority to vote is withheld, shall not be voted either for or against the election of a director.

Approval by written ballot shall be valid only when the number of votes cast by ballot, including those ballots marked in a manner indicating that authority to vote is withheld, within the time specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot without a meeting. A written ballot may not be revoked. All written ballots shall be filed with the secretary of the corporation and maintained in the corporate records.

**Section 4.20. Record Date.** For purposes of determining the members entitled to notice of any meeting, entitled to vote at any meeting, entitled to vote by written ballot, or entitled to exercise any rights with respect to any lawful action, the Board may, in advance, fix a record date. A member at the close of business on the record date shall be a member of record. The record date so fixed:

(a) For notice of a meeting shall not be more than ninety (90) nor less than ten (10) days before the date of the meeting. If not otherwise fixed by the Board, the record date shall be the next business day preceding the day on which notice is given or, if notice is waived, the next business day preceding the day on which the meeting is held.

(b) For voting at a meeting shall not be more than sixty (60) days before the date of the meeting. If not otherwise fixed by the Board, the record date shall be the day on which the meeting or adjourned meeting is held.

(c) For voting by written ballot shall not be more than sixty (60) days before the day on which the first written ballot is mailed or solicited. If not otherwise fixed by the Board, the record date shall be the day on which the first written ballot is mailed or solicited.

(d) For any other action shall not be more than sixty (60) days before that action. If not otherwise fixed by the Board, the record date shall be the date on which the Board adopts the resolution relating to that action, or the 60th day before the date of that action, whichever is later.

**Section 4.21. Proxies.** Each member entitled to vote may do so only in person by its designated representative. Voting rights may not be exercised by proxy.



**Section 4.22. Election of Directors.** The Board of Directors may appoint a committee to select qualified candidates for election to the Board at least 120 days before the date of any election of directors. This nominating committee shall make its report at least ninety (90) days before the date of the election, or at such other time as the Board of Directors may set, and the secretary shall forward to each member, with the notice of meeting required by these bylaws, a list of all candidates nominated by committee under this section. In nominating candidates, the committee shall seek to achieve the following goals regarding the nominees: diversity of backgrounds and skills relevant to the needs of the corporation, and such other goals as the Board of Directors may establish. If after the close of nominations the number of people nominated is not more than the number of directors to be elected, the corporation may without further action declare that those nominated and qualified to be elected have been elected. If there is a meeting of members to elect directors, any member present at the meeting in person may place names in nomination.

The Board shall formulate procedures that allow a reasonable opportunity for a nominee to communicate to members the nominee's qualifications and the reasons for the nominee's candidacy, a reasonable opportunity for the nominee to solicit votes, and a reasonable opportunity for all members to choose among the nominees. Without Board authorization, no corporate funds may be expended to support a nominee for director after more people have been nominated for director than can be elected.

## **ARTICLE 5: BOARD OF DIRECTORS**

**Section 5.1. Powers.** Subject to the provisions and limitations of the Law and any other applicable laws, and subject to any limitations in the Articles of Incorporation or bylaws regarding actions that require approval of the members, the business and affairs of the corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors. The Board of Directors may delegate the management of the day-to-day operation of the business of the corporation to a management company, committee (however composed), or other person, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board of Directors.

**Section 5.2. Number of Directors.** The authorized number of directors of the corporation shall be ten (10). Notwithstanding any other provisions of these bylaws, fifty percent (50%) of the authorized number of directors shall be appointed by the California Tow Truck Association (CTTA). These CTTA-appointed directors shall not be subject to the election, vacancy, and removal provisions of these bylaws. The remaining fifty percent (50%) of authorized directors shall be elected and hold office consistent with these bylaws.

**Section 5.3. Election, Designation, Term of Office, and Qualifications of Directors.** The initial Board of Directors shall serve until their successors have been elected and seated at the first regular meeting of members. The term of office of each director shall

be two (2) years. However, if all of the directors to be elected are not elected at any regular meeting, they may be elected at any special members' meeting held for that purpose or by written ballot.

