

**PUEBLO OF ISLETA  
LEASING LAW**

**CHAPTER 100  
GENERAL PROVISIONS**

**101 – Authority**

This Pueblo of Isleta Leasing Law (“Leasing Law”) is enacted by the Tribal Council pursuant to Article V, Section 2, Subsections (k) and (l) of the Pueblo’s Constitution, and is subject to, and will be effective upon the date of approval of this Leasing Law by the U.S. Secretary of the Interior pursuant to Helping Expedite and Advance Responsible Tribal Home Ownership of 2012, P.L. 112-151(codified at 25 U.S.C. § 415(h) (“HEARTH Act”) in accordance with Section 108 hereof.

**102 – Scope**

(a) This Leasing Law shall apply to all Leases of Pueblo Trust or Restricted Lands specified in (c) below entered into on or after the Effective Date of this Leasing Law. In accordance with the HEARTH Act, this Leasing Law does not apply to any lease for the exploration development, or extraction of any mineral resource, which requires approval by BIA.

(b) This Leasing Law does not apply to individually owned land, Permits of Pueblo Trust or Restricted Land or to Tribal Land Assignments, which may be granted, transferred and terminated only in accordance with Tribal Law.

(c) This Leasing Law applies to Business, Agricultural, Residential, Wind and Solar and Public Purpose Leases of Pueblo Trust or Restricted Lands, as hereinafter defined. Chapters 100 through 300, and 800 through 1100 generally apply to all Leases, except as otherwise expressly provided in this Leasing Law. Provisions specifically applicable to (a) Business Leases and Public Purpose Leases appear at Chapter 400, (b) Agricultural Leases appear at Chapter 500, (c) Residential Leases appear at Chapter 600, and (d) WEEL and WSR Leases appear at Chapter 700.

(d) Nothing contained herein shall be construed to affect any Lease that has been entered into prior to the Effective Date of this Leasing Law or any Lease approved by the Secretary under 25 U.S.C. 415 after the Effective Date.

**103 – Purpose**

The purposes of this Leasing Law are to:

(a) Recognize and assert the authority of the Pueblo to grant Leases, establish streamlined procedures for Environmental Review, and provide for the

management and enforcement of Leases with respect to Pueblo Trust or Restricted Land;

- (b) Promote self-determination, encourage economic development and self-sufficiency, assist tribal members to obtain affordable and suitable housing, facilitate and control the use of the Pueblo's agricultural, wind and solar resources, and increase business activity and employment on the lands of the Pueblo; and
- (c) Implement the authority recognized by the HEARTH Act.

#### **104 – Definitions**

For purposes of this Leasing Law:

- (a) *Agricultural Land* means Pueblo Trust or Restricted Land suited or used for the production of crops, livestock or other agricultural products, or Pueblo Trust or Restricted Land suited or used principally to support the surrounding agricultural community.
- (b) *Agricultural Lease* means a Lease of Agricultural Land for farming, grazing or associated agricultural purposes not designated/defined as a Business Lease.
- (c) *AIARMA* means the American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 et seq.), as amended on November 2, 1994 (108 Stat. 4572).
- (d) *Assignment* means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee's rights, and assumes all or some of the Lessee's obligations, under a Lease. This defined term does not mean or apply to a Tribal Land Assignment.
- (e) *Authorized Official* means the Governor, a Lieutenant Governor or other person authorized to execute Leases or Lease Documents by Tribal Law.
- (f) *BIA* means the Bureau of Indian Affairs of the U.S. Department of the Interior.
- (g) *Best Interest of the Pueblo* means a determination by the Tribal Council that the inclusion or waiver of any Lease term, or the taking or omitting to take any action with respect to a Lease by or on behalf of the Pueblo, furthers the economic, social, environmental or other interests and objectives of the Pueblo.
- (h) *Business Day* means Monday through Friday, excluding federally recognized holidays and other days that the offices of the Pueblo are closed to the public.
- (i) *Business Lease* means any Lease that is not defined and covered as an Agricultural Lease, Residential Lease, WEEL, WSR Lease or Public Purpose Lease under this

Leasing Law. Business Leases may be for commercial, industrial, retail, entertainment, office, manufacturing, storage, distribution, waste-to-energy or other business purposes. Business Leases may authorize the construction of single-purpose or mixed use projects designed for use by any number of occupants.

- (j) *Cancellation* means Pueblo action to end a Lease pursuant to this Leasing Law.
- (k) *Consent* or *consenting* means written authorization by the Pueblo concerning a specified action.
- (l) *Day* means a calendar day, unless otherwise specified.
- (m) *Environmental Review Process* means the process for conducting Pueblo environmental review under Chapter 1100 of this Leasing Law to assess whether a proposed Leasehold Use will have a Significant Effect on the Environment.
- (n) *Fair Market Rental* means the amount of rental income that a leased tract of Pueblo Trust or Restricted Land would most probably command in an open and competitive market, or as determined by competitive bidding.
- (o) *Governor* means the Governor of the Pueblo of Isleta.
- (p) *Holdover* means circumstances in which a Lessee remains in possession of the leased Premises after the Lease term expires.
- (q) *IPHA* means the Isleta Pueblo Housing Authority.
- (r) *Lease* means a written contract between the Pueblo and a Lessee, whereby the Lessee is granted a right to possess Pueblo Trust or Restricted Land for a specified purpose and duration., The Lessee's right to possess will limit the Pueblo's right to possess the leased Premises only to the extent provided in the Lease. A Lease may be a ground Lease (undeveloped land) or a Lease of developed land (together with the Permanent Improvements thereon).
- (s) *Lease Document* means a Lease, Amendment, Assignment, Sublease, or Leasehold Mortgage.
- (t) *Leasehold Mortgage* means a mortgage, deed of trust, or other instrument that pledges a Lessee's Leasehold interest as security for a debt or other obligation owed by the Lessee to a Mortgagee.
- (u) *Leasing Officer* means the Governor or other official designated by the Governor or Tribal Council in accordance with Tribal Law to negotiate and administer a Lease on behalf of the Pueblo. Different Leasing Officers may be designated for different forms of Leases, such as Business, Agricultural or Residential Leases.

- (v) *Leasehold Use* means any use, improvement, development or activity contemplated to occur on Pueblo Trust or Restricted Land pursuant to an existing or proposed Lease.
- (w) *Lessee* means a person or entity who has acquired a legal right to possess Pueblo Trust or Restricted Land by a Lease granted under this Leasing Law.
- (x) *LTRO* means the appropriate Regional Land Titles and Records Office of the BIA.
- (y) *LRO* means the Pueblo Surveying and Mapping Division, or other Pueblo agency authorized under Tribal Law to record and maintain records pertaining to Pueblo Trust or Restricted Land for the purposes of this Leasing Law.
- (z) *Mortgagee* means the holder of a Leasehold Mortgage.
- (aa) *NEPA* means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.
- (bb) *Notice of Violation* means a letter notifying a Lessee of a violation of a Lease and providing the Lessee with a specified period of time to show cause why such Lease should not be cancelled for the violation. A 10-day show cause letter is one type of notice of violation.
- (cc) *Permanent Improvements* means buildings, other structures, agricultural facilities, wind or solar testing or generation facilities, and associated infrastructure attached to the leased Premises.
- (dd) *Permit* means a written, non-assignable agreement between the Pueblo and the Permittee, whereby the Permittee is granted a temporary, revocable privilege to use Pueblo Trust or Restricted Land, for a specified purpose.
- (ee) *Permittee* means a person or entity who has acquired a privilege to use Pueblo Trust or Restricted Land by a Permit.
- (ff) *Premises* means the specifically identified parcel(s) or tract(s) of Pueblo Trust or Restricted Land that is subject to a particular Lease.
- (gg) *Public* means, for purposes of an Environmental Review pursuant to Chapter 1100, (a) any Tribal Member of the Pueblo maintaining a residence on Pueblo Trust and Restricted Land, and (b) any person holding an interest in land contiguous to a proposed Leasehold which may reasonably be expected to experience a Significant Environmental Effect from the intended Leasehold Use.
- (hh) *Public Purpose Lease* means a Lease, other than a Residential Lease, for religious, educational, recreational or other purpose primarily for the social or cultural

betterment of the Pueblo community, rather than a commercial or profit-making purpose.

