

**FIFTH AMENDED ARTICLES OF ORGANIZATION FOR SAN ILDEFONSO  
SERVICES, A LIMITED LIABILITY COMPANY Chartered by the  
Pueblo de San Ildefonso, a federally recognized sovereign.**

(As amended effective December 31, 2018)

**ARTICLE I – NAME**

The name of the Limited Liability Company (hereinafter “LLC”) is San Ildefonso Services, LLC.

**ARTICLE II – PRINCIPAL OFFICE, REGISTERED OFFICE AND AGENT FOR SERVICE**

- A. **Principal Office.** The LLC shall maintain a principal office within the Pueblo de San Ildefonso lands, State of New Mexico, and its street address, shall be described in the Operating Agreement. The LLC may have such other offices, within or without the Pueblo de San Ildefonso lands, as the Manager of the LLC may designate or as the business of the LLC may require from time to time. The LLC shall notify the Pueblo de San Ildefonso (“Pueblo”) of a change in the street address of its principal place of business by delivering a written statement to the Governor’s Office of the Pueblo setting forth such change. Unless the Operating Agreement provides otherwise, the change of address shall not require an amendment to the Operating Agreement.
- B. **Registered Office.** The LLC shall maintain a registered office that may be the same as its principal place of business. The street address of the initial registered office shall be described in the Operating Agreement. The LLC, or its Registered Agent, shall notify the Pueblo of a change in the street address of the registered office by delivering a written statement to the Governor’s Office of the Pueblo setting forth such change. Unless the Operating Agreement provides otherwise, the change of address shall not require an amendment to the Operating Agreement.
- C. **Agent for Service of Process.** The LLC shall maintain a registered agent for service of process, who shall be identified in the Operating Agreement. A Statement of Acceptance of Appointment as Initial Registered Agent shall be delivered to the Governor’s Office of the Pueblo within 30 days from the Effective Date of the Operating Agreement. A registered agent of the LLC may resign as registered agent by delivering a written notice, executed in duplicate, to the Governor’s Office of the Pueblo, which shall mail a copy of the notice to the LLC at its principal place of business as shown on the Operating Agreement. The resigning registered agent’s appointment terminates thirty (30) days after receipt of the notice by the Governor’s Office of the Pueblo or on the effective date of the appointment of a successor registered agent, whichever occurs first. Each successor registered agent shall deliver a Statement of Acceptance of Appointment as Registered Agent to the Governor’s Office of the Pueblo within thirty (30) days from LLC’s receipt of the resigning registered agent’s notice.

### **ARTICLE III – FORMATION**

The LLC is formed, organized, incorporated and chartered under the laws and inherent sovereign power of the Pueblo, and shall have the powers, privileges and immunities embodied in these Articles. The date of formation shall be the date of the Council Resolution approving the original Articles of Organization.

### **ARTICLE IV – STATUS OF THE LLC**

- A. The LLC is a legal entity wholly owned by the Pueblo de San Ildefonso, a federally recognized Indian tribe, but distinct and separate from the Pueblo. The activities, transactions, obligations, liabilities and property of the LLC are not those of the Pueblo de San Ildefonso.
- B. The LLC shall have the same privileges and immunities under tribal, state, and federal law as the Pueblo de San Ildefonso, except as such privileges and immunities are waived by Article XVI herein, or are waived by the LLC pursuant to such article. The LLC shall retain the Tribe's tax exemption status and shall enjoy any tax advantages available to this type of LLC.
- C. The LLC shall be a single member limited liability company wholly owned by the Pueblo de San Ildefonso. The Pueblo is also referred to as the Member in these Articles and the Operating Agreement. The LLC shall be a Manager-Managed LLC whose Manager shall be appointed by the Member's Representatives consistent with these Articles, the Operating Agreement, and applicable laws of the Pueblo. The Member's Representatives shall be comprised of a group as described in Article X herein.

### **ARTICLE V – OWNERSHIP OF THE LLC**

- A. All shares in the LLC shall be owned by the Pueblo de San Ildefonso for the benefit of the Pueblo and its tribal members. No individual or legal entity other than the Pueblo de San Ildefonso shall acquire any shares in the LLC, unless the Pueblo de San Ildefonso agrees to transfer such shares consistent with its laws and the Operating Agreement.
- B. The Tribe's shares in the LLC shall not be sold, transferred, pledged or hypothecated, voluntary or involuntarily, without the prior written consent of the Pueblo de San Ildefonso Council (hereinafter the "Council").
- C. The Member's Representatives, shall exercise all rights of the Member in accordance with these Articles, the Operating Agreement, and applicable tribal law.

