

# WINNEBAGO TRIBE OF NEBRASKA

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## RESOLUTION #22-48

### APPROVING AMENDED TRIBAL AGRICULTURAL LAND LEASE POLICY AND PROCEDURES

- WHEREAS,** the Winnebago Tribe of Nebraska is a Federally recognized Indian Tribe organized pursuant to Section 16 of the Act of June 18, 1934 (48 Stat 984), (25 USC 476) as amended by the Act of June 15, 1935, (49 Stat 378); and
- WHEREAS,** pursuant to Article III of the Winnebago Tribal Constitution, the governing body of the Tribe shall be the Tribal Council; and
- WHEREAS,** pursuant to Article IV, Section 1(c) of the Winnebago Tribal Constitution, and its inherent powers of self-government, the Tribal Council is vested with the power, *inter alia*, "To safeguard and promote the peace, safety, morals, and general welfare of the Tribe"; and
- WHEREAS,** the Winnebago Tribal Council is vested with the authority to regulate the leasing of Tribal lands pursuant to its inherent powers of self-government and Article IV, Section 1(d), of the Winnebago Tribal Constitution; and
- WHEREAS,** the Tribe's primary natural resource is its land, a vast amount of which is high quality agricultural land that is currently leased to non-tribal farming operations; and
- WHEREAS,** the Tribe has determined that it is in its best interest to increase its return on land assets and investments; and
- WHEREAS,** in addition to its general power under tribal law, the Tribe has the specific authority under federal law to establish a policy for the leasing of tribal and individually-owned agricultural land as set forth in the American Indian Agricultural Resource Management Act codified at 25 U.S.C. §39 and related regulations in 25 C.F.R. Part 162; and
- WHEREAS,** federal law also provides that the federal government will "recognize and comply with tribal laws regulating activities on agricultural land, including tribal laws relating to land use, environmental protection, and historic or cultural preservation" (See 25 C.F.R. §162.202); and
- WHEREAS,** the Tribe desires to exercise its authority to establish and adopt certain tribal policies and procedures regarding the leasing of tribal agricultural land; and
- WHEREAS,** the Tribal Council adopted the Tribal Agricultural Land Lease Policy ("Policy") and Procedures on January 11, 2012, and amended such policy on January 8, 2014, to include additional procedural requirements; and

**WHEREAS,** such January 8, 2014, amendments contained an incorrect provision which requires a Tribal Entity to provide a bond under an Agricultural Lease; and

**WHEREAS,** the Tribal Council desires to revise the Policy to correct said provision to reflect the original intention contained in the Policy approved January 1, 2011, to state that a Tribal Entity shall **NOT** be required to provide a bond under an Agricultural Lease.

**NOW, THEREFORE, BE IT RESOLVED,** that the Winnebago Tribal Council hereby adopts and approves the attached revised Tribal Agricultural Land Lease Policy and Procedures, including an exemption for a Tribal Entity from the requirement to provide a bond under an Agricultural Lease, preference policy for lease lands that allows Tribal Entities to match the highest responsible bid, in accordance with 25 C.F.R. §162.203 and other applicable law; and

**BE IT FURTHER RESOLVED,** that the Tribal Agricultural Land Lease Policy and Procedures shall supersede federal leasing regulations under 25 C.F.R. Part 162 as set forth in 25 C.F.R. §162.203, whenever applicable and this resolution shall serve as notice to the Bureau of Indian Affairs of the Tribe's intent and action; and

**BE IT FINALLY RESOLVED,** that the Tribal Agricultural Land Lease Policy and Procedures shall be effective upon adoption of this resolution by the Tribal Council.

### C E R T I F I C A T I O N

We, the undersigned Officers of the Winnebago Tribal Council, hereby certify that on December 20, 2021, at a meeting duly convened by the Winnebago Tribal Council, the Tribal Council voted to adopt the above Resolution by a vote of 7 for, 0 against, 0 abstentions, with the Chairwoman and 1 Member(s) not voting.

Dated this 20 day of December, 2021.