- (ii) *Pueblo* means the Pueblo of Isleta. When this Leasing Law refer to action to be taken by the Pueblo, such action may be taken by the Governor, Tribal Council or their designee(s), including the Leasing Officer or Responsible Official, as appropriate to the specific action at issue.
- (jj) *Pueblo Trust or Restricted Land* means any tract, or interest therein:
  - (1) to which the United States holds title in trust for the benefit of the Pueblo; or
  - (2) that the Pueblo holds title to, but can alienate or encumber only with the approval of the United States because of limitations in the conveyance instrument or other limitations under federal law.
- (kk) *Residential Lease* means a Lease for affordable housing purposes and other housing programs established by the Pueblo and/or IPHA on Pueblo Trust or Restricted Land, but shall not include any Lease designated as a Business Lease by Tribal Council.
- (ll) *Responsible Official* means the person designated from time to time by the Governor and/or Tribal Council in accordance with Tribal Law to conduct Environmental Reviews, and to perform duties and take the actions specified in Chapter 1100 hereof. A different Responsible Official may be designated for different forms of Lease, e.g. Business, Agricultural or Residential.
- (mm) *Secretary* means the Secretary of the U.S. Department of the Interior.
- (nn) *Significant Effect on the Environment* means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic or cultural significance.
- (oo) *Sublease* means a written agreement by which the Lessee grants to an individual or entity a right to possession and use of Pueblo Trust or Restricted Land no greater than that held by the Lessee under the Lease.
- (pp) *Surety* means one who guarantees the performance of another.
- (qq) *Termination* means action by the Pueblo to end a Lease.
- (rr) *Trespass* means any unauthorized occupancy, use of, or action on any Pueblo Trust or Restricted Land.

- (ss) *Tribal Council Authorization* means a duly adopted Tribal Council Resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.
- (tt) *Tribal Council* means the Tribal Council of the Pueblo of Isleta.
- (uu) *Tribal Council Resolution* means a resolution of the Tribal Council duly adopted in accordance with Tribal Law.
- (vv) *Tribal Court* means the Pueblo of Isleta Tribal Court.
- (ww) *Tribal Land Assignment* means a Tribal Council Authorization, agreement or other action or document recognized under Tribal Law that conveys to (a) tribal member(s), a family of tribal members, a tribal entity, or a wholly owned tribal corporation, any right to possess or use a particular parcel or tract of Pueblo Trust or Restricted Land in accordance with Tribal Law, other than a Lease.
- (xx) *Tribal Law* means the body of non-federal law that governs lands and activities under the jurisdiction of the Pueblo, including ordinances or other enactments by the Pueblo's Tribal Council, Tribal Court rulings, and generally recognized Pueblo custom and tradition.
- (yy) *Violation* means a failure to take an action, including payment of compensation, when required by the Lease, or to otherwise not comply with a term or condition of the Lease. This definition applies for purposes of enforcement of a Lease under this Leasing Law no matter how "violation" or "default" is defined in the Lease.
- (zz) *WEEL* means a wind energy evaluation Lease authorizing short term possession of Pueblo Trust or Restricted Land for the purpose of installing, operating and maintaining, instrumentation and associated infrastructure, such as meteorological towers, to evaluate wind resources for electrical generation.
- (aaa) *WSR Lease* means a Lease that authorizes possession of Pueblo Trust or Restricted Land for the purpose of installing, operating and maintaining instrumentation, facilities and associated infrastructure, such as wind turbines and solar panels, to harness wind power and solar power to generate and supply electricity for resale (i) on a for-profit or not-for-profit basis; (ii) to a utility serving the public generally; or (iii) to users within the local community on or near Pueblo Trust or Restricted Land.

## **105 – Applicable Law**

- (a) In addition to this Leasing Law itself, Leases approved under this Leasing Law:
- (1) are subject to applicable federal laws;

- (2) are subject to applicable Tribal Law; and
  - (3) are not subject to state law or the law of a political subdivision thereof, except if (a) particular state law is expressly made applicable by federal or Tribal Law, or the interpretive use of state law is elected pursuant to paragraph (b) of this section.
- (b) Unless prohibited by federal law, the parties to a Lease may agree to interpret the terms of such Lease in accordance with state or local law, in the absence of federal or Tribal Law, if:
- (1) the particular Lease includes a provision to this effect; and
  - (2) the Pueblo expressly agrees to the interpretive application of state or local law; provided that such reference to state law for purposes of Lease interpretation shall not in any event be deemed to consent to or grant to the state of any jurisdiction over the Pueblo or its Trust or Restricted Lands.
- (c) An agreement under paragraph (b) of this section shall not waive the Pueblo's sovereign immunity, unless the Pueblo expressly states its intention to waive sovereign immunity in the Lease.

#### **106 – Applicable Taxes**

- (a) Subject only to applicable federal law, Permanent Improvements on the leased Premises, without regard to ownership of those Permanent Improvements, are not subject to any fee, tax, assessment, levy or other charge imposed by the State of New Mexico or any political subdivision thereof; provided that such Permanent Improvements may be subject to taxation under the Pueblo's Possessory Interest Tax and other Pueblo taxes, as may apply.
- (b) Subject only to applicable federal law, activities under a Lease conducted on the leased Premises are not subject to any fee, tax assessment, levy, or other charge (e.g. business use, privilege, public utility, excise, gross revenue taxes) imposed by the State of New Mexico or any political subdivision thereof; provided that such activity may be subject to Pueblo Gross Receipts Tax and other Pueblo taxes, as may apply.
- (c) Subject only to applicable federal law, the leasehold or possessory interest under a Lease is not subject to any fee, tax assessment, levy, or other charge imposed by the State of New Mexico or any political subdivision thereof; provided that such leasehold may be subject to the Pueblo's Possessory Interest Tax and other Pueblo taxes, as may apply.

## **107 – Permitted Term**

- (a) No Lease shall be approved under this Leasing Law more than 12 months prior to the commencement of the term of such Lease.
- (b) The term of a Business Lease or WSR Lease shall not exceed 25 years, except that any Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years.
- (c) The term of an Agricultural Lease may not exceed ten years, unless a substantial investment in the improvement of the leased Premises is required, in which case the term may not exceed 25 years.
- (d) The term of a Public Purpose Lease or a Residential Lease may not exceed 75 years.
- (e) The term of a WEEL shall not exceed the period described in Section 704 hereof.

## **108 – Effective Date**

This Leasing Law shall go into effect and apply from and after the date of its approval by the Secretary or her or his authorized designee pursuant to 25 U.S.C. § 415(h).

## **CHAPTER 200 OBTAINING A LEASE**

### **201 – Leasing Information**

Information concerning the leasing of Pueblo Trust or Restricted Land, including the Lease negotiation and approval process established under this Leasing Law, may be obtained from the Governor, a Leasing Officer or other source designated by the Governor or Tribal Council.

### **202 – Leasing Proposals**

The Pueblo may invite proposals for Leases with respect to Pueblo Trust or Restricted Land approved by the Tribal Council and may consider unsolicited Lease proposals, at its discretion. Lease proposals shall be initially reviewed by the Leasing Officer under the supervision of the Governor and in consultation with the Tribal Council. Whether to pursue development of any such proposal and negotiation of a Lease shall be determined based on the substance and merits of each proposal by the Governor and Tribal Council.

### **203 – Negotiation of Leases**

The Leasing Officer may negotiate proposed terms and conditions of a Lease with a proposed Lessee. Such terms and conditions shall address all material features of the proposed Leasehold Use and shall be consistent with the generally applicable requirements of Chapter 300 of this Leasing Law, and any other requirements applicable to a specific form of Lease described



at Chapters 400 through 700, as the case may be. If the Leasing Officer is satisfied with the terms and conditions of a proposed Lease, he or she shall forward such proposed Lease to the Governor and Tribal Council for consideration and approval.

#### **204 – Lease Approval**

All Leases must be approved by the Tribal Council prior to execution by the Authorized Official. The Tribal Council shall document its approval of a Lease by duly adopted Tribal Council Resolution, and such approval may be:

- (a) following completion of the Environmental Review Process; or
- (b) subject to completion of the Environmental Review Process, but without further Tribal Council Authorization required.

#### **205 – Execution of Leases**

A Tribal Council approved Lease shall be executed by an Authorized Official. A Lease shall be effective upon execution, unless otherwise provided in the terms and conditions of such Lease.

#### **206 – Amendments, Assignments, Subleases and Leasehold Mortgages**

Any amendment to a Lease must be approved by Tribal Council Resolution, and any Assignment, Sublease or Leasehold Mortgage, must be consented to or approved by Tribal Council Authorization, unless the terms and conditions of the Lease expressly provide otherwise.

#### **207 – Recording, Administration and Enforcement**

Leases shall be recorded in accordance with Chapter 800 of this Leasing Law, and administered and enforced in accordance with Chapter 900 hereof.

#### **208 – Permits**

If an intended access or use of Pueblo Trust or Restricted Land does not require the right of possession of such land, such access or use may be authorized by a Permit granted pursuant to any Tribal Council Authorization in lieu of a Lease granted under this Leasing Law, and this Leasing Law will not apply to such Permit.