Each director, including a director elected to fill a vacancy, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified. Directors may serve any number of consecutive terms.

Each director must be a member in good standing. For the purposes of this section, all CTTA-appointed directors shall be deemed to be members in good standing. Directors may be divided into classes and a minimum number of directors per class may be established by vote of a majority of the directors then in office.

**Section 5.4. Vacancies.** A vacancy on the Board shall exist on the occurrence of the following: (a) the death or resignation of any director; (b) the declaration by resolution of the Board of a vacancy in the office of a director who has been declared of unsound mind by a final order of court, convicted of a felony, or found by final order or judgment of any court to have breached a duty under Sections 5230-5239 of the Law dealing with standards of conduct for a director, or has missed three (3) consecutive meetings of the Board of Directors or a total of four (4) meetings of the Board during any one calendar year; (c) the vote of the members to remove a director; (d) an increase in the authorized number of directors; or (e) the failure of the members, at any meeting of members at which directors are to be elected, to elect the number of directors required to be elected at such meeting.

Except as provided in this paragraph, 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 the resignation. If the resignation is effective at a future time, a successor may be designated to take office when the resignation becomes effective. Unless the California Attorney General is first notified, no director may resign when the corporation would then be left without a duly elected director in charge of its affairs.

Except for a vacancy created by the removal of a director by the members, vacancies on the Board may be filled by vote of a majority of the directors then in office, whether or not the number of directors then in office is less than a quorum, or by vote of a sole remaining director. The members may fill any vacancy not filled by the directors. Prior to the removal of any director, the director to be removed shall have been notified in writing in the manner set forth in Section 4.13 that such action would be considered at the meeting at which removal is voted. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

**Section 5.5. Meetings.** The Board of Directors shall meet after each regular meeting of members for purposes of organization, election of officers, and transaction of other business. Other regular meetings of the Board of Directors shall be held at such times

as are fixed by the Board of Directors. Such regular meetings may be held without notice. Meetings shall be held at any place designated by resolution of the Board, or, if not designated, at the principal office of the corporation. A meeting may be held at any place consented to in writing by all the directors, either before or after the meeting. Consents shall be filed with the minutes of the meeting. Any meeting may be held by conference telephone or other communications equipment permitted by the Law, as long as all directors participating in the meeting can communicate with one another and all other requirements of the Law are satisfied. All such directors shall be deemed to be present in person at such meeting.

Meetings of the Board for any purpose may be called at any time by the president, the secretary, or any two (2) directors. Notice of the date, time, and place of meetings shall be delivered personally to each director or communicated to each director by telephone (including a voice messaging system which records and communicates messages), facsimile, or electronic mail at least four (4) days before the date of the meeting, or communicated by telegraph, express mail service, first-class mail, or by other means of written communication, charges prepaid, addressed to the director at the director's address as it is shown upon the records of the corporation, deposited in the mails or given to the telegraph company or express mail company or other carrier at least seven (7) days before the date of the meeting. The notice need not specify the purpose of the meeting. Notice of a meeting need not be given to any director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes of the meeting, whether before or after the meeting, or who attends the meeting without protesting, prior to the meeting or at its commencement, the lack of notice to such director. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 5.6. Action at a Meeting.** Presence of a majority of the directors then in office or twenty percent (20%) of the authorized number of directors, whichever is greater, at a meeting of the Board of Directors constitutes a quorum for the transaction of business, except as otherwise provided in these Bylaws. Every act done or decision made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number, or the same number after disqualifying one or more directors from voting, is required by the Articles of Incorporation, these bylaws, or the Law. Directors may not vote by proxy. A meeting at which a quorum is initially present, including an adjourned meeting, may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a disinterested majority of the required quorum for such meeting, or such greater number as required by the Articles of Incorporation, these bylaws or the Law.

**Section 5.7. Adjourned Meeting and Notice.** A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned

meeting to the directors who were not present at the time of the adjournment. Such notice may be waived in the manner provided for in Section 5.5.

**Section 5.8. Action Without a Meeting.** The Board of Directors may take any required or permitted action without a meeting, if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of such directors. For purposes of this section only, "all members of the Board" does not include any "interested directors" as defined in Section 5233 of the Law.

**Section 5.9. Fees and Compensation.** Directors and members of committees may not receive any compensation for their services as such, but may receive reasonable reimbursement of expenses incurred in the performance of their duties, including advances as provided in Section 6.2, as may be fixed or determined by resolution of the Board of Directors. Directors may not be compensated for rendering services to this corporation in any capacity other than director, unless such compensation is reasonable and approved as provided in Section 6.4.

**ARTICLE 6: STANDARD OF CARE**

**Section 6.1. General.** A director shall perform the duties of a director, including duties as a member of any committee of the Board on which the director may serve, in good faith, in a manner such director believes to be in the best interest of this corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances. In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as in any such case, the director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Except as provided in Article 8, Section 3.B, a person who performs the duties of a director in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat

a public or charitable purpose to which the corporation, or assets held by it, are dedicated.

**Section 6.2. Loans.** This corporation shall not make any loan of money or property to, or guarantee the obligation of, any director or officer, unless approved by the California Attorney General; provided, however, that this corporation may advance money to a director or officer of this corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such officer or director so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

**Section 6.3. Conflict of Interest.** The purpose of the conflict of interest policy is to protect the corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of one of its officers or directors, or that might otherwise result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable California and federal laws conflict of interest applicable to nonprofit and charitable corporations and is not intended as an exclusive statement of responsibilities.

#### *A) Definitions*

Unless otherwise defined, the terms used in this Section have the following meanings:

1. "Interested Persons" - Any director, principal officer, or member of a committee with the Board delegated powers, which has a direct or indirect financial interest, as defined below, is an interested person.

2. "Financial Interest" - A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

(a) An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement;

(b) A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or

(c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the appropriate Board decides that a conflict of interest exists.

## *B) Procedures*

### 1. Duty To Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors, who are considering the proposed transaction or arrangement.

2. Determining Whether A Conflict Of Interest Exists After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested person shall leave the Board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists.

3. Procedure For Addressing The Conflict Of Interest In the event that the Board determines that a proposed transaction or arrangement presents a conflict of interest, the Board shall take the following actions:

(a) An interested person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

(b) The President of the Board shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(c) After exercising due diligence, the Board shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

(d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. It shall make its decision as to whether to enter into the transaction or arrangement in conformity with this determination.

4. Violations Of The Conflict Of Interest Policy If the Board has reasonable cause to believe an interested person has failed to disclose actual or possible conflicts of interest, it shall inform the interested person of the basis for such belief and afford the interested person an opportunity to explain the alleged failure to disclose.

If, after hearing the interested person's response and after making further investigation as warranted by the circumstances, the Board determines the interested person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## 5. Records And Procedures

The minutes of the Board shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.

(b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

## 6. Annual Statements

Each director, principal officer and member of a committee with Board-delegated powers shall annually sign a statement which affirms such person:

(a) Has received a copy of the conflict of interest policy;

(b) Has read and understands the policy;

(c) Has agreed to comply with the policy; and

(d) Understands the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities, which accomplish one or more of its tax-exempt purposes.

### **Section 6.4. Compensation.**

#### *A) Definitions*

Unless otherwise defined, the terms below have the following meanings:

1. "Highest Compensated Employee" - Any employee of the Corporation, whose total compensation would require the employee to be listed in Part I of Schedule A of IRS Form 990, or in response to an equivalent question on any successor exempt organization annual return.

2. "Highest Compensated Independent Contractor" - Any independent contractor engaged by the Corporation, whose total compensation would require the contractor to be listed in Part II of Schedule A of IRS Form 990, or in response to an equivalent question on any successor exempt organization annual return.

*B) No director, officer, Highest Compensated Employee or Highest Compensated Independent Contractor may receive compensation, directly or indirectly, from the*

Corporation unless such compensation is first determined by the disinterested directors, or an authorized committee thereof, to be just and reasonable to the corporation.

The names of the persons who were present for discussions and votes relating to the compensation arrangement, the content of the discussion, including any the information used to determine the reasonableness of the compensation, and a record of any votes taken in connection with the proceedings shall be maintained in the minutes of the Corporation.

The determination of reasonableness shall be based upon information about compensation paid by similarly situated organizations for similar services, current compensation surveys compiled by independent firms or actual written offers from similarly situated organizations. Similarly situated organizations may include both taxable and tax exempt organizations.

No director, principal officer, Highest Compensated Employee or Highest Compensated Independent Contractor, shall participate in the discussion and approval of his or her compensation, except that such persons may provide information to the disinterested directors as described in the conflict of interest policy above.

**Section 6.5.** The Board shall review the fairness of compensation, including benefits, paid to the President of the Board and the Treasurer upon the occurrence of the following events:

- (a) The officer is hired;
- (b) The officer's term of employment is extended or renewed; or
- (c) The officer's compensation is modified, unless such modification occurs pursuant to a general modification of compensation that extends to all employees.

**Section 6.6. Periodic Reviews.** Periodic reviews shall be conducted to ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- (b) Whether partnerships, joint ventures, and arrangements with management corporations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction. When conducting the periodic reviews as provided for above, the Corporation may, but need not, use outside advisors. If outside experts are used their



use shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted

**Section 6.7. Restriction on Interested Directors.** Not more than forty-nine percent (49%) of the persons serving on the Board of Directors at any time may be interested persons. An interested person is (1) any person currently being compensated by the corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; and (2) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this section shall not affect the validity or enforceability of any transaction entered into by the corporation.

**Section 6.8. Indemnification.** To the fullest extent permitted by law, this corporation shall indemnify its "agents", as described in Section 5238(a) of the Law, including its directors, officers, employees, and volunteers, and including persons formerly occupying any such position, and their heirs, executors, and administrators, against all expenses, judgments fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in said Section 5238(a), and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that Section.

To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification in defending any "proceeding" shall be advanced by the corporation before final disposition of the proceeding upon receipt by the corporation of an undertaking by or on behalf of that person to repay such amount unless it is ultimately determined that the person is entitled to be indemnified by the corporation for those expenses.

The corporation shall have power to purchase and maintain insurance to the fullest extent permitted by law on behalf of any agent of the corporation, against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, or to give other indemnification to the extent permitted by law.

**ARTICLE 7: COMMITTEES**

**Section 7.1. Committees of Directors.** The Board of Directors may, by resolution adopted by a majority of the directors then in office, provided that a quorum is present, designate one or more committees to exercise all or a portion of the authority of the Board, to the extent of the powers specifically delegated in the resolution of the Board or in these bylaws. Each such committee shall consist of two (2) or more directors, and may also include persons who are not on the Board, to serve at the pleasure of the Board. The Board may designate one or more alternate members of any committee, who may replace any absent member at any meeting of the committee. The

appointment of members or alternate members of a committee requires the vote of a majority of the directors then in office, provided that a quorum is present. The Board of Directors may also designate one or more advisory committees that do not have the authority of the Board. However, no committee, regardless of Board resolution, may:

- (a) Approve any action that, under the Law or the Articles of Incorporation or these bylaws, also requires approval of the members or approval of a majority of all members;
- (b) Fill vacancies on, or remove members of, the Board of Directors or in any committee that has the authority of the Board;
- (c) Fix compensation of the directors for serving on the Board or on any committee;
- (d) Amend or repeal the Articles of Incorporation or bylaws or adopt new bylaws;
- (e) Amend or repeal any resolution of the Board of Directors that by its express terms is not so amendable or repealable;
- (f) Appoint any other committees of the Board of Directors or their members;
- (g) Approve a plan of merger; consolidation; voluntary dissolution; bankruptcy or reorganization; or for the sale, lease, or exchange of all or substantially all of the property and assets of the corporation otherwise than in the usual and regular course of its business; or revoke any such plan;
- (h) Approve any self-dealing transaction, except as provided by Section 5233 of the Law; or
- (i) Expend corporate funds to support a nominee for director after there are more people nominated for director than can be elected. No committee shall bind the corporation in a contract or agreement or expend corporate funds, unless authorized to do so by the Board of Directors.

**Section 7.2. Meetings and Actions of Committees.** Meetings and actions of all committees shall be governed by, and held and taken in accordance with, the provisions of Section 5.5, of these bylaws, concerning meetings and actions of directors, with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee. Special meetings of committees may also be called by resolution of the Board of Directors. Notice of special meetings of committees shall also be given to any and all alternate members, who shall have the right to attend all meetings of the committee. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules not inconsistent with the provisions of these bylaws for the government of any committee.

**Section 7.3. Executive Committee.** Pursuant to Section 7.1, the Board may appoint an Executive Committee composed of three (3) or more directors, one of whom shall be the President of the Board to serve as the Executive Committee of the Board. The Executive Committee, unless limited in a resolution of the Board, shall have and may exercise all the authority of the Board in the management of the business and affairs of the corporation between meetings of the Board; provided, however, that the

Executive Committee shall not have the authority of the Board in reference to those matters enumerated in Section 7.1. The secretary of the corporation shall send to each director a summary report of the business conducted at any meeting of the Executive Committee.

**Section 7.4. Grievance Committee.** The Board shall appoint from time to time, committees to be known as the grievance committees. Any grievance committee shall not be a standing committee and shall be dissolved after making a written report of the matter brought before it, which report shall be addressed to the Board and delivered to the Secretary within 48 hours (not to include Saturdays, Sundays, or Holidays) after the conclusion of any hearing and reaching of or the failure to reach a decision. No direct competitor of any member against whom a complaint has been filed shall be eligible to be a member of the grievance committee acting upon such a complaint. The purpose of the grievance committee shall be to hear and act upon any complaint filed in writing with the Secretary, President, or Manager against any member of the Association. The findings of the grievance committee shall be subject to the approval of the Board of Directors before action thereon shall be taken by the Association and the Grievance committee shall have the right to recommend that suspension be ordered or expulsion be ordered if the complaint be found true. Final action on all grievances shall rest with the Board.

## **ARTICLE 8: OFFICERS**

**Section 8.1. Officers.** The officers of the corporation shall consist of a President, Secretary, and Treasurer, and such other officers as the Board may designate by resolution. The same person may hold any number of offices, except that neither the secretary nor the treasurer may serve concurrently as the President. In addition to the duties specified in this article, officers shall perform all other duties customarily incident to their office and such other duties as may be required by law, by the Articles of Incorporation, or by these bylaws, subject to control of the Board of Directors, and shall perform such additional duties as the Board of Directors shall from time to time assign.

The officers shall be chosen by the Board following each regular meeting of members, and shall serve at the pleasure of the Board, subject to the rights, if any, of any officer under any contract of employment. Without prejudice to any rights of an officer under any contract of employment, any officer may be removed with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board of

Directors, the president, or the secretary of the corporation, without prejudice to the rights, if any, of the corporation under any contract to which such officer is a party. Any resignation shall take effect on the date of the receipt of such notice or at any later time specified in the resignation; and, unless otherwise specified in the resignation, the acceptance of the resignation shall not be necessary to make it effective. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to that office. The compensation, if any, of the officers shall be fixed or determined by resolution of the Board of Directors.

**Section 8.2. President.** The President is chief executive officer of the Association and has subject to the control of the Board, general supervision, direction, and control of the business and activities of the Association. The President shall preside at all meetings of the members and at all meetings of the Board. The President has the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be from time to time assigned by the Board.

**Section 8.3. Secretary.** The secretary, or his or her designee, shall be custodian of all records and documents of the corporation which are to be kept at the principal office of the corporation, shall act as secretary of all the meetings of the Board of Directors and the members, and shall keep the minutes of all such meetings in books proposed for that purpose. He or she shall attend to the giving and serving of all notices of the corporation, and shall see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws.

**Section 8.4. Treasurer.** The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements.

The treasurer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. The treasurer shall disburse or cause to be disbursed the funds of the corporation as may be ordered by the Board of Directors, and shall render to the president and directors, whenever they request it, an account of all of the treasurer's transactions as treasurer and of the financial condition of the corporation.

If required by the Board of Directors, the treasurer shall give the corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the treasurer's office and for restoration to the corporation of all its books, papers, vouchers, money and other property of every kind in the treasurer's possession or under the treasurer's control on the treasurer's death, resignation, retirement, or removal from office. The corporation shall pay the cost of such bond.

## ARTICLE 9: EXECUTION OF CORPORATE INSTRUMENTS

**Section 9.1. Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except when otherwise provided by law, and such execution or signature shall be binding upon the corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, formal contracts of the corporation, promissory notes, deeds of trust, mortgages, and other evidences of indebtedness of the corporation, and other corporate instruments or documents, memberships in other corporations, and certificates of shares of stock owned by the corporation, shall be executed, signed, or endorsed by the president and by the secretary or treasurer or any assistant secretary or assistant treasurer.

All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation, or in special accounts of the corporation, shall be signed by such person or persons as the Board of Directors shall authorize to do so.

**Section 9.2. Loans and Contracts.** No loans or advances shall be contracted on behalf of the corporation and no note or other evidence of indebtedness shall be issued in its name unless and except as the specific transaction is authorized by the Board of Directors. Without the express and specific authorization of the Board, no officer or other agent of the corporation may enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation.

## ARTICLE 10: RECORDS AND REPORTS

**Section 10.1. Maintenance and Inspection of Articles and Bylaws.** The corporation shall keep at its principal office the original or a copy of its Articles of Incorporation and bylaws as amended to date, which shall be open to inspection by the members and directors at all reasonable times during office hours.

**Section 10.2. Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns.** The corporation shall keep at its principal office a copy of its federal tax exemption application and its annual information returns for three years from their date of filing, which shall be open to public inspection and copying to the extent required by law.

**Section 10.3. Maintenance and Inspection of Other Corporate Records.** The corporation shall keep adequate and correct books and records of accounts; written minutes of the proceedings of its members, Board, and committees of the Board; and a

record of each member's name and address. All such records shall be kept at such place or places designated by the Board of Directors, or, in the absence of such designation, at the principal office of the corporation. The minutes shall be kept in written or typed form, and other books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed, or printed form. Upon leaving office, each officer, employee, or agent of the corporation shall turn over to his or her successor or the president, in good order, such corporate monies, books, records, minutes, lists, documents, contracts or other property of the corporation as have been in the custody of such officer, employee, or agent during his or her term of office.

Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the corporation and each of its subsidiary corporations. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts of documents. On written demand of the corporation, any member may inspect, copy, and make extracts of the accounting books and records and the minutes of proceedings of the members, the Board, and committees of the Board at any reasonable time for a purpose reasonably related to the member's interest as a member.

Subject to the provisions of Sections 6330-6332 of the Law and unless the corporation provides a reasonable alternative as provided below, any member may do either or both of the following for a purpose reasonably related to the member's interest as a member:

(a) Inspect and copy the records of members' names, addresses, and voting rights during usual business hours on five (5) days' prior written demand on the corporation, which demand must state the purpose for which the inspection rights are requested; or

(b) Obtain from the secretary of the corporation, on written demand and tender of a reasonable charge, an alphabetized list of names, addresses, and voting rights of members who are entitled to vote for the election of directors as of the most recent record date for which that list has been compiled, or as of the date, after the date of demand, specified by the member. The demand shall state the purpose for which the list is requested. The secretary shall make this list available to the member on or before the later of ten days after (i) the demand is received or (ii) the date specified in the demand as the date as of which the list is to be compiled.

The corporation may, within ten (10) business days after receiving a demand under this Section, make a written offer of an alternative method of reasonable and timely achievement of the proper purpose specified in the demand without providing access to or a copy of the membership list. Any rejection of this offer must be in writing and must state the reasons that the proposed alternative does not meet the proper purpose of the demand.

If the corporation reasonably believes that the information will be used for a purpose other than one reasonably related to a person's interest as a member, or if it provides a

reasonable alternative under this Section, it may deny the member access to the membership list. Any inspection and copying under this Section may be made in person or by the member's agent or attorney. The right of inspection includes the right to copy and make extracts. Any right of inspection extends to the records of any subsidiary of the corporation.

**Section 10.4. Preparation of Annual Financial Statements.** The corporation shall prepare annual financial statements using generally accepted accounting principles. Such statements shall be audited by an independent certified public accountant, in conformity with generally accepted accounting standards. The corporation shall make these financial statements available to the California Attorney General and members of the public for inspection no later than nine (9) months after the close of the fiscal year to which the statements relate.

**Section 10.5. Reports.** The Board shall cause an annual report to be sent to all directors and members of this corporation, within 120 days after the end of the corporation's fiscal year, containing the following information:

- (a) The assets and liabilities, including the trust funds, of this corporation at the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) The revenues or receipts of this corporation, both unrestricted and restricted for particular purposes, for the fiscal year;
- (d) The expenses or disbursements of this corporation for both general and restricted purposes during the fiscal year; and
- (e) The information required by Section 6322 of the Law concerning certain self dealing transactions involving more than \$50,000 or indemnifications involving more than \$10,000 which took place during the fiscal year.

The report shall be accompanied by any pertinent report of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation. The corporation shall furnish any member who so requests a copy of any report filed by the corporation with the California Attorney General. The corporation may impose reasonable charges for copying and mailing this report to a member.

## **ARTICLE 11: FISCAL YEAR**

The fiscal year for this corporation shall begin on January 1 and shall end on December 31.

## **ARTICLE 12: AMENDMENTS AND REVISIONS**

Subject to the rights of members under this Article 12, the Board may adopt, amend, or repeal bylaws by affirmative vote of a majority of the directors then in office, unless the action would materially and adversely affect the members' rights as to voting or transfer. Proposed amendments to these bylaws must be in writing. The Board may not extend the term of a director beyond that for which the members elected the director.

If any provision of these bylaws requires the vote of a larger proportion of the Board than is otherwise required by law, that provision may not be altered, amended, or repealed except by that greater vote.

Without the approval of the members, the Board may not adopt, amend, or repeal any bylaws that would:

- (a) Increase or extend the terms of directors;
- (b) Increase the quorum for members' meetings;
- (c) Repeal, restrict, create, expand, or otherwise change members' proxy rights;
- (d) Authorize cumulative voting;
- (e) Increase the number of directors appointed by the Board rather than elected by the members; or
- (f) Authorize the Board to fill a vacancy created by the removal of a director by the members. New bylaws may be adopted, or these bylaws may be amended or repealed, by approval of the members. Any provision of these bylaws that requires the vote of a larger proportion of the members than otherwise is required by law may not be altered, amended, or repealed except by the vote of that greater number. No amendment may extend the term of a director beyond that for which the director was elected.

Notwithstanding the foregoing, however, the Board may in its discretion, and for the benefit of the corporation, establish different classes of membership, each with different voting rights.

## **ARTICLE 13: CONSTRUCTION AND DEFINITIONS**

Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the California Nonprofit Corporation Law as amended from time to time shall govern the construction of these bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term



"person" includes a corporation as well as a natural person. If any competent court of law shall deem any portion of these bylaws invalid or inoperative, then so far as is reasonable and possible (i) the remainder of these bylaws shall be considered valid and operative, and (ii) effect shall be given to the intent manifested by the portion deemed invalid or inoperative.

## CERTIFICATE OF SECRETARY

I hereby certify that the foregoing bylaws, as originally adopted at a meeting of the regular members held on January 20, 2012, were amended at a meeting of the Board held on August 23, 2018, and are the current Bylaws of the Emergency Road Service Coalition of America.

Date: 8/23/18      Secretary: \_\_\_\_\_  
Steve Sgarlato

Date: 8/23/18      President: \_\_\_\_\_  
Craig Baker