### **ARTICLE VI – PERIOD OF DURATION**

The period of the LLC's duration shall be perpetual, unless either the Operating Agreement states otherwise or the Member's Representatives revoke these Articles under tribal laws.

## **ARTICLE VII – CORPORATE PURPOSES**

The business purpose of the LLC shall be to engage in federal contracting and other lawful business ventures that serve the business interest of the LLC, the Pueblo of San Ildefonso and its members. In furtherance of any such business purpose, the LLC may:

- A. Purchase or otherwise acquire, hold, rent, lease, develop, manage, operate, encumber, improve and exchange property.
- B. Contract for any activity or service for, and collect fees and other forms of revenue related to, the construction, operation and management of buildings, infrastructure and other facilities; the ownership and operation of retail and service enterprises, including enterprises providing consultant and advisory services to government and industry; and other economic development initiatives for the benefit of the Pueblo de San Ildefonso and its members.
- C. Create opportunities for employment and income for members of the Pueblo de San Ildefonso.
- D. Provide for the efficient and effective utilization of the resources of Tribal land leased to the LLC in a manner that protects the long-term interests of the Tribe and that provides benefits to the Tribe from the utilization of those resources.
- E. Provide a structure for business management and decision-making that is both accountable to the Member's Representatives, and sufficiently independent from the Pueblo's governmental and political processes to allow the business to succeed as a profit-making enterprise.
- F. Promote the orderly economic development of the Pueblo through compliance with comprehensive planning conducted by the Pueblo.
- G. Create opportunities for investing tribal and corporate resources in business ventures that may be identified and approved by the Member's Representatives.
- H. Enhance the economic self-sufficiency of the Pueblo, the ability of the Pueblo to provide governmental services, and the ability of the Pueblo to preserve and protect the culture and values of the Pueblo.

## **ARTICLE VIII – COMPANY POWERS**

The LLC is authorized to:

- A. Have a corporate seal which may be altered at the discretion of the Manager.
- B. Buy, sell, lease and otherwise acquire and maintain buildings, offices, shops and other appurtenances proper and necessary for the carrying on of said business.
- C. Carry on its business either within or without the Pueblo de San Ildefonso, as permitted by law and pursuant to its annual business plan and budget approved by the Member's Representatives.

- D. Guarantee, purchase, hold, assign, mortgage, pledge or otherwise dispose of capital stock of, or any bonds, securities or other evidence of indebtedness created by any other LLC or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government or country, and to exercise all the rights, privileges and powers of ownership.
- E. Enter into and make contracts of every kind and nature with any person, firm, association, LLC, corporation, municipality, nation, Indian tribe, state or body politic, without the approval of the Pueblo or the Secretary of the Interior, except when the use of trust or federally-restricted Indian property requires such approval, and except as otherwise provided in these Articles concerning indebtedness of the LLC.
- F. Purchase, take by gift or bequest, acquire, own, lease, manage, operate, deal in and dispose of real and personal property of all kinds and descriptions, wherever situated.
- G. Incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issue and sale or other disposal of stocks, bonds, indentures, obligations, negotiable and transferable instruments and evidence of indebtedness of all kinds; whether secured by mortgage, pledge, deed of trust or otherwise, without the approval of the Secretary of the Interior except when the use of trust or federally-restricted Indian property requires such approval; provided that the LLC shall not incur any debt or debts which in the aggregate exceed \$2 million at any time without the prior approval of the Member's Representatives; and provided further that any debt incurred by the LLC shall be subject to the limitations imposed by Article IX of these Articles.
- H. Apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters patent, and to sue, exercise, develop, grant and give licenses in respect thereto.
- I. Apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government or authority or any LLC or other public body may be empowered to enact, make, or grant, and, subject to the limitations imposed by Article IX of these Articles, to pay for and to appropriate any of the company's assets to defray the necessary costs, charges and expenses thereof.
- J. Sue and be sued in its LLC name in any court of competent jurisdiction within the United States, to the extent provided in Article XVI of these Articles.
- K. Employ or appoint employees and agents of the LLC and define their duties and fix their compensation, consistent with Article XII of these Articles.
- L. Lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned and invested.
- M. Sell, convey, mortgage (including leasehold mortgages), pledge, lease, exchange, transfer or otherwise dispose of all of any part of its corporate property or assets to the extent permitted by Article IX(F) of these Articles; provided that the LLC shall not mortgage or pledge any of its corporate property or assets to secure any debt or debts

which in the aggregate exceed \$2 million at any time without the prior approval of the Member's Representatives; provided further that, in accordance with federal law, the LLC has no authority to sell, mortgage, or lease for a period of time exceeding twenty-five (25) years, any trust or restricted lands included within the Pueblo de San Ildefonso's Indian country.

- N. Adopt an Operating Agreement for the regulation of the internal affairs of the LLC consistent with these Articles and the laws and regulations of the Pueblo. An Operating Agreement means a written agreement providing for the conduct of the business and affairs of a limited liability company. That agreement may be amended in writing.
- O. Obtain a certificate of authority to transact business in the State of New Mexico or in any other state as a foreign LLC, and to comply with applicable state law governing foreign LLCs.
- P. Have and exercise all lawful powers incidental, necessary or convenient to effect any or all of the purposes for which the LLC is organized.

#### **ARTICLE IX – LIMITATIONS ON COMPANY POWERS**

The LLC shall have no power to:

- A. Expressly or by implication enter into any agreement of any kind on behalf of the Pueblo de San Ildefonso.
- B. Pledge the credit of the Pueblo de San Ildefonso.
- C. Dispose of, pledge, or otherwise encumber real or personal property of the Pueblo de San Ildefonso, except that the LLC shall have the power to encumber real property pursuant to the terms of written lease agreement(s) between the Pueblo de San Ildefonso and the LLC.
- D. Waive any right, privilege or immunity of or release any obligation owed to the Pueblo de San Ildefonso.
- E. Enter into any sublease or other encumbrance or instrument respecting lands leased to the LLC by the Pueblo de San Ildefonso without the express written approval of the Council. Such approval may be reflected in the written lease agreement(s) between the Pueblo and the LLC.
- F. Sell, lease, exchange or otherwise dispose of all or substantially all of the LLC's assets without the prior written consent of the Member's Representatives. Prior to any such proposed sale or disposition, the LLC shall give reasonable notice to the Member's Representatives. The Member's Representatives' consent to any such proposed sale or disposition shall be in the form of a resolution of the Member's Representatives, duly adopted in accordance with applicable tribal law.

**ARTICLE X – MEMBER’S REPRESENTATIVES**

- A. **Member’s Representatives.** The Pueblo de San Ildefonso owns and shall own the entirety of the membership interest in the LLC. The Member’s Representatives, shall exercise all rights of the Member in accordance with these Articles, the Operating Agreement, and applicable tribal law. The Member’s Representatives shall receive compensation at the sole discretion of the Council by law.
- B. **Appointment and Term of Office.** The Council of the Pueblo hereby establishes a five (5) person Member’s Representatives group to be composed of two (2) members appointed by the Governor and three (3) members appointed by the Council by Legislative Order. The appointment of members of the Pueblo is preferred but not required. Member’s Representatives appointed by the Governor and Council shall be appointed for staggered terms of three (3) years each. In order to achieve staggered terms, the Member’s Representatives shall be divided into three groups: Group A, Group B and Group C. Group A shall consist of two individuals: one of Governor’s appointees and one of the Council’s appointees. Group B shall consist of one individual: one of Council’s appointees. Group C shall consist of two individuals: one of Governor’s appointees and one of the Council’s appointees. Group A shall serve an initial term of one (1) year. Group B shall serve an initial term of two (2) years. Group C shall serve an initial term of three (3) years. Thereafter, the Governor and Council shall appoint their respective Member’s Representative(s) for a full three-year term.

<b>Group A</b>	<b>Group B</b>	<b>Group C</b>
<p>One (1) Member’s Representative appointed by the Governor</p> <p>One (1) Member’s Representative appointed by the Council</p>	<p>One (1) Member’s Representative appointed by the Council</p>	<p>One (1) Member’s Representative appointed by the Governor</p> <p>One (1) Member’s Representative appointed by the Council</p>
<p>Initial term of one (1) year (January 1, 2019, to December 31, 2019)</p>	<p>Initial term of two (2) years (January 1, 2019, to December 31, 2020)</p>	<p>Initial term of three (3) years (January 1, 2019, to December 31, 2021)</p>
<p>Upon expiration of the initial term, all subsequent appointments of Member’s Representatives shall be for three (3) year terms.</p>	<p>Upon expiration of the initial term, all subsequent appointments of Member’s Representatives shall be for three (3) year terms.</p>	<p>Upon expiration of the initial term, all subsequent appointments of Member’s Representatives shall be for three (3) year terms.</p>

- C. **Qualifications of Member’s Representatives.** Each person appointed to the Member’s Representatives shall possess the level of professional experience and expertise determined by the Governor and the Council to be necessary to carry out the duties of a Member’s Representative and to contribute to the ability of the LLC to achieve the purposes for which these Articles are issued.

- a. Member's Representatives shall possess the following qualifications:
  - A. Extensive professional and leadership experience in business, government, or the nonprofit sector;
  - B. A commitment to and understanding of the needs of the Pueblo community, Pueblo sovereignty, and the laws of the Pueblo;
  - C. Integrity, credibility, and a passion for the Pueblo's economic development activities;
  - D. Demonstrated ability to oversee a business for maximum profitability and performance, including fiscal goals and priorities, and operational procedures and guidelines;
  - E. A High School Diploma is required;
  - F. A Bachelor's Degree in business administration, marketing, retail management, finance, or a related degree is preferred;
  - G. Five or more years of experience in business, finance, government, and/or related management experience is preferred;
  - H. A combination of education and experience may be considered in meeting the requirements of f. (Bachelor's Degree) and g. (experience) above;
  - I. Must pass a background check and successfully complete an alcohol and drug test prior to appointment and remain subject to random drug testing throughout term. The drug tests conducted before the Member's Representative's appointment will be paid for by Council and random drug tests will be paid for by the LLC; and
  - J. Must have the ability to obtain special clearances and background investigations (per project requirement basis).

b. Member's Representatives must not have been:

- A. Convicted of a felony within the last five (5) years; or
- B. Convicted of any crime involving theft or conversion of money or property.

**D. Duties of Member's Representatives.** The Member's Representatives shall exercise oversight of the LLC on behalf of the Pueblo and shall monitor the LLC as an asset of the Pueblo. The Member's Representatives, however, do not exercise day-to-day management or control of the LLC, or its business activities. In addition to all authority and responsibilities described in these Articles, the Member's Representatives shall serve as the primary point of contact between the LLC and the Pueblo.

- E. **Conflicts of Interest.** No sitting Member's Representative shall engage in any activity that is or creates an appearance of a conflict of interest. A conflict of interest occurs when the Member's Representative's personal or financial interest conflicts with the LLC's interest. Should a conflict of interest develop for a Member's Representative, he or she shall state the conflict in writing to all other Member's Representatives. If the conflict cannot be avoided to the satisfaction of the other Member's Representatives, the Member's Representative shall immediately resign. In the event of a potential conflict of interest, a Member's Representative shall recuse himself or herself from any vote involving the potential conflict of interest.
- F. **Resignation, Suspension and Removal of Member's Representative.**
- a. A Member's Representative may resign at any time by delivering a written notice to the Governor, Council and to the principal place of business of the LLC, and such resignation shall be effective on the date specified in the notice.
  - b. The Governor's Member's Representative appointee shall be subject to suspension or removal by the Governor at any time for any reason. The Council's Member's Representative appointee shall be subject to suspension or removal by the Council at any time for any reason.
- G. **Vacancies.** A vacancy for any reason in a seat filled by an appointment of the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy for any reason in a seat filled by an appointment of the Council shall be filled by the Council for the remainder of the unexpired term.
- H. **Annual Meetings.** An annual meeting of the Member's Representatives shall be held annually, on the second Tuesday in June, or as otherwise scheduled by the LLC Member's Representatives, for the purpose of electing a Manager, approving the LLC's annual business plan and budget, and transacting any business that may come before the Member's Representatives at such meeting. If the election of a Manager shall not be held on the date scheduled for any annual meeting of the Member, or at any adjournment thereof, the Member's Representatives shall cause the election to be held at a special meeting of the Member's Representatives as soon thereafter as is convenient.
- I. **Special Meetings.** Special meetings of the Member, for any purpose or purposes, unless otherwise proscribed by applicable law, may be called by the Member's Representatives or the Manager. Special meetings shall require written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered not less than five (5) days before the date of the meeting, either personally, electronically or by mail to the Manager of the LLC and each member of the Member's Representatives. This notice requirement may be waived at any time by individual Member's Representatives and the Manager who does not receive such notice. Any business in addition to that specified in the notice of the meeting may be transacted at any special meeting of the Member.
- J. **Reports to Council.** The Member's Representatives shall provide quarterly reports to the Council and Governor consistent with Article XV.



- K. **Meeting Procedures.** Matters within the scope and legal authority of the Member under these Articles and the Operating Agreement shall only be discussed and decided by the Member's Representative at a Member meeting duly called as provided in these Articles. On any issue or question presented to the Member, a vote shall be taken of those members of the Member's Representatives present.
- L. **Quorum.** At all meetings of the Member's Representatives, the presence of a minimum of three (3) of the Member's Representatives shall be necessary and sufficient to constitute a quorum for any transaction of business. Subject to the presence of a quorum, the vote of a simple majority of Member's Representatives present shall carry and decide any issue or question properly before the Member's Representatives.
- M. **Records.** Written minutes of the discussions and proposals presented at any Member's Meeting and the votes taken and matters approved at such meeting shall be taken by a person designated by the Member's Representatives at the meeting. A copy of the minutes of the meeting shall be placed in the LLC's records book after the meeting.
- N. **Tribal Employee Member's Representative.** Tribal employees serving as a Member's Representative shall not be deemed to be acting within the scope of their duties as tribal employees or acting in any other capacity while acting on behalf of the LLC or under color of office of the LLC.

#### **ARTICLE XI – MANAGEMENT BY MANAGER**

- A. **Management Authority.** This LLC shall be Manager-Managed LLC and only the Manager elected by the Member's Representatives shall have the exclusive authority to manage the business affairs of the LLC, subject to the terms of these Articles, the Operating Agreement, and the laws of the Pueblo. The Pueblo de San Ildefonso shall have no authority to direct the business affairs of the LLC, except through its Member's Representatives and its status as the sole Member and as provided in these Articles and the Operating Agreement.
- B. **How Elected.** The Governor shall appoint a Manager for a two-year term beginning January 1, 2019, and ending December 31, 2020. Thereafter, the process for electing the manager will be as follows: election of the Manager shall be held at a meeting of the Member's Representatives. Nominations for the Manager shall be made and seconded by Member's Representatives members until nominations cease. The Member's Representatives shall elect the Manager from the list of nominations that have been seconded for that position. The Member's Representatives may choose to vote by voice vote or by written ballot. The person receiving the highest number of votes for each position shall fill that position.
- C. **Term of Office.** The Manager shall be elected for terms of three (3) years and shall serve only for the term of office or until resignation, removal, disability, or death. A Manager may serve any number of consecutive three-year terms for which he or she is elected.

**D. Qualifications of Manager.**

- a. The Manager may be subject to a background investigation and, if necessary, shall be required to obtain security or other clearances, or such licensure necessary to carry on the purposes of the LLC.
- b. A bachelor's or master's degree in business administration, management, or a field related to the purposes and operations of the LLC.
- c. The Manager shall possess the level of business experience and expertise determined by the Member's Representatives to be necessary to carry out the duties of a Manager and to contribute to the ability of the LLC to achieve the purposes of the LLC, which should include substantial experience in one or more of the following areas: small business administration, contracting with the federal government, contract and grant oversight, tribal government relations, and construction management.
- d. No person who has been convicted of a felony within the last five (5) years shall be elected as a Manager. A felony is a crime punishable by at least one (1) year in jail, regardless of whether the person actually served a full year in jail.
- e. No person who has ever been convicted of any crime involving theft or conversion of money or property shall be elected as a Manager.

**E. Duties of Manager.** The Manager shall manage the general affairs and business of the LLC. The Manager shall in all cases act consistent with the Operating Agreement, Articles of Organization, and other applicable laws and regulations. A Manager shall perform the duties as a Manager in good faith, in a manner the Manager believes to be in or not opposed to the best interests of the LLC, and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a Manager shall be entitled to rely on factual 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 LLC whom the Manager reasonably believes to be reliable and competent in the matters presented;
- b. Legal counsel, public accountants or other persons as to matters which the Manager reasonably believes to be within such person's professional or expert competence; or
- c. A committee of the LLC upon which the Manager does not serve, duly designated in accordance with a provision of the operating agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit confidence, but the Manager shall not be considered to be acting in good faith if the Manager has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

**F. Conflicts of Interest.**

- a. No sitting Manager shall engage in any activity that is or creates the appearance of a conflict of interest. A conflict of interest occurs when circumstances create a possibility that a Manager's duty of undivided loyalty to the LLC might be compromised. If the conflict cannot be avoided, the Manager shall immediately resign.

**G. Resignation and Removal of Manager.**

- a. A Manager may resign at any time by delivering a written notice to the Member's Representatives and to the principal place of business of the LLC, and such resignation shall be effective on the date specified in the notice. A Manager may be removed either with or without cause, at any time by a vote of the Member's Representatives, at any special meeting called for that purposes, or at the annual meeting.
- b. A Manager may be removed with or without cause at any time by the Member's Representatives. In addition, a Manager may be removed due to malfeasance, misfeasance or non-feasance of office, gross neglect of duty, misconduct reflecting on the dignity and integrity of the LLC, or an irresolvable conflict of interest.
- c. Decisions to remove a Manager, whether with or without cause, shall be final. A removed Manager does not have any rights to appeal the decision. Serving as a Manager is considered a privilege, and no Manager receives any property interest in such management.

**H. Vacancies.** Whenever any vacancy shall occur in the Manager position by death, resignation, removal or otherwise, the same shall be filled without undue delay by the Member's Representatives at a special meeting which shall be called for that purpose.

**I. Liability of Manager.** A Manager shall not be personally liable to the LLC or its Member for monetary damages for breach of fiduciary duty as a Manager unless:

- a. The Manager has breached or failed to perform the duties of the Manager's office as provided in these Articles; and
- b. The breach or failure to perform constitutes willful misconduct or recklessness.

**J. Manager Compensation.** The Manager shall receive such compensation and expense reimbursement as is reasonable, prudent, and consistent with prevailing levels of compensation in New Mexico and the LLC's budget. Manager compensation and expense reimbursement shall be subject to the Operating Agreement.

**K. Tribal Employee Manager.** Tribal employees serving as a Manager shall not be deemed to be acting within the scope of their duties as tribal employees or acting in any other capacity while acting on behalf of the LLC or under color of office of the LLC.

## ARTICLE XII – EMPLOYEES

- A. **Company Employees.** The Manager may hire employees of the LLC. The employee position(s), job description(s), duties, and powers of the employees of the LLC shall be provided in the LLC's annual business plan. Employee positions shall not be created and employees shall not be directed to perform work that imprudently expends the LLC's financial resources. To the extent that it promotes efficiency, employees may be retained under personal services contracts.
- B. **Employees Compensation.** Employees shall receive such compensation and expense reimbursement as is reasonable, prudent, and consistent with prevailing levels of compensation in New Mexico and the LLC's budget. Employee compensation and expense reimbursement shall be subject to the Operating Agreement.
- C. **Tribal Employees.** Pueblo de San Ildefonso Tribal employees serving as employees of the LLC shall not be deemed to be acting within the scope of their duties as tribal employees or acting in any other capacity while acting on behalf of the LLC or under color of office of the LLC.

## ARTICLE XIII – INDEMNIFICATION

- A. The LLC shall indemnify any former or current Manager or employee against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding in which he or she is made a party by reason of being, or having been, such Manager or employee of the LLC, and the reasonable costs of settlement of any such action or proceeding, if the Manager shall determine in good faith that:
  - a. Such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent;
  - b. Any legal fees paid or any settlements made are reasonable;
  - c. The person seeking indemnification did not act beyond the scope of his or her employment or office; and
  - d. It is in the best interests of the LLC and the Member that indemnification be made.
- B. If the Manager is unable to act on a request for indemnification, the decision whether to indemnify shall be submitted to the Member's Representatives.

## ARTICLE XIV – ALLOCATION AND DISTRIBUTION OF CASH TO MEMBER

- A. The Manager of the LLC may, from time to time, declare, and the LLC may pay cash from the net profits of the LLC, whenever, in the opinion of the Manager, the financial condition of the LLC, including any need for investment in the business operations of the LLC, justifies the distribution in the best interests of the LLC and the Pueblo de San

ldefonso. No cash may be paid when the LLC expenses exceed revenues or when the payment thereof would render the LLC insolvent.

#### **ARTICLE XV – REPORTS TO MEMBER**

- A. The LLC shall maintain its financial records in conformity with generally accepted accounting principles (GAAP).
- B. The Manager of the LLC shall present and also provide a written report to the Member's Representatives, no less frequently than on a quarterly basis, on the financial and operating condition of the LLC, including the assets and liabilities of the LLC and the official actions of the LLC. The content of the report shall be as recommended by the Manager and approved by the Member's Representatives. The Member's Representatives shall submit a copy of all reports of the LLC to the Council and Governor and, if requested by the Council, appear before and present reports of the LLC to the Council.
- C. The LLC shall, within 120 days following the close of the LLC's fiscal year, which shall be the calendar year, submit to the Member's Representatives an audited financial statement showing the status of the LLC as of the last day of the LLC's fiscal year. These financial statements will:
  - a. Include a Management letter;
  - b. Include balance sheet, income statement and statement of retained earnings and statements of cash flow;
  - c. Be prepared in accordance with GAAP; and
  - d. Be prepared by a certified public accounting firm that is (a) licensed in the State of New Mexico, (b) approved by the Manager, and (c) acceptable to the Member's Representatives.
  - e. Be provided by the Member's Representatives to the Council and Governor.
- D. The LLC will submit financial forecast information to the Member's Representatives, who will similarly provide such information to the Pueblo, by February 1st of each year for the purpose of informing the Member's Representatives of the LLC's overall operations. The forecast information will consist of summary level estimates for the following year and two subsequent years. The financial forecast information will include:
  - a. Current and projected balance sheet, income statements, and statements of cash flow;
  - b. Discussion of major plans, priorities and assumptions;
  - c. Borrowing and debt levels;
  - d. Depreciation and amortization (and other non cash expenses);

- e. Major capital replacement, acquisition or investments;
  - f. Increases or decreases in reserves;
  - g. Estimated dividend distributions of the Member;
  - h. Estimated capital contributions (if any) recommended for infusion by the Member;
  - i. Estimated taxes, fees and other payments to the Member; and
  - j. Report on how the LLC is meeting the purpose set forth in Article VII of these Articles; and
  - k. Such other information as the Member's Representatives may reasonably request.
- E. The financial and operating records of the LLC shall at all reasonable times be open to inspection by the Member's Representatives and the Council.
- F. The LLC shall promptly give notice in writing to the Member's Representatives of any litigation pending or threatened against the LLC.

#### **ARTICLE XVI – CLAIMS AGAINST THE LLC**

- A. The LLC is an instrumentality of the Pueblo de San Ildefonso and is entitled to all of the privileges and immunities of the Pueblo, except as provided in this Article XVI.
- B. For all matters arising out of federal government contracts or federal Small Business Administration ("SBA") programs including, but not limited to, 8(a) Business Development program participation, loans, and contract performance, the LLC's immunity is hereby waived for suits brought in the United States Federal Courts, which shall be considered courts of competent jurisdiction with regard to such matters. While the LLC will have the ability to sue and be sued in federal court for such matters, the LLC's immunity to suit in state court is retained and not waived.
- C. For all other matters not otherwise identified in paragraph B of Article XVI, the LLC is hereby authorized to waive any defense of sovereign immunity from suit the LLC, its Manager, employees or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purpose of the LLC, and to consent to suit in tribal, state and/or federal court, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation.
- D. The LLC is hereby authorized to waive, as provided in this Article XVI, any defense the LLC, its Manager, employees or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against the LLC in a state or federal court otherwise having jurisdiction over the subject matter and the parties.

- E. Any waiver by the LLC authorized by paragraph C or D of Article XVI shall be in the form of a resolution duly adopted by the Manager, which resolution shall not require the approval of the Pueblo de San Ildefonso or the Secretary of the Interior. The resolution shall identify the party or parties for whose benefit the waiver is granted, the transaction or transactions and the claims or classes of claims for which the waiver is granted, the property of the LLC which may be subject to execution to satisfy any judgment which may be entered in the claim, and shall identify the court or courts in which suit against the LLC may be brought. Any waiver shall be limited to claims arising from the acts or omissions of the LLC, its manager, employees or agents, and shall be construed only to affect the property and income of the LLC.
- F. Nothing in these Articles, and no waiver of the LLC's sovereign immunity pursuant to this Article, shall be construed as a waiver of the sovereign immunity of the Pueblo de San Ildefonso or any other instrumentality of the Pueblo, and no such waiver by the LLC shall create any liability on the part of the Pueblo de San Ildefonso or any other instrumentality of the Pueblo for the debts and obligations of the LLC, or shall be construed as a consent to the encumbrance or attachment of any property of the Pueblo de San Ildefonso or any other instrumentality of the Pueblo based on any action, adjudication or other determination of liability of any nature incurred by the LLC.
- G. Nothing in these Articles, and no action taken by the LLC pursuant to these Articles, shall be construed as permitting, recognizing, or granting the State of New Mexico, or any other state, any regulatory jurisdiction or taxing jurisdiction over the property or activities of the LLC or its employees located within the boundaries of the Pueblo de San Ildefonso's Indian country.
- H. A copy of all Manager resolutions granting any waiver under this Article shall be filed with the Governor of the Pueblo within ten (10) business days following adoption of the resolution.

#### **ARTICLE XVII - MERGER**

- A. The LLC is authorized, but not required, to merge with any other LLC or other business entity owned and controlled by the Pueblo de San Ildefonso, provided that the merger complies with this Article. This LLC shall follow the procedures established by this Article.
- B. The Manager of this LLC shall by resolution approve a plan of merger setting forth the details of the proposed merger. The Manager shall by resolution direct that the plan of merger be submitted to a vote at a meeting of the Member's Representatives. The plan of merger shall provide that this LLC is to be the surviving LLC following the proposed merger, and shall not include or be deemed to require any amendment of the Articles.
- C. Upon approval of the plan of merger by the Member of this LLC as provided in this Article and by the other LLC or business entity as provided by applicable law, articles of merger shall be executed by each entity by its Chairman of the Board, President or Vice-President and by its Secretary. The executed articles of merger shall be filed with the Secretary of the Interior, if required by applicable law. The merger shall become effective upon approval of the plan of merger by the Member.

## ARTICLE XVIII – LIMITED LIABILITY AND INSURANCE

- A. **No Personal Liability.** The properties and assets, both real and personal, of the Pueblo, the Member's Representative and the Manager of the LLC shall be exempt from the debts and liabilities of the LLC.
- B. **Pueblo Protected.** Nothing in these Articles shall be construed as creating or recognizing any right to encumber, levy, affix, adjudicate, and/or take judgment against any assets or property owned by the Pueblo de San Ildefonso for any action, adjudication, or determination of liability of the LLC.
- C. **Liability Insurance.** Insurance, including but not limited to, public liability insurance sufficient to protect the interests of the LLC, shall be carried on all property and persons under the management or control of the LLC, in such amounts as the Manager deems appropriate.
- D. **Unemployment Insurance.** The LLC shall carry such workers' compensation and unemployment insurance as the Manager may deem to be necessary to protect the interest of the LLC and its employees and to comply with applicable law.
- E. **Fire Hazard Insurance.** Fire and hazard insurance sufficient protect the interests of the LLC from losses by fire or other disaster shall be carried on all property of the LLC.
- F. **Fidelity Bond.** The LLC shall bond each employee who handles money for the LLC to a minimum of \$250,000 or such higher amount as the Manager or Member's Representatives may set.

## ARTICLE XIX – SUSPENSION OF BUSINESS; DISSOLUTION

- A. The business of the LLC may be suspended, or the LLC dissolved only as provided in this Article.
- B. Proceedings to suspend or dissolve the business of the LLC may be initiated by either:
  - a. **Resolution of Manager.** The Manager may adopt a resolution recommending that the business of the LLC be suspended and/or the LLC dissolved and directing that the question of suspension and dissolution be submitted to a vote of the Member's Representative at a meeting of the Member, which may be either a regular or special meeting.
  - b. **Motion of Member's Representatives.** An individual of the Member's Representatives may make a motion to direct that the question of suspension and dissolution the recommendation that the business of the LLC be submitted to a vote of the Member's Representatives at a meeting of the Member, which may be either a regular or special meeting.
- C. Following the Member's Representatives receipt of either a resolution of the Manager or a motion of a Member's Representative under this Article, the following procedure shall govern:



- a. Written notice shall be given to the Member's Representatives in the manner provided in these Articles for giving notice of special meetings of the Member's Representatives and notice shall be provided to the Governor and Council of the meeting to consider the advisability of the action proposed.
- b. At the Member's Representatives meeting, a vote shall be taken on resolutions to approve or disapprove the action proposed; provided that a decision to dissolve the LLC shall also require the approval of the Council by law.
- c. Upon adoption of the resolution to suspend business and/or dissolve, a statement of intent to suspend business and/or dissolve shall be executed for the LLC by the Manager.
- d. Upon signature of the statement of intent to suspend business and/or dissolve, the LLC shall cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence shall continue until these Articles are revoked by act of the Member's Representatives.
- e. After filing the statement of intent to suspend business, the LLC shall follow the procedures provided in the bylaws or Operating Agreement for winding up the affairs of the LLC.
- f. After filing the statement of intent to dissolve, the LLC shall immediately cause notice thereof to be mailed to each known creditor of the LLC; shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its Member; pay, satisfy and discharge its liabilities and obligations, and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to its Member.
- g. At any time prior to dissolution of the LLC pursuant to this Article XIX, the Manager or Member's Representatives may revoke voluntary dissolution proceedings. Written notice of the revocation shall be filed with the Member's Representatives. Upon filing the notice of revocation of voluntary dissolution proceedings, the revocation shall be effective and the LLC may again carry on its business.
- h. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the LLC have been paid and discharged, or adequate provision has been made therefore, and all of the remaining property and assets of the LLC have been distributed to the Member, the LLC shall take all actions necessary to obtain a resolution from Member's Representatives revoking these Articles and dissolving the LLC.

## **ARTICLE XX - AMENDMENTS**

- A. The authority to make amendments to these Articles is vested in the Council, and no amendment shall be valid unless written in a Council resolution, and in accordance with applicable tribal law.

- B. The Manager or the Member's Representatives may request the Council to amend these Articles, but the final decision to amend shall be made by the Council in accordance with applicable tribal law.
- C. These Articles of Organization and any Articles of Amendment shall be filed with the Governor's Office, at the following address:

Governor's Office  
02 Tunyo Po  
Santa Fe, NM 87506

**ARTICLE XXI – CERTIFICATE OF APPROVAL**

These Fifth Amended Articles of Organization were approved at a duly called meeting of the Council, at which a quorum was present.

Pueblo de San Ildefonso Council

By:   
Perry Martinez, Governor

Attest:

  
Tribal Secretary