### **CHAPTER 300 REQUIRED LEASE TERMS AND CONDITIONS**

#### **301 – Required Lease Terms**

- (a) Except as otherwise expressly provided in this Chapter 300, or in Chapters 400, 500, 600 or 700, as applicable to a particular form of Lease, all Leases must identify:
- (1) the Premises being leased;
  - (2) the purpose of the Lease and authorized uses of the leased Premises;
  - (3) the parties to the Lease;
  - (4) the term of the Lease;
  - (5) the ownership of any Permanent Improvements on, or to be constructed on, the Premises and the responsibility for constructing, operating, maintaining, and managing Permanent Improvements under and in accordance with this Leasing Law;
  - (6) rent and other payment requirements and late payment charges, including interest;
  - (7) due diligence requirements under and in accordance with this Leasing Law;
  - (8) insurance requirements under and in accordance with this Leasing Law; and
  - (9) bonding requirements under and in accordance with this Leasing Law, if any. If a performance bond is required, the Lease must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects such Surety's obligations and liabilities.
- (b) Where a representative executes a Lease on behalf of the Lessee, the Lease must identify the Lessee being represented and the authority under which the action is taken.
- (c) All Leases must include provisions addressing the following:
- (1) the obligations of the Lessee and its Sureties to the Pueblo are also enforceable by the United States, so long as the land remains Pueblo Trust or Restricted Land;
  - (2) there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased Premises;
  - (3) the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other applicable legal requirements;

- (4) if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact the Leasing Officer and any other Pueblo official with jurisdiction to determine how to proceed and appropriate disposition;
  - (5) the Leasing Officer has the right, at any reasonable time during the term of the Lease and upon reasonable notice, in accordance with Section 805, to enter the leased Premises for inspection and to ensure compliance; and
  - (6) the Leasing Officer may, at his or her discretion, treat as a Lease violation any failure by the Lessee to cooperate with the Leasing Officers' request to make appropriate records, reports, or information available for the Leasing Officer's inspection and duplication.
- (d) Unless the Lessee would be prohibited by law from doing so, the Lease must also contain the following provisions:
- (1) the Lessee holds the United States and the Pueblo harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased Premises; and
  - (2) the Lessee indemnifies the United States and the Pueblo against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased Premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Pueblo for liability or cost arising from the Pueblo's negligence or willful misconduct.
- (e) The Leasing Officer may treat any provision of a Lease Document that violates Tribal Law or federal law as a violation of the Lease.
- (f) Unless the Tribal Council determines that it is in the Best Interest of the Pueblo to waive or omit such provision, the Lease may include a provision requiring the Lessee to give preference with respect to employment and contracting on Pueblo Trust or Restricted Land to tribal members and tribal member owned businesses.

### **302 – Permanent Improvements to Premises**

- (a) The Lessee may construct Permanent Improvements under a Lease if the Lease specifies, permits, or provides for the development of:
  - (1) a plan that describes the type and location of any Permanent Improvements to be constructed by the Lessee; and

- (2) except for Residential Leases, a general schedule for construction of the Permanent Improvements, including dates for commencement and completion of construction.
- (b) A Lease must specify who will own any Permanent Improvements the Lessee constructs during the Lease term and may specify under what conditions, if any, Permanent Improvements the Lessee constructs may be conveyed to the Pueblo during the Lease term. In addition, the Lease must indicate whether each specific Permanent Improvement the Lessee constructs will:
  - (1) remain on the leased Premises, upon the expiration, cancellation, or termination of the Lease, in a condition satisfactory to the Pueblo, and become the property of the Pueblo;
  - (2) be removed within a time period specified in the Lease, at the Lessee's expense, with the leased Premises to be restored as closely as possible to their condition before construction of the Permanent Improvements; or
  - (3) be disposed of by other specified means.
- (c) A Lease that requires the Lessee to remove the Permanent Improvements must also provide the Pueblo with an option to take possession of and title to the Permanent Improvements if the improvements are not removed within the specified time period.
- (d) The Leasing Officer may take appropriate enforcement action to ensure removal of the Permanent Improvements and restoration of the Premises at the Lessee's expense:
  - (1) in consultation with the Governor and Tribal Council; and
  - (2) before or after expiration, termination, or cancellation of the Lease.
- (e) The Leasing Officer may collect and hold any performance bond until removal and restoration are completed.

### **303 – Due Diligence Requirements For Permanent Improvements**

- (a) If Permanent Improvements are to be constructed on the premises, the Lease must include due diligence requirements that require the Lessee to complete design, and construction of any Permanent Improvements within the schedule specified in the Lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the Lease, the Lessee must provide the Leasing Officer with an explanation of good cause as to the nature of

any delay, the anticipated date of construction of the Permanent Improvements, and evidence of progress toward commencement of construction.

- (b) Failure of the Lessee to comply with the due diligence requirements of the Lease is a violation of the Lease and may lead to cancellation of the Lease under Sections 903 and 905.
- (c) The Tribal Council may waive any of the requirements in this section if the Tribal Council determines that such waiver is in the best interest of the Pueblo.
- (d) The requirements of this section do not apply to Public Purpose Leases, Residential Leases, or WSR Leases.

### **304 – Description of Leased Premises**

- (a) A Lease must describe the leased Premises by reference to an official or certified survey, if possible. If the leased Premises cannot be so described, the Lease must include one or more of the following:
  - (1) a legal description;
  - (2) a survey-grade global positioning system description; or
  - (3) another description prepared by a registered land surveyor that is sufficient to identify the leased Premises.
- (b) Each description must be of sufficient detail to meet recording requirements of the BIA's LTRO in accordance with 25 C.F.R. Part 150.

### **305 – Compatible Retained Uses**

A Lease may reserve the right of or Permit the Pueblo to use, or authorize others to use, the leased Premises for other uses compatible with the purpose of the Lease and consistent with the terms of the Lease. Any such use or authorization by the Pueblo will not reduce or offset the monetary compensation for the Lease.

### **306 – Determination of Rental Amount**

- (a) A Lease of Pueblo Trust or Restricted Land may provide for the payment of any amount or rent or other compensation negotiated by the Pueblo through the Leasing Officer, and approved by Tribal Council, if the Tribal Council Authorization expressly states that:
  - (1) the negotiated compensation is satisfactory to the Tribal Council;
  - (2) the Tribal Council waives valuation; and

- (3) the Tribal Council has determined that accepting such negotiated compensation and waiving valuation is in the Pueblo's best interest.
- (b) The Tribal Council may request, in writing, that the Leasing Officer determine fair market rental, in which case the Leasing Officer will use a valuation method in accordance with Section 307. After providing the Tribal Council with the fair market rental appraisal or analysis, the Leasing Officer will defer to the Tribal Council's decision to agree to any rent or other payment amount negotiated by the Pueblo.
- (c) If the conditions in paragraph (a) or (b) of this section are not met, the Leasing Officer will require that the Lease provide for fair market rental based on a valuation in accordance with Section 307.
- (d) Residential Leases or Public Purpose Leases may provide for nominal rent.

### **307 – Determination of Fair Market Rent**

- (a) Except as provided in Section 306, or in any other provisions of Chapters 500, 600, or 700, as may apply in a particular case, the Leasing Officer will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental before he or she submits a business Lease, to the Tribal Council for approval.
- (b) The Leasing Officer will either:
  - (1) prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or
  - (2) use an approved market analysis, appraisal, or other appropriate valuation method provided by the Pueblo or Lessee.
- (c) The Leasing Officer will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:
  - (1) has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation or another recognized valuation method; and
  - (2) complies with Pueblo policies regarding appraisals, including third-party appraisals.
- (d) The Pueblo may use competitive bidding as a valuation method if approved by the Tribal Council.

### **308 – Time For Payment of Rent**

- (a) A Lease must specify the dates on which all rent and other payments are due.
- (b) Unless the Lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.
- (c) Payments are due at the time specified in the Lease, regardless of whether the Lessee receives an advance billing or other notice that a payment is due.

### **309 – Lease must Specify Recipient of Rent**

- (a) A Lease must specify whether the Lessee will make payments directly to the Pueblo (direct pay) or to the Secretary in accordance with 25 C.F.R. Part 115.
- (b) If the Lease provides that the Lessee will directly pay the Pueblo, then:
  - (1) the Lease must include provisions for proof of payment upon the Secretary's request; and
  - (2) direct payments must continue through the duration of the Lease.
- (c) The Lessee must send direct payments to the addresses specified in the Lease, unless the Lessee receives notice of a change of recipient or address from the Pueblo or BIA.
- (d) Unless the Lease provides otherwise, compensation payments may not be made payable directly to anyone other than the Pueblo or the Secretary.

### **310 – Medium of Payment**

- (a) When payments are made directly to the Pueblo, the form of payment must be acceptable to the Pueblo.
- (b) When payments are made to the Secretary, its preferred method of payment is electronic funds transfer payments in accordance with 25 C.F.R. Part 162. The Secretary will also accept:
  - (1) money orders;
  - (2) personal checks;
  - (3) certified checks; or
  - (4) cashier's checks.

(c) The Secretary will not accept cash or foreign currency.

(d) The Secretary will accept third-party checks only from financial institutions or federal agencies.

### **311 – Alternative Form of Rent**

A Lease may provide for:

(a) alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or

(b) varying types of compensation at specific stages during the life of the Lease, including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses;

if the Tribal Council determines any form of compensation described in clause (a) or (b) of this section is in the Pueblo's best interest and approves the Lease providing for such form of compensation.

### **312 – Notice of Payment Due Not Required**

The Leasing Officer may issue invoices to a Lessee in advance of the dates on which payments are due under a Lease. The Lessee's obligation to make these payments in a timely manner will not be contingent on whether invoices are issued, delivered, or received.

### **313 – Adjustments of Rental Amount**

(a) Unless the Lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required (1) for an Agricultural Lease, Residential Lease, WSR Lease or Public Purpose Lease, or (2) for a Business Lease if the Tribal Council states in a Tribal Council Resolution or other Tribal Council Authorization that it has determined that not having compensation reviews and/or adjustments is in the Pueblo's best interest.

(b) If for a Business Lease the condition in clause (2) of paragraph (a) of this section is not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the Lease. The Lease must specify:

(1) when adjustments take effect;

(2) who can make adjustments;

(3) what the adjustments are based on; and

(4) how to resolve disputes arising from the adjustments.



- (c) When a review results in the need for adjustment of compensation, the Pueblo must consent to the adjustment, unless the Lease provides otherwise.

### **314 – Payments Required in Addition to Rent**

The Lessee may be required to pay additional fees, taxes, and assessments associated with the use of the Premises, as determined by the Pueblo, and specified in a Lease. The Lessee must pay these amounts to the appropriate office at the Pueblo or to any other party specified in the Lease.

### **315 – Performance Bond**

Unless waived by Tribal Council Resolution, the Lessee of a Business Lease or WSR Lease must provide a performance bond issued by a Surety licensed to do business in New Mexico and named in the current list of Companies Holding Certificates as Acceptable Sureties on Federal Bonds as published in Federal Circular 570 by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

- (a) The performance bond must be in an amount reasonably sufficient to secure the contractual obligations including:
  - (1) payment of rent expected to be due over a reasonable period before other enforcement actions can take effect;
  - (2) the construction of any required Permanent Improvements; and
  - (3) the restoration and reclamation of the leased Premises to their condition at the start of the Lease term or some other specified condition.
- (b) The performance bond must be deposited with the Leasing Officer, and made payable only to the Pueblo, and may not be modified without the Pueblo's approval.
- (c) The Lease must specify the conditions under which the Leasing Officer may adjust performance bond requirements to reflect changing conditions, including consultation with and approval by the Governor and Tribal Council before the adjustment.
- (d) The Leasing Officer may require that the Surety provide any supporting documents needed to show that the performance bond will be enforceable, and that the Surety will be able to perform the guaranteed obligations.
- (e) The performance bond must require the Surety to provide notice to the Leasing Officer at least 60 days before canceling a performance bond. This will allow the Leasing Officer to notify the Lessee of its obligation to provide a substitute

performance bond and require collection of the bond before the cancellation date. Failure to provide a substitute performance bond is a violation of the Lease.

### **316 – Insurance**

- (a) Except as provided in Section 605 with respect to a Residential Lease, the Lessee shall provide insurance from a nationally accredited insurance company satisfactory to the Pueblo covering all foreseeable risks and interests of the Pueblo including, as appropriate, property, casualty, general and relevant special liabilities, business interruption, and such other risks and interests that may apply, in amounts satisfactory to the Pueblo. The policy shall (1) include the Pueblo and United States as additional insureds on liability coverage, and (2) cover the Pueblo's interest in all Permanent Improvements and other property as they may appear. The forms of coverage shall be satisfactory to the Pueblo.
- (b) As necessary and appropriate, the Leasing Officer shall consult with the Pueblo's insurance broker or agent to determine the appropriate coverages and forms of insurance to be provided by the Lessee to protect the Pueblo's interests, and shall report on such consultations to the Tribal Council with respect to its consideration of a proposed Lease for approval.

### **317 – Option to Renew**

- (a) If the Lease provides for an option to renew, the Lease must specify:
  - (1) the time and manner in which the option must be exercised or is automatically effective;
  - (2) that confirmation of the renewal will be submitted to the Leasing Officer, unless the Lease provides for automatic renewal;
  - (3) whether Pueblo consent to the renewal is required;
  - (4) that the Lessee must provide notice of the renewal to the Leasing Officer and any Sureties and Mortgagees;
  - (5) the additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
  - (6) any other conditions for renewal (e.g., that the Lessee not be in violation of the Lease at the time of renewal).
- (b) The Leasing Officer will record any renewal of a Lease in the LRO and LTRO.

### **318 – Subleases, Assignments and Encumbrances**

- (a) Except as otherwise expressly allowed by the terms and condition of an approved Lease, any Sublease, Assignment or Leasehold Mortgage shall be valid only if approved by Tribal Council Resolution and executed by the Governor or other Authorized Official.
- (b) Leases may by their express terms authorize Subleases and Assignments, in whole or part, without approval from the Pueblo, provided the following conditions are met:
  - (1) Except for Residential Leases, a copy of the Sublease or Assignment is promptly provided to the Leasing Officer;
  - (2) there is no uncured default under the terms of the Lease or violation of this Leasing Law by the Lessee;
  - (3) any limitations and restrictions on the use of the leased Premises shall apply to any Subtenant or assignee;
  - (4) the proposed assignee or sublessee provides evidence of financial capacity to perform the Lease in accordance with its terms reasonably satisfactory to the Pueblo; and
  - (5) the Lessee shall continue to be responsible for, and shall not be or be deemed released or relieved from, any of its obligation under the Lease.

This Subsection 318(b) shall in no way relieve the Lessee or any sublessee or assignee from performing and carrying out their duties in accordance with all of the terms and conditions of the Lease.

- (c) The Lease, or Sublease thereof, may authorize a Leasehold Mortgage of the leasehold or subleasehold, as the case may be, for the purpose of financing the development and improvement of the leased Premises. Unless otherwise expressly allowed under the terms and conditions of the Lease, the grant of any such Leasehold Mortgage shall require approval by the Tribal Council and a written consent executed by the Governor or other Authorized Official.
- (d) If the lien granted by a Leasehold Mortgage is foreclosed and the approved encumbrancer is the purchaser of the Leasehold, the approved encumbrancer may assign the Lease without approval by the Pueblo, provided that the assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the Lease so provides, the class of such assignees may be limited to tribal members, tribal entities or enterprises, or another specified group of potential assignees. If the purchaser of the Leasehold is other than the approved encumbrancer, the Assignment shall require Tribal Council approval and a written consent executed

by the Governor or other Authorized Official, provided that the assignee agrees in writing to be bound by all terms and conditions of the Lease.

### **319 – Access to Leased Premises**

A Lease may address access to the leased Premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements, including 25 C.F.R. Part 169. Roads or other infrastructure within the leased Premises do not require compliance with 25 C.F.R. Part 169 during the term of the Lease, unless otherwise stated in the Lease.

### **320 – Waiver or Modification of Requirements**

Any term or provision described in this Chapter 300 may be waived or modified by the Tribal Council if it determines such waiver or modification of the term or provision is in the Best Interest of the Pueblo.

## **CHAPTER 400 BUSINESS AND PUBLIC PURPOSE LEASES**

### **401 – Designation as Business Lease**

As provided in Sections 501 and 601, Leases of Agricultural Land or for residential purposes may be designated as Business Leases by Tribal Council if their purpose is primarily to make a profit or further economic development, rather than typical agricultural leasing or affordable/public housing purposes.

### **402 – Business Lease Requirements**

Certain generally required terms and conditions of a Business Lease are set forth in Chapter 300; provided that particular requirements of Chapter 300 may be waived or modified with respect to a particular Business Lease pursuant to Section 320.

### **403 – Public Purpose Leases**

Public Purpose Leases shall conform to the requirements of Chapter 300, subject to Section 320.

## **CHAPTER 500 AGRICULTURAL LEASE SPECIFIC PROVISIONS**

### **501 – Leases Covered**

(a) In addition to other generally applicable provisions of this Leasing Law, Agricultural Leases and Leases of Agricultural Land designated by Tribal Council as Business Leases pursuant to Subsection (c), are subject to the provisions of this Chapter 500.

(b) This Leasing Law, including this Chapter 500, does not apply to agreements and transactions between tribal members or entities wholly owned by tribal members, with respect to the use of a Tribal Land Assignment held by one of them other than an Agricultural Lease. Such non-Agricultural Lease agreements and transactions are excluded from the scope of this Leasing Law and are subject only to other applicable Tribal Law.

(c) The Tribal Council may designate a Lease of Agricultural Land as a Business Lease, rather than an Agricultural Lease, if it is granted primarily for purposes of revenue generation and economic development, rather than a typical Leasehold Use for use of Agricultural Land.

(d) A Lease of Pueblo Trust or Restricted Land that is subject to a Tribal Land Assignment to a non-tribal member or non-member owned entity is covered by this Leasing Law and shall be granted and administered as an Agricultural Lease in accordance with Section 504 below.

#### **502 – Management Plan**

Agricultural Land that is subject to an Agricultural Lease and a Lease of Agricultural Land designated as Business Lease shall be managed in accordance with the goals and objectives of any agricultural management plan developed by the Pueblo and, as applicable, AIARMA.

#### **503 – Tribal Law**

Without limitation to the general application of Tribal Law or Section 105 of this Leasing Law, Tribal Laws regulating Agricultural Land, including those relating to land use, environmental protection, historic and cultural preservation, irrigation and water use, grazing or other aspects of the possession and use of Agricultural Land, shall apply to all Agricultural Leases and Leases of Agricultural Land designated as a Business Lease.

#### **504 – Leasing of Agricultural Lands subject to a Tribal Land Assignment**

(a) Agricultural Land that is subject to a Tribal Land Assignment may be leased to any person other than a tribal member or member-owned entity only by the Pueblo as the legal owner of the Pueblo Trust or Restricted Land that is subject to the Tribal Land Assignment in accordance with this Leasing Law. Any purported Lease of such Agricultural Lands to any person other than a tribal member or member-owned entity by any person other than the Pueblo shall be null, void and unenforceable.

(b) The Pueblo shall lease any Agricultural Land that is subject to a Tribal Land Assignment only with the prior written consent and approval of the Tribal Land

Assignment holder recognized by the Pueblo. The rights, interests and obligations of the Pueblo and Tribal Land Assignment holder in a Lease shall be clearly set forth in the Lease and/or by separate written agreement between the Pueblo and such holders. In no event shall the Pueblo have any obligation to lease Agricultural Land subject to a Tribal Land Assignment regardless of whether the holder requests or wishes that a Lease be granted for such Agricultural Lands, and the Tribal Council may decline to grant such an Agricultural Lease for any or no reason at its discretion.

- (c) The grant, terms and conditions, and administration of any Lease of Agricultural Land that is subject to a Tribal Land Assignment shall be in accordance with and subject to this Leasing Law and any and all Tribal Laws and policies adopted by the Tribal Council.

#### **505 – Alternate Form of Rental**

Section 311 is supplemented, with respect to Agricultural Leases and Leases of Agricultural Land designated as a Business Lease to provide that rent may be based on a share of the agricultural products yielded by the leased Premises, or a percentage of the income to be derived from the sale of such agricultural products.

#### **506 – Term**

- (a) Except for a Lease for Agricultural Land that is designated as a Business Lease by the Tribal Council (which may have a term up to the maximum allowed by Section 106), an Agricultural Lease may not exceed ten years, unless a substantial investment is required, in which case the maximum term may be up to 25 years.
- (b) Other than a Lease of Agricultural Land that is designated as a Business Lease by the Tribal Council, an Agricultural Lease may not provide the Lessee with an option to renew, and such an Agricultural Lease may not be renewed or extended by holdover.

#### **507 – Use of Agricultural Land**

An Agricultural Lease shall require that farming and grazing operations thereunder be conducted in accordance with reorganized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable Tribal Law, policies and agricultural resource management plans. Appropriate stipulations or conservation plans shall be developed and incorporated in all Agricultural Leases.

## **508 – Crop Insurance**

In addition to insurance required by Section 316, an Agricultural Lease may, but is not required, to provide that the Lessee maintain crop insurance and/or other forms of insurance specific to agricultural operations.

## **CHAPTER 600 RESIDENTIAL LEASE SPECIFIC PROVISIONS**

### **601 – Residential Leases Covered**

- (a) Residential Leases covered by this Chapter include ground leases (undeveloped land) and leases of developed land (together with the Permanent Improvements thereon) on Pueblo Trust and Restricted Land. Residential Leases approved under this Leasing Law may authorize the construction or use of:
  - (1) a single family residence;
  - (2) housing for Public Purposes, which may include office and warehouse space necessary to administer programs for housing for Public Purposes; and
  - (3) community development tracts to be used by IPHA for sublease (without further consent or approval) to program beneficiaries.
- (b) Leases for purposes other than a single family residence, affordable or public housing, or any other Pueblo/IPHA housing programs (for example, single family and multi-family residential developments that are for revenue generation and/or economic development purposes rather than affordable public housing, or other governmental housing programs) may be designated as Business Leases by Tribal Council.

### **602 – Term**

- (a) A Residential Lease may be month-to-month or shall be for a stated term.
- (b) As provided by Section 107(d) of this Leasing Law, and the Act, the maximum term of a Residential Lease shall be not more than 75 years, inclusive of any option terms.
- (c) A Residential Lease may provide for one or more option terms, subject to the maximum term provided in Subsection 602(b) above. The terms upon which any option may be exercised shall be clearly stated in a Residential Lease.

### **603 – Insurance**

Except as otherwise required by Tribal Council, IPHA regulations or policies, and/or lender requirements, and notwithstanding Section 316 of this Leasing Law, a Lessee, assignee, or sublessee shall not be required to provide insurance for a Residential Lease.

### **604 – No appeal Bond Required**

Notwithstanding Section 1004 of this Leasing Law, the Tribal Court shall not require an appeal bond for an appeal of a decision on a Residential Lease.

### **605 – Assignment**

Notwithstanding Section 318 of this Leasing Law, a Lessee of a Residential Lease, may assign the Residential Lease without further approval or consent if:

- (a) (1) the assignee is a tribal member, or (2) the assignee is a Leasehold Mortgagee or its designee acquiring the Residential Lease either through foreclosure or by conveyance, and such Mortgagee or designee conveys the Residential Lease to a tribal member, tribal entity or tribally owned corporation;
- (b) the assignee agrees in writing to assume all of the obligations and conditions of the Residential Lease; and
- (c) such assignment is in accordance with Tribal Law and any other applicable law.

### **606 – Coordination With Other Tribal Law and Practice**

- (a) In accordance with the Mortgage Code and Residential Lease Policies previously adopted by the Tribal Council, and subject to any amendments to such Code and Policies, Residential Leases may be granted only to and held by Tribal Members, IPHA, any future tribally designated developer of affordable housing, or a tribally controlled agency or entity.
- (b) In accordance with existing Pueblo practice, Pueblo Trust and Restricted Land may be designated for use and administration of IPHA for housing purposes without any formal Lease of such Lands to IPHA; provided that any Lease to an individual Tribal Member of a portion of such Lands shall be subject to this Leasing Law.

## **CHAPTER 700 WIND AND SOLAR LEASES (WEELs & WSR Leases) SPECIFIC PROVISIONS**



### **701 – WEELs and WSR Leases Covered**

- (a) This Chapter contains provisions specifically applicable to WEELs and WSR Leases. In the event of conflicts between this Chapter and other portions of this Leasing Law concerning WEELs and WSR Leases, this Chapter will control as to any conflicting provision, but WEELs and WSR Leases will remain subject to the remainder of this Leasing Law.
- (b) If the generation of electricity is solely to support a use of Pueblo Trust or Restricted Land covered by an approved Business Lease, Agricultural Lease, Residential Lease or Public Purpose Lease, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure for such purpose shall be governed by Chapters 300–600, as appropriate, and this Chapter 700 shall not apply to such Leases.

### **702 – Leasehold Use s for which a WEEL or WSR Lease is Required**

- (a) Anyone other than the Pueblo or its instrumentalities and enterprises seeking to possess Pueblo Trust or Restricted Land to conduct activities associated with the evaluation of wind resources must obtain a WEEL, except that a WEEL is not required if a limited use of Pueblo Trust or Restricted Land is authorized by a Permit.
- (b) Except as provided at Subsection 701(b), anyone other than the Pueblo or its instrumentalities and enterprises seeking to possess Pueblo Trust or Restricted Land to conduct activities associated with the development of wind and/or solar resources must obtain a WSR Lease.

### **703 – Purpose of a WEEL**

A WEEL is a short-term Lease for the purpose of evaluating wind resources. The Lessee may use information collected under the WEEL to assess the potential for wind energy technology to use in developing the energy resource potential of the leased Premises.

### **704 – Term of a WEEL**

- (a) A WEEL must provide for a definite term, state if there is any option to renew and, if so, provide for a definite period for the renewal term. WEELs are for limited purposes of wind resource evaluation and therefore may have:
  - (1) an initial term no longer than 3 years; and
  - (2) a renewal term not to exceed 3 years.
- (b) The exercise of the option to renew must be in writing and the WEEL must specify:

- (1) the time and manner by which the option must be exercised, or if it is automatically effective;
- (2) whether further consent or approval is required; and
- (3) the additional consideration, if any, due upon exercise of the option to renew or start of the renewal term.

Unless the renewal is automatic, the Leasing Officer shall provide copies of the renewal documentation to the LTRO and record them in the LRO.

#### **705 – Permanent Improvements**

- (a) A WEEL anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind resource capacity and potential effects of wind resource development that are considered Permanent Improvements.
- (b) The proposed Lessee of a WEEL will, before completion of the negotiation of the WEEL and submission for Tribal Council review and approval, provide to the Leasing Officer:
  - (1) an equipment installation plan;
  - (2) a restoration and reclamation plan; and
  - (3) documents that demonstrate the technical capability of the proposed Lessee or its agent to construct, operate, maintain, and terminate the proposed Leasehold Use's evaluation phase and the proposed Lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed Leasehold Use's development phase if pursued and approved.
- (c) If any of the following changes are made to the equipment installation plan, the Pueblo must approve the revised plan and provide a copy to the BIA:
  - (1) location of Permanent Improvements;
  - (2) type of Permanent Improvements; or
  - (3) delay of 90 days or more in any segment of the evaluation phase.

#### **706 – Ownership and Disposition of Permanent Improvements**

- (a) A WEEL must specify who will own any Permanent Improvement the Lessee installs during the Lease term. In addition, the WEEL must provide whether any Permanent Improvements that the Lessee installs:

- (1) will remain on the Premises upon expiration, termination, or cancellation of the WEEL (whether or not the WEEL is followed by a WSR Lease), in a condition satisfactory to the Pueblo;
  - (2) may be conveyed to the Pueblo during the WEEL term and under what conditions the Permanent Improvements may be conveyed;
  - (3) will be removed within a time period specified in a WEEL, at the Lessee's expense, with the leased Premises to be restored as closely as possible to their condition before installation of the Permanent Improvements; or
  - (4) will be disposed of by other specified means.
- (b) A WEEL that requires the Lessee to remove the Permanent Improvements must also provide the Pueblo with an option to take possession and title to the Permanent Improvements, if they are not removed within the specified time period, and without limitation to the Pueblo's ability to recover against any bond.

#### **707 – Due Diligence Regarding Installation of Permanent Improvements**

- (a) A WEEL must include due diligence provisions that require the Lessee to:
- (1) install testing and monitoring facilities within 12 months after the effective date of the WEEL (or another period designated in the WEEL), and consistent with the plan of development; and
  - (2) if installation does not occur, or is not expected within the time period allowed by Subsection (1) or the WEEL, provide the Leasing Officer with an explanation of good cause for any delay, the estimated completion date for installation of the facilities, and evidence of progress concerning installation.
- (b) Failure of the Lessee to comply with the due diligence requirements of the WEEL is a violation of the WEEL and may lead to:
- (1) cancellation of the WEEL under Sections 903 and 905; and
  - (2) application of the transfer of ownership requirement for energy resource information collected under the WEEL to the Pueblo pursuant to Section 708.

#### **708 – Ownership of Energy Resource Information**

- (a) The WEEL must specify the ownership of any energy resource information the Lessee obtains during the WEEL term.

- (b) Unless otherwise specified in the WEEL, the energy resource information that the Lessee obtains during the term of the WEEL becomes the property of the Pueblo at the expiration, termination, or cancellation of the WEEL or upon failure by the Lessee to diligently install testing and monitoring equipment on the leased Premises in accordance with Section 707.

**709 – Incorporation of WEEL Analyses Into WSR Analyses**

Any analyses a Lessee uses to bring a WEEL Leasehold Use into compliance with applicable laws, ordinances, rules, and regulations, including those under Section 105 and any other legal requirements, may be incorporated by reference, as appropriate into a proposed WSR Lease.

**710 – WSR Lease Option**

A WEEL may provide for an option period following expiration of the WEEL term during which the Lessee and Pueblo may enter into a WSR Lease. Unless the WSR Lease or the principal terms thereof are agreed and approved by the Tribal Council at the time of WEEL approval, the WSR Lease requires the separate approval of the Tribal Council.

**711 – No Valuation or Bond Required**

Unless the terms of a WEEL approved by Tribal Council provide otherwise, the Lessee is not required to provide a rental valuation of the Premises or a performance bond for a WEEL.

**712 – Purpose of WSR Lease**

A WSR Lease authorizes a Lessee to possess the leased Premises to conduct activity related to the installation, operation and maintenance of wind and/or solar energy generation projects, including facilities and infrastructure associated with the generation, transmission and storage of electricity and other associated activities. A Lease for biomass or waste-to-energy purposes shall be treated as a Business Lease under this Leasing Law.

**713 – WEEL Not Required Prior to WSR**

Obtaining a WEEL is not required as a precondition to a WSR Lease, and with Tribal Council approval the Pueblo and a Lessee may directly enter into a WSR Lease without having had a WEEL.

**714 – Responsibilities of Lessee of WSR Lease**

Unless a WSR Lease expressly provides otherwise, the Lessee shall be responsible for evaluating the leased Premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and arranging for electricity transmission.

#### **715 – Information and Documentation Required from Prospective Lessee of a WSR Lease**

- (a) Prior to submission of a WSR Lease to the Tribal Council for approval, the proposed Lease shall submit to the Leasing Officer documents that demonstrate the technical capability of the proposed Lessee or its agent to construct, operate, maintain, and terminate the contemplated Leasehold Use, and the proposed Lessee's ability to successfully design, construct, and obtain funding for the contemplated Leasehold Use.
- (b) The proposed Lessee shall also provide to the Leasing Officer for incorporation in the WSR Lease, by reference or otherwise:
  - (1) a resource development plan that describes the type and location of any Permanent Improvements the proposed Lessee plans to install on the Premises and a schedule showing the tentative commencement and completion dates for these Permanent Improvements; and
  - (2) a restoration and reclamation plan for the Premises upon expiration, termination or cancellation of the WSR Lease.

#### **716 – Permanent Improvements Installed Under a WSR Lease**

A WSR Lease shall provide for the installation of facilities and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity as contemplated by the Leasehold Use and in accordance with the resource development plan incorporated in the WSR Lease pursuant to Subsection 715 (b)(1). All such facilities and infrastructure shall be considered Permanent Improvements.

#### **717 – Ownership of Permanent Improvements Installed under a WSR Lease**

- (a) A WSR must specify who will own any Permanent Improvement that the Lessee installs during the WSR Lease term, and may specify under what conditions, if any, such Permanent Improvements may be conveyed to the Pueblo during such WSR Lease term. In addition, the WSR Lease must provide whether each such specific Permanent Improvement will:
  - (1) remain on the Premises upon expiration, termination, or cancellation of the WSR Lease in a condition satisfactory to the Pueblo and become the property of the Pueblo;
  - (2) be removed within a time period specified in a WSR Lease, at the Lessee's expense, with the leased Premises to be restored as closely as possible to their condition before installation of the Permanent Improvements; or
  - (3) be disposed of by other specified means.

- (b) A WSR Lease that requires the Lessee to remove the Permanent Improvements must also provide the Pueblo with an option to take possession and title to the Permanent Improvements if not timely removed, and to charge the cost of removal and restoration to any performance bond held by the Pueblo or recover such cost from Lessee.

#### **718 – Due Diligence of WSR Lease Lessee Concerning Permanent Improvements**

- (a) A WSR Lease shall include due diligence requirements that require the Lessee to:
  - (1) commence installation of energy facilities within 2 years after the effective date of the WSR Lease (or consistent with a timeframe stated in the applicable resource development plan incorporated in the WSR Lease);
  - (2) if installation does not occur, or is not expected to be completed within the timeframe specified in the WSR Lease, provide the Leasing Officer with an explanation of good cause as to the nature of any delay, the anticipated date of installation of the facilities, and evidence of progress toward completion of installation, which information and evidence the Leasing Officer shall share with the Governor and Tribal Council;
  - (3) maintain all on-site electrical generation equipment, facilities and related infrastructure in accordance with the design standards in the resource development plan and best industry practice; and
  - (4) repair, place into service, or remove from the Premises, within a time period specified in the WSR Lease, any idle, improperly functioning, or abandoned equipment or facilities that have been for a continuous period specified in the WSR Lease (unless due to planned suspension of operations, for example, for grid operations or during bird migration season).
- (b) Failure of the Lessee to comply with the due diligence requirements of the WSR Lease is a violation thereof and may lead to the cancellation of the WSR Lease under Section 903 and 905.

#### **719 – Compensation Reviews and Adjustments**

The compensation to the Pueblo under a WSR Lease may be reviewed and adjusted at such times and on such terms as may be specified in the WSR Lease. If a Tribal Council approved WSR Lease so provides, no periodic review of the adequacy of compensation or adjustment is required.

#### **720 – Performance Bond**

- (a) Unless waived by Tribal Council Authorization or the terms of a Tribal Council approved WSR Lease, the Lessee of a WSR Lease must provide a performance

bond. The performance bond must be in an amount sufficient to secure Lessee's obligations under the WSR Lease, including:

- (1) the amount of the expected maximum annual payment of rent and other compensation to the Pueblo;
  - (2) the cost of installing any required Permanent Improvements; and
  - (3) the cost of removing any Permanent Improvements, which the WSR Lease requires to be removed, and to restore and reclaim the leased Premises, as and if required by the WSR Lease.
- (b) The WSR lease must specify the conditions upon which any adjustment in the amount of the bond may be made to reflect changing conditions.
- (c) The Lessee shall cause its Surety to provide any supporting documentation needed to show the bond is enforceable and the Surety is bound to perform under it.
- (d) The performance bond shall require the Surety to provide notice to the Lessee and the Pueblo at least 60 days before any cancellation of the bond in order for the Lessee to provide an acceptable substitute performance bond. Lessee's failure to timely provide a satisfactory performance bond is a violation of the WSR Lease.

## **CHAPTER 800 RECORDING AND MANAGEMENT**

### **801 – Recording**

The Leasing Officer shall promptly, following receipt of a Lease, Amendment, Assignment, Sublease or Leasehold Mortgage duly approved and executed pursuant to this Leasing Law, deliver such document to the BIA LTRO for filing and file such document with the Pueblo's LRO.

### **802 – Delivery of Documentation of Direct Lease Payment to the BIA**

With respect to any rental or other payments made directly to the Pueblo under the terms of a Lease, the Leasing Officer shall deliver to the BIA documentation of such Lease payments sufficient to enable the Secretary to discharge the trust responsibility of the United States in accordance with the Act.

### **803 – Lease Management**

The Leasing Officer shall manage and oversee all Leases granted under this Leasing Law. The Leasing Officer shall institute a Lease management plan that employs recognized real estate management practices, and addresses accounting, collections, monitoring, enforcement, relief and

remedies with respect to all active Leases. The Leasing Officer shall provide to the Governor and Tribal Council a report on his or her Lease management activities not less often than every six months.

#### **804 – Accounting**

- (a) The Leasing Officer shall establish and maintain an accounting system for Leases that generates invoices in advance of due dates, accounts for and confirms the proper computation of payments, and monitors any rental adjustments to be made under the terms and conditions of Leases and ensures that adjustments are made as due.
- (b) The Pueblo's Lease accounting system shall include the following information: the name of the Lessee, Lease identification number, Premises leased, due dates for rent and other payments, payments made, late charges, collection and cancellation activity, balance outstanding and due, and cumulative payments made.

#### **805 – Monitoring and Investigation of Compliance**

- (a) The Leasing Officer may enter the leased Premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable Tribal Law and applicable Lease documents, to protect the interests of the Pueblo and to determine if the Lessee is in compliance with the requirements of the Lease.
- (b) If the Leasing Officer becomes aware that a specific Lease violation has occurred, the Leasing Officer will promptly initiate an appropriate investigation. The Leasing Officer, upon notice to and authorization from the Governor and Tribal Council, may also provide notice to the BIA pursuant to 25 U.S.C. § 415 (h)(7)(B)

### **CHAPTER 900 ENFORCEMENT**

#### **901 – Negotiated Remedies**

- (a) A Lease may provide either or both parties with negotiated remedies in the event of a Lease violation, including, but not limited to, the power to terminate the Lease.
- (b) The parties must notify any Surety or Mortgagee of any violation that may result in termination or cancellation of a Lease.
- (c) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to the Leasing Officer, as specified in the Lease. The Pueblo may request BIA's assistance in enforcing negotiated remedies.
- (d) A Lease may provide that Lease violations will be addressed by a process established by the Pueblo, and that Lease disputes will be resolved by the Tribal



Court, any other court of competent jurisdiction if approved by the Tribal Council, by the Tribal Council, or through an alternative dispute resolution method. The Pueblo shall be bound to any dispute resolution process to which it agrees in the Lease or by separate agreement, but BIA may not be bound by decisions made in such forums.

## **902 – Response to Lease Violations**

- (a) In the absence of actions or proceedings described in Section 901, or if the Pueblo has not agreed to any such actions or proceedings, the Leasing Officer will follow the procedures in paragraphs (b) and (c) of this section.
- (b) If the Leasing Officer determines there has been a violation of the terms and conditions of a Lease, other than a violation of payment provisions covered by paragraph (c) of this section, he or she will promptly send the Lessee and any Surety and Mortgagee a notice of violation by certified mail, return receipt requested.
  - (1) The Leasing Officer will send a copy of the notice of violation to the Governor and Tribal Council.
  - (2) The notice of violation will advise the Lessee that, within 10 business days of the receipt of a notice of violation, the Lessee must:
    - (i) Cure the violation and notify the Leasing Officer, the Governor, and the Tribal Council in writing that the violation has been cured; or
    - (ii) Dispute the Leasing Officer's determination that a violation has occurred; or
    - (iii) Request additional time to cure the violation.
  - (3) The notice of violation may order the Lessee to cease operations under the Lease.
- (c) A Lessee's failure to pay compensation in the time and manner required by a Lease is a violation of the Lease, and the Leasing Officer will issue a notice of violation in accordance with this paragraph.
  - (1) The Leasing Officer will send the Lessees and any Surety and Mortgagee a notice of violation by certified mail, return receipt requested:
    - (i) Promptly following the date on which the payment was due, if the Lease requires that payments be made to the Pueblo; or

- (ii) Promptly following the date on which the Pueblo receives actual notice of non-payment from the Secretary, if the Lease provides for payment to the Secretary.
- (2) The Leasing Officer will send a copy of the notice of violation to the Governor and Tribal Council.
- (3) The notice of violation will require the Lessee to provide adequate proof of payment.
- (d) The Lessee and its Sureties will continue to be responsible for the obligations in the Lease until the Lease expires, or is terminated or cancelled.

### **903 – Failure to Cure**

- (a) If the Lessee does not cure a violation of a Lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Leasing Officer will consult with the Governor and Tribal Council, and determine whether:
  - (1) The Pueblo should cancel the Lease;
  - (2) The Pueblo wishes to invoke any remedies available to it under the Lease;
  - (3) The Pueblo should invoke other remedies available under the Lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to BIA with a request for further referral to the U.S. Department of the Treasury for collection; or
  - (4) The Lessee should be granted additional time in which to cure the violation.
- (b) Following consultation with the Governor and Tribal Council, the Leasing Officer may take action to recover unpaid compensation and any associated late payment charges.
  - (1) The Pueblo does not have to cancel the Lease or give any further notice to the Lessee before taking action to recover unpaid compensation.
  - (2) The Pueblo may still take action to recover any unpaid compensation if it cancels the Lease.
- (c) If the Pueblo decides to cancel the Lease, the Leasing Officer will send the Lessee and any Surety and Mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of the decision. The Leasing Officer will send a copy of the cancellation letter to the Governor and Tribal Council. The cancellation letter will:

- (1) Explain the grounds for cancellation;
  - (2) If applicable, notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease;
  - (3) Notify the Lessee of the Lessee's right to appeal under Chapter 1000 of this chapter, including the possibility that the Tribal Court may require the Lessee to post an appeal bond;
  - (4) Order the Lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and
  - (5) Order the Lessee to take any other action the Leasing Officer deems necessary to protect the Pueblo.
- (d) The Pueblo may invoke any other remedies available to it under the Lease, including collecting on any available performance bond, and the Pueblo may pursue any available remedies under Tribal Law.

**904 – Late Payment Charges and Special Fees**

- (a) Late payment charges will apply as specified in the Lease. The failure to pay these amounts will be treated as a Lease violation.
- (b) The Leasing Officer may assess the following special fees to cover administrative costs incurred by the Pueblo or the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment charges that must be paid to the Pueblo under the Lease:

The Lessee will pay:	For:
(1) \$50.00	Any dishonored check
(2) \$15.00	Processing of each notice or demand letter
(3) 18 percent of balance due	Treasury processing charge following referral for collection of delinquent debt that is accepted by the BIA and Treasury

**905 – Cancellation**

- (a) A cancellation involving a Lease pursuant to this Leasing Law will not be effective until 31 days after the Lessee receives a cancellation letter from the Leasing Officer, or 41 days from the date he or she mailed the letter, whichever is earlier.
- (b) If an appeal is filed, the cancellation decision will not be effective until such time as a ruling is made on appeal, unless the cancellation is made immediately effective under Chapter 1000 of this Leasing Law. During the time a cancellation decision

is ineffective, the Lessee must continue to pay compensation and comply with the other terms of the Lease.

#### **906 – Recovery of Possession**

If a Lessee remains in possession after the expiration, termination, or cancellation of a Lease, the Pueblo may treat the unauthorized possession as a trespass under applicable law. Unless the Pueblo and Lessee are engaged in good faith negotiations with the holdover Lessee to obtain a new Lease, the Pueblo may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

#### **907 – Harmful or Illegal Activities**

In addition to the rights and remedies provided in a Lease or this Chapter 900, the Pueblo may seek immediate mandatory and injunctive relief to prevent the occurrence or continuation of any harmful or illegal activities on the Premises.

#### **908 – Abandonment**

If a Lessee abandons the leased Premises, the Pueblo will treat the abandonment as a violation of the Lease. The Lease may specify a period of non-use after which the Lease Premises will be considered abandoned.

#### **909 – Consistency with Mortgage Code**

The Pueblo's enforcement actions pursuant to this Chapter 900 shall be taken in a manner consistent with any Mortgage Code of the Pueblo in force from time to time and any agreement that the Pueblo may enter into with any Mortgagee or class of Mortgagees.

### **CHAPTER 1000 APPEALS**

#### **1001 – Appeals**

- (a) Prior to appealing any determination of the Leasing Officer regarding the interpretation enforcement or cancellation of a Lease, the Lessee or other interested party shall provide written notice of such person's intent to appeal to the Governor and Tribal Council within ten (10) days of the Leasing Officer's determination that is in dispute. The notice of intent to appeal shall state the basis/reason for appeal and the remedy being sought. The Governor and Tribal Council shall have an opportunity to informally resolve such dispute to the mutual satisfaction of such person and the Pueblo for a period of fifteen (15) days following the Governor's and Tribal Council's receipt of such notice.

- (b) If the dispute is not informally resolved within the fifteen day period provided by Subsection (a), the Lessee or other interested party may appeal a determination of the Leasing Officer, regarding the interpretation, enforcement or cancellation of a Lease, within thirty (30) days of notification the original determination by the Leasing Officer. Appeals may be filed with the Tribal Court. Such appeals shall be initiated by a written petition setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.
- (c) An appeal of a Tribal Court order or decision may be filed with the Isleta Appellate Court subject to and in accordance with the Pueblo's Rules of Appellate Procedure.
- (d) The decision of the Isleta Appellate Court, or the decision of the Tribal Court if an appeal is not validly and timely filed with the Isleta Appellate Court, shall be conclusive and binding on all parties.

#### **1002 – Scope of Review**

The Tribal Court's scope of review, and any appeal of the Tribal Court's decision to the Isleta Appellate Court, shall be limited to whether the determination of the Leasing Officer was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with applicable law.

#### **1003 – No Appeal of Leasing Determinations**

This Leasing Law is not intended to, and does not, create an individual right to appeal tribal decisions resulting in the Pueblo declining to enter into a Lease with individuals or entities seeking the possession and use of Pueblo Trust or Restricted Lands, which decisions are within the sole discretion of the Pueblo.

#### **1004 – Appeal Bond**

- (a) Except as provided in paragraph (b) of this section or Section 604 of this Leasing Law, an appeal bond may be required by the Tribal Court, at its discretion, to appeal from Lease cancellation decisions; provided that the amount of any such bond shall reasonably estimate any damage to the Pueblo from deferring any action pending appeal.
- (b) The Lessee may not appeal the appeal bond decision to the Isleta Appellate Court. The Lessee may, however, request that the Tribal Court reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision by the Tribal Court on the requirement for and amount of the appeal bond is final and conclusive.

### **CHAPTER 1100**

## **ENVIRONMENTAL REVIEW**

### **1101 – Purpose of Environmental Review**

The purpose of this Chapter is to ensure that prior to approval of any Lease pursuant to this Leasing Law, a process is followed that:

- (a) identifies and evaluates any Significant Effects on the Environment of a proposed Leasehold Use;
- (b) ensures that the Public is informed of, and has a reasonable opportunity to comment on, any the environmental impact of the proposed Leasehold Use identified by the Pueblo; and
- (c) the Pueblo provides responses to relevant and substantive public comments on any such impacts before the Pueblo approves the Lease.

### **1102 – Environmental Review Required; Exceptions and Associated Lease Reviews**

- (a) The Responsible Official must ensure that an Environmental Review statement is prepared for all proposed Leases, except those:
  - (1) That will not result in any significant change in use of the leased Pueblo Trust or Restricted Lands;
  - (2) That are covered by an earlier Environmental Review statement prepared not more than twenty-four months earlier for a substantially identical Leasehold Use on the same parcel as determined and documented by the Responsible Official;
  - (3) That are covered by an environmental review conducted by IPHA (the Isleta Pueblo Housing Authority) or another Responsible Entity as defined under 24 C.F.R. Part 58 with respect to Residential Leases; or
  - (4) Exempted under Section 1105.
- (b) A single Environmental Review may be conducted for all Leases contemplated to be granted on an identified parcel or tract of Pueblo Trust or Restricted Land (e.g. development of a shopping center with separate direct Leases with each tenant, a housing development, or the leasing of certain Agricultural Lands subject to several different Tribal Land assignments under separate Leases). In the event that the environmental conditions materially change after the original Environmental Review is completed and before all contemplated Leases are granted, the Environmental Review shall be reopened and updated to address such material change in accordance with the procedures described in Chapter 1100.

### **1103– Public Notice and Comment**

- (a) The Responsible Official shall prepare an Environmental Review statement for any Leasehold Use not exempted by Section 1103 in which such Responsible Official:
  - (1) identifies any Significant Effects on the Environment of the proposed Leasehold Use on the environment,
  - (2) considers whether there are any commercially reasonable actions that may be taken to mitigate such significant effects on the environment as part of the proposed Leasehold Use, and
  - (3) determines whether any such actions should be recommended to the Tribal Council as a condition of approval of a Lease.
- (b) A notice of availability of the completed Environmental Review statement shall be
  - (a) published in a newspaper of general circulation to the identified Public, or (2) disseminated in such other manner or by such other means as may reasonably be expected to provide notice of such availability to the Public.
- (c) The Environmental Review notice shall notify the Public that (A) a Lease is under consideration for approval pursuant to this Leasing Law, (B) a copy of the Environmental Review statement is available to any member of the Public requesting it without charge, and (C) the Public is being provided with a reasonable opportunity to comment on any Significant Effects on the Environment a proposed Leasehold Use may have prior to approval or disapproval of such Lease under this Leasing Law.
- (d) The notice shall invite comments on the Environmental Review statement during a period not less than thirty (30) days following such publication or dissemination. The Responsible Official shall consider all comments received from the Public, shall provide a response to all relevant and substantive Public comments within thirty (30) days of closure of the comment period and prior to approving the Lease.

### **1104 – Federal Environmental Review**

- (a) A Responsible Official may rely upon an environmental review in accordance with NEPA by a federal agency, or, with respect to a Residential Lease, a tribal entity in accordance with 24 C.F.R. Part 58, involved in a Leasehold Use in lieu of conducting an independent tribal Environmental Review process under this Leasing Law for such Leasehold Use.

### **1105 – Conclusion and Recommendations**

Upon review of the environmental effects of a Leasehold Use by the Responsible Official, publication of the Environmental Review statement, acceptance of Public comments and delivery

of the Pueblo's response to such comments, the Environmental Review statement process shall conclude and the Responsible Official shall make such recommendation that the Responsible Official determines appropriate concerning the approval, disapproval or conditioning of a Lease, to the Tribal Council for its consideration. The determination of the Tribal Council with respect to any such recommendation, as reflected in its approval or disapproval of a proposed Lease shall be final and non-appealable.

## **CHAPTER 1200 AMENDMENTS; SEVERABILITY**

### **1201 – Amendments**

The Tribal Council may amend this Leasing Law without the Secretary's approval, so long as the amendment is for clarification, administrative convenience, or similar technical purposes, and is consistent with federal and tribal law. Any substantive amendment to the terms of this Leasing Law must be submitted to and approved by or on behalf of the Secretary.

### **1202 – Severability**

If a court of competent jurisdiction determines a provision in this Leasing Law is invalid, void or unenforceable, the remainder shall remain in full force and effect without regard to the stricken portion.



Property Pueblo of Isleta