

PUEBLO DE SAN ILDEFONSO

COUNCIL RESOLUTION NO. SI-R22-028

**APPROVING AND AUTHORIZING THE THIRD AMENDED BUSINESS LEASE WITH SAN ILDEFONSO SERVICES, LLC FOR THE WHITE ROCK GAS STATION AND CONVENIENCE STORE**

At a duly called meeting of the Council of San Ildefonso Pueblo on the 29th   day of December , 2022, the following Resolution was adopted:

**WHEREAS,**  the Pueblo de San Ildefonso (“Pueblo”) is a sovereign and self-governing Tribe, recognized as such by the United States of America; and

**WHEREAS,** the sovereign authority of the Pueblo is vested in its Council and Governor; and

**WHEREAS,** the Pueblo previously enacted a law titled “Act to Transfer Ownership and Operation of C-Stores to San Ildefonso Services, LLC”; and

**WHEREAS,**  the Pueblo and San Ildefonso Services, LLC entered into the Business Lease (the “Business Lease”) for the White Rock Gas Station and Convenience Store dated May 9, 2018, and the term of such lease began on July 1, 2017; and

**WHEREAS,** the transfer of ownership and operation of the Totavi and White Rock C-Stores became effective on July 1, 2017; and

**WHEREAS,** on or about March 22, 2019, the Pueblo and San Ildefonso Services, LLC amended the Business Lease to correct the acreage of the leased premises and to update the date of the Surveyor’s Certificate; and

**WHEREAS,** the Business Lease and its accompanying amendment were both approved by the Superintendent, Northern Pueblo Agency, Bureau of Indian Affairs (BIA), on March 27, 2019, which is attached hereto as **Attachment A**; and

**WHEREAS,** on or around November 25, 2020, the Parties further amended the Business Lease (the “Second Amended Lease”) whereby SIS LLC secured a loan for purposes of making upgrades and other improvements to the White Rock Gas Station and Convenience Store, and the Business Lease was extended for an additional five years through September 30, 2027, *see* Council Resolution No. SI-R20-023 and the Second Amended Lease attached hereto as **Attachment B**; and

**WHEREAS,** there is no record that the Second Amended Lease was recorded with the BIA; and

**WHEREAS,** the Pueblo and San Ildefonso desire to further amend the Business Lease to expand the land included in the leased area as described in the proposed Third Amended Lease which is attached hereto as **Attachment C** (the “Third Amended Lease”); and

**WHEREAS,** the Business Lease, as amended, prohibits subleases, assignments, management agreements, or transfers of the Business Lease or any rights to or interest in the Business Lease, without the written approval of the Pueblo, the Secretary and sureties, if any; and

**WHEREAS,** the Pueblo and San Ildefonso Services, LLC desire to amend Paragraph K, Sublease, Assignment, Management Agreement, Transfer of the Business Lease, as amended, to only require approval by the Pueblo and to remove approval of the Secretary and sureties, if any; and

**WHEREAS,** the Pueblo and San Ildefonso Services, LLC desire to diversify the services provided by the business on the property including all lawful business uses; and

**WHEREAS,** for purposes of recording this Amendment with BIA, the changes agreed upon by the Pueblo and San Ildefonso Services, LLC that are reflected in the Second Amendment are hereby incorporated into this Amendment.

**NOW THEREFORE BE IT RESOLVED,** that theCouncil hereby enacts the attached law entitled, “APPROVING AND AUTHORIZING THE THIRD AMENDED BUSINESS LEASE WITH SAN ILDEFONSO SERVICES, LLC FOR THE WHITE ROCK GAS STATION AND CONVENIENCE STORE.”

**BE IT FINALLY RESOLVED,** that the Pueblo de San Ildefonso Council hereby approves and

adopts this resolution in accordance with the requirements of the amended Agreement, according to Council procedures, and authorizes and directs the Governor, or his designee, to take such actions as deemed necessary to carry out the intent of this resolution.

**CERTIFICATION**

The foregoing resolution was duly voted upon by the Council on December 29 , 2022, at a meeting with a vote of 8 in favor, 0 opposed, 0 abstaining and 2 absent (Governor presiding and not voting) pursuant to the authority vested in the Council by the Agreement of the Pueblo de San Ildefonso.

Wayne Martinez, Council Secretary

**COUNCIL REPRESENTATIVE SPONSOR(S): Council Representatives**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **COUNCIL REPRESENTATIVE** | **YES** | **NO** | **ABSTAIN** | **ABSENT** |
| Tom Garcia | X |  |  |  |
| Thomas Gonzales |  |  |  | X |
| M. Wayne Martinez | X |  |  |  |
| Michael Martinez |  |  |  | X |
| Nichole S. Martinez | X |  |  |  |
| Raymond J. Martinez | X |  |  |  |
| Thomas Martinez | X |  |  |  |
| Denise Moquino | X |  |  |  |
| Nathan Sanchez | X |  |  |  |
| Irene Tse-Pe | X |  |  |  |

DELIVERY OF THE RESOLUTION TO THE GOVERNOR:

Resolution No. SI-R22-028 was presented to the Governor of the Pueblo de San Ildefonso on the 29th day of December , 2022, pursuant to the Governing document of the Pueblo de San Ildefonso (“Agreement”), GOVERNOR, Sec. 4 (c), and will become effective after signature by the Governor or veto override by the Council.

Wayne Martinez, Council Secretary

GOVERNOR’S ACTION:

{ X } APPROVED

{ } VETO - RETURNED TO COUNCIL WITH EXPLANATION:

On this 3rd day of January , 2023.

Christopher A. Moquino, Governor

Presented by the Governor to the Council on the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022.

**COUNCIL’S ACTION:**

Override of Governor’s veto:

{ } YES

{ } NO

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **COUNCIL REPRESENTATIVE** | **YES** | **NO** | **ABSTAIN** | **ABSENT** |
| Raymond J. Martinez |  |  |  |  |
| Tom Garcia |  |  |  |  |
| Thomas Gonzales |  |  |  |  |
| M. Wayne Martinez, Jr. |  |  |  |  |
| Nichole S. Martinez |  |  |  |  |
| Michael Martinez |  |  |  |  |
| Thomas Martinez |  |  |  |  |
| Denise Moquino |  |  |  |  |
| Nathan Sanchez |  |  |  |  |
| Irene Tse-Pe |  |  |  |  |

**CERTIFICATION**

The foregoing resolution was duly voted upon by the Council on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022, at a meeting with a vote of \_\_\_\_\_\_ in favor, \_\_\_\_\_ opposed, \_\_\_\_\_ abstaining and \_\_\_\_\_ absent (Governor presiding and not voting) pursuant to the authority vested in the Council by the Agreement of the Pueblo de San Ildefonso.

Wayne Martinez, Council Secretary

**PUEBLO DE SAN ILDEFONSO**

**APPROVING AND AUTHORIZING THE THIRD AMENDED BUSINESS LEASE WITH SAN ILDEFONSO SERVICES, LLC FOR THE WHITE ROCK GAS STATION AND CONVENIENCE STORE**

**Section 1.1 Short Title**

This enactment shall be known as the Act, “APPROVING AND AUTHORIZING THE THIRD AMENDED BUSINESS LEASE WITH SAN ILDEFONSO SERVICES, LLC FOR THE WHITE ROCK GAST STATION AND CONVENIENCE STORE.”

**Section 1.2 Definitions**

(a) “White Rock Convenience Store” means the White Rock Convenience Store and Gas Station located within the external boundaries of the Pueblo.

(b) “SIS LLC” means San Ildefonso Services, LLC, a single member limited liability company organized under tribal law and wholly owned by the Pueblo**.**

**Section 1.3 Purpose**

The purpose of this Act is to authorize and direct the Governor of the Pueblo to negotiate and execute a Third Amended Business Lease with SIS LLC for the White Rock Gas Station and Convenience Store.

**Section 1.4 Findings**

The Council hereby finds and declares that:

1. SIS LLC is chartered under tribal law as a single member limited liability company wholly owned by the Pueblo.
2. On June 21, 2017, the Pueblo de San Ildefonso enacted a law entitled “Act to Transfer Ownership and Operation of C-Stores to San Ildefonso Services, LLC.”
3. To carry out the Act, the Pueblo and SIS LLC effected the transfer of ownership and operation of the Totavi and White Rock C-Stores on July 1, 2017.
4. Under Article VIII of its Articles of Organization, San Ildefonso Services LLC has authority to “buy, sell, lease and otherwise acquire and maintain buildings, offices, shops and other appurtenances proper and necessary for the carrying on of said business.”
5. The Pueblo and SIS LLC entered into the Business Lease (the “Business Lease”) for the White Rock Gas Station and Convenience Store dated May 9, 2018, and the term of such lease began on July 1, 2017; and
6. On or about March 22, 2019, the Parties amended the Business Lease to correct the acreage of the leased premises and to update the date of the Surveyor’s Certificate.
7. The Business Lease and its accompanying amendment were both approved by the Superintendent, Northern Pueblo Agency, Bureau of Indian Affairs (BIA), on March 27, 2019, which is attached hereto as **Attachment A**.
8. On or around November 24, 2020, the Pueblo and SIS LLC further amended the Business Lease (the “Second Amended Lease”) whereby SIS LLC secured a loan for purposes of making upgrades and other improvements to the White Rock Gas Station and Convenience Store, and the Business Lease was extended for an additional five years through September 30, 2027, *see* Council Resolution No. SI-R20-023 and the Second Amended Lease attached hereto as **Attachment B.**
9. There is no record that the Second Amendment was recorded with the BIA.
10. The Pueblo and SIS LLC desire to further amend the Business Lease to expand the acres included in the leased area as described in the proposed Third Amended Lease (the “Third Amended Lease”).
11. The Business Lease, as amended, prohibits subleases, assignments, management agreements, or transfers of the Business Lease or any rights to or interest in the Business Lease, without the written approval of the Pueblo, the Secretary and sureties, if any.
12. The Pueblo and SIS LLC desire to amend Paragraph K, Sublease, Assignment, Management Agreement, Transfer of the Business Lease, as amended, to only require approval by the Pueblo and to remove approval of the Secretary and sureties, if any.
13. The proposed Third Amended Lease is attached to this Resolution, as **Attachment C**.
14. The Pueblo and SIS LLC desire to diversify the services provided by the business to include all lawful business uses.
15. Paragraph K of the Business Lease, as amended, shall be modified and replaced with the following:

K. SUBLEASE, ASSIGNMENT, MANAGEMENT AGREEMENT, TRANSFER

Lessee shall not sublease, assign, place under management agreement, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the Leased Premises, without the written approval of Lessor, and no such sublease, assignment, or transfer shall be valid or binding without such approval, and then only upon the condition that the sublease, assignee or other successor in interest, excepting an approved encumbrance(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, or transfer, except as foresaid, such action shall be deemed a breach of this Lease. Approval of one sublease, assignment, or transfer shall not validate a subsequent sublease, assignment, or transfer, and the restriction of this Section shall apply to each successive sublease, assignment, or transfer hereunder and shall be severally binding upon each and every sublessee, assignee, transferee and other successor in interest of the Lessee.

1. For purposes of recording this Amendment with BIA, the changes agreed upon by the Parties and reflected in the Second Amendment are hereby incorporated into this Third Amendment.

**Section 1.5 Council Authorizations and Waivers**

1. The Council has reviewed the proposed monetary compensation that must be paid under the Proposed Business Lease and has determined the amount to be satisfactory to the Pueblo, and the Council hereby waives valuation that may otherwise be required under the Code of Federal Regulations, and has determined that accepting such negotiated compensation and waiving valuation is in the best interests of the Pueblo.
2. The Council has determined that it is in the Pueblo’s best interest that no periodic review of the adequacy of compensation or adjustment be required for the Proposed Third Amended Business Lease.
3. The Council has determined that it is in the Pueblo’s best interest to waive the requirement of a performance bond or an alternative form of security that may otherwise be required under the Code of Federal Regulations, and further requests that the Bureau of Indian Affairs, Department of the Interior, defer to the Council’s express waiver of such bond or security.
4. The Council has determined that it is in the Pueblo’s best interest to provide an express and limited waiver of its immunity from suit, subject to the limitations herein, only as to actions to enforce the Business Lease, as amended, or any settlement agreement reached in mediation under the Business Lease, provided that the Pueblo’s limited waiver of sovereign immunity is granted only to San Ildefonso Services, LLC and not to any other individual or entity, and that the Pueblo de San Ildefonso Tribal Court shall have exclusive jurisdiction over any lawsuit brought pursuant to this limited waiver of immunity.
5. The Council has determined that the Governor may execute said Business Leases, as amended, or any other certification required by federal or tribal law.

**Section 1.6 Authority of Tribal Governor to Execute the Third Amended Business Lease**

The Council hereby authorizes and directs the Governor of the Pueblo to negotiate and execute a final Third Amended Business Lease in substantially the same form as the attached proposed Third Amended Business Lease consistent with this Act, make any revisions and amendments that may be necessary and required to support the execution of a final Third Amended Business Lease, as amended, and execute any certification that may be required by federal or tribal law to support the execution of a final Third Amended Business Lease.