ATTEST:

*Victoria Kitcheyan*

Victoria Kitcheyan, Chairwoman, Winnebago Tribal Council

*Lorelei DeCora*

Lorelei DeCora, Secretary, Winnebago Tribal Council



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Section I. AUTHORITY

These policies and procedures are enacted pursuant to the Winnebago Tribal Council's authority to regulate the leasing of Tribal lands under its inherent powers of self-government and Article IV, Section 1(d) of the Winnebago Tribal Constitution.

In addition to its powers under tribal law, the Tribe has the specific authority under federal law to establish a policy for the leasing of tribal and individually-owned agricultural land as set forth in the American Indian Agricultural Resource Management Act codified at 25 U.S.C §39 and related regulations in 25 C.F.R. Part 162. Further, 25 C.F.R. §162.203 provides that the federal government will "recognize and comply with tribal laws regulating activities on agricultural land, including tribal laws relating to land use, environmental protection, and historic or cultural preservation."

Section II. PURPOSE

The purpose of these policies and procedures is to establish a mechanism for leasing tribal and individual-owned agricultural lands that includes a preference in favor of Tribal Entities for leasing such lands.

Section III. SCOPE

This Tribal Agricultural Land Lease Policy applies to Winnebago Tribal agricultural land held in trust or fee. This policy also applies to individually-owned agricultural land held in trust within the boundaries of the Winnebago Reservation.

Section IV. POLICY

It is the policy of the Winnebago Tribe of Nebraska that Tribal Entities shall receive a preference in leasing agricultural land leased by the Tribe or by the BIA under 25 C.F.R. §162.212, by permitting prospective Tribal Entity tenants to negotiate or bid on lease agreements or match the highest responsible bid for leases. Subject to Tribal Council approval and acceptance of bids and bidders.

Section V. PROCEDURES

1. Definitions.

- a. *Agricultural Land* means land suited or used for the production of crops, livestock or other agricultural products or land suited or used for a business that supports the surrounding agricultural community.
- b. *Agricultural Lease* means a lease of agricultural land for farming and/or grazing purposes.

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- c. *BIA* means the Bureau of Indian Affairs within the U.S. Department of Interior.
  - d. *Notice of Intent* means written documentation submitted by a Registered Tribal Entity to the Winnebago Tribe's Land Management Department or the Bureau of Indian Affairs stating its intention to lease and/or bid to lease certain Agricultural Land.
  - e. *Notice of Interest* means written documentation submitted by a Tribal Entity to the Tribal Land Management Department stating its desire to be a Registered Tribal Entity and to receive formal notice of Agricultural Lease opportunities from the BIA and the Tribal Land Management Department.
  - f. *Registered Tribal Entity* means any Tribal Entity, approved and accepted by the Tribal Council, possessing an intent to lease Agricultural Land that has submitted a Notice of Interest to the Winnebago Land Management Department and to the Bureau of Indian Affairs, Winnebago, Nebraska.
  - g. *Superintendent* means the BIA Winnebago Agency Superintendent or other BIA official, including a field representative or one holding equivalent authority.
  - h. *Tribal Entity* means any organization, subdivision, department program, corporation, company, subsidiary, agency, or other business or governmental unit that is owned, operated, controlled, or managed by the Winnebago Tribe of Nebraska.
2. Any Tribal Entity that seeks to receive notice of Agricultural Lease opportunities and become a Registered Tribal Entity shall submit a written Notice of Interest stating such to the Winnebago Tribe Land Management Department and to the BIA. Such status as a Registered Tribal Entity is subject to the approval of the Winnebago Tribal Council.
  3. Upon posting an advertisement for an Agricultural Lease, a copy of such advertisement shall be sent to each Registered Tribal Entity. In situations where no advertisement will be posted, if Tribal Council approves, written notice of the availability of Agricultural Land for lease shall be provided to each Registered Tribal Entity as Agricultural Land comes available for lease. Such advertisement notice process does not pertain to those lands the Tribe seeks to negotiate a lease on with a lessee of their choice.
  4. Any Registered Tribal Entity that seeks to lease certain Agricultural Land advertised or available for lease shall submit a Notice of Intent to the Winnebago Land Management Department or Superintendent, as appropriate, upon receipt of the lease advertisement or notice stating which lands it seeks to lease. This notice requirement does not pertain to those Tribal lