

**North Carolina 811, Inc.**

**Membership Agreement**

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THIS MEMBERSHIP AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between **North Carolina 811, Inc.**, a North Carolina nonprofit corporation, and City of Greensboro (“Member”).

Recitals

**North Carolina 811, Inc.** is a North Carolina nonprofit corporation with members, and is the Association sponsored by Utility Owners to receive and transmit to its members notifications of planned Excavations, as contemplated by the North Carolina Underground Damage Prevention Act, G.S. 87-100, *et. seq.* (the “Act”). As used in this Membership Agreement, the following terms have the meanings indicated:

“Utility Member” means any person or entity that owns or operates an “Underground Utility” as the term “Underground Utility” is defined in the Act.

“Contract Locator” means any person or entity that locates and marks Underground Utility lines for one or more Utility Members.

“Associate Member” means any person or entity that furnishes goods or services to Category One members, and other persons and entities that have an interest in the prevention of damage to Underground Utilities and the promotion of safe excavation practices.

“Transmission” means the notification given by **North Carolina 811, Inc.** to one or more of its Utility Members or their Contract Locators of a proposed or planned Excavation.

Other terms used but not defined in this Membership Agreement, but which are defined in the Act, are used with the meanings as so defined.

**North Carolina 811, Inc.** has three categories of members as follows:

- (a) Category One members are Utility Members.
- (b) Category Two members are Contract Locators
- (c) Category Three members are Associate Members.

Member has applied to become a Category One member of **North Carolina 811, Inc.**

In consideration of the Recitals and the mutual covenants and agreements contained herein, but subject to the approval of the application of, and election of Member as, a member by the Board of Directors of **North Carolina 811, Inc.**, the parties hereby agree as follows:

2. **Term.** This Agreement shall be effective from and after the date hereof and shall continue in effect until such time as either party terminates this Agreement in accordance with the provisions regarding termination of membership contained in the Bylaws of **North Carolina 811, Inc.**
3. **Documents.** Member acknowledges receipt of copies of the Articles of Incorporation and Bylaws of **North Carolina 811, Inc.** and agrees to abide by all of the terms and provisions thereof.
4. **Fees and Charges.** Member agrees to duly and timely pay either (a) the transmission fees charged by **North Carolina 811, Inc.** to Category One members for Transmissions, or (b) annual membership fees charged by **North Carolina 811, Inc.** to Category Two members and Associate members, in either case in the amounts established from time to time by the Board of Directors of **North Carolina 811, Inc.**
5. **Category One Members.** If Member is a Category One member, Member shall provide to **North Carolina 811, Inc.** a description in reasonable detail and in form acceptable to **North Carolina 811, Inc.** of those geographic areas in North Carolina in or with respect to which **North Carolina 811, Inc.** is to notify Member when **North Carolina 811, Inc.** receives notifications of proposed Excavations (“Notification Areas”). Member shall update Member’s Notification Area data or information not less frequently than annually.
6. **Duties of North Carolina 811, Inc.** **North Carolina 811, Inc.** shall provide the necessary personnel and facilities and a toll free telephone number for the receipt of notifications of proposed Excavations and for Transmissions on such days of the week and during such times of day as are determined from time to time by the Board of Directors of **North Carolina 811, Inc.** **North Carolina 811, Inc.** will also maintain records of receipt of such notifications and Transmissions. Upon receipt of a notification of proposed Excavation, **North Carolina 811, Inc.** shall promptly send Transmissions to all Category One members (or their designated Contract Locator(s)) that have designated as a Notification Area any area that includes the area of such proposed Excavation.
7. **Indemnification.** If Member is a Category One member, Member agrees to indemnify and save **North Carolina 811, Inc.** harmless from and against any and all loss, cost, damage or expense, including reasonable attorneys’ fees, based upon or arising out of (1) a Transmission by **North Carolina 811, Inc.** to Member or Member’s designee of any notification of proposed Excavation, (2) any marking, or failure to mark, the location of Member’s Underground Utilities pursuant to any such Transmission, (3) any excavation by any Person which injures or damages the Underground Utilities of Member, or (4) any injury or damage to the person or property of any third Person resulting from any of the foregoing.

8. **No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.
  
9. **Succession and Assignment.** Member may not assign this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of **North Carolina 811, Inc.** Notwithstanding the foregoing, Member may assign its rights, interests and obligations hereunder without approval of **North Carolina 811, Inc.** to the parent or a subsidiary or affiliate of Member or to any entity into which Member is merged or to which Member sells all or substantially all of its assets. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
  
10. **Notices.** Any notice, request, demand, claim or other communication hereunder (“Notice”) shall be in writing. The term “Notice” does not include or apply to a Transmission. Any Notice may be given by any method listed below and shall be deemed received on the date stated to the right of each such method, as follows:

Personal delivery	Upon delivery
Overnight courier service, charges prepaid	One business day after receipt by addressee as shown on the records of the courier service
Facsimile transmission	The next business day following the date of transmission as shown on the sender’s records
Registered or Certified U.S. Mail, Return Receipt Requested, postage prepaid	Date of delivery as shown on return receipt

Any notice shall be addressed as follows:

If to **North Carolina 811, Inc.:** 2300 W. Meadowview Road  
Suite 227  
Greensboro, NC 27407  
Attn: Executive Director

If to Member: City of Greensboro  
P. O. Box 1170  
2602 South Elm-Eugene Street  
Greensboro, NC 27401

Either Party may change the address to which Notices are to be delivered by giving the other Party notice in the manner herein set forth.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of North Carolina.
12. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement shall be valid unless the same is in writing and signed by both parties. No waiver of breach or violation of any provision shall be deemed to extend to any prior or subsequent breach or violation of the same or any other provision, or affect in any way any rights arising by virtue of any prior or subsequent or breach or warranty or violation.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.
14. **Severability.** If any provision of this Agreement is deemed invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

IN WITNESS WHEREOF, each of the parties has executed this Agreement the day and year first above written.

*This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.*

\_\_\_\_\_  
(Signature of Finance Officer)

\_\_\_\_\_  
(Printed Name of Finance Officer)

Date: \_\_\_\_\_

City of Greensboro  
(Name of Member)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or Print Name)

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

Date: \_\_\_\_\_

**North Carolina 811, Inc.**

By: \_\_\_\_\_  
(Signature)

Louis Panzer  
(Type or Print Name)

Title: Executive Director

The application of City of Greensboro as a **Category One** member of **North Carolina 811, Inc.** is hereby approved and City of Greensboro is elected as a member of **North Carolina 811, Inc.** holding such membership classification.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By Order of the Board of Directors,

\_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Type or Print Name)

Title: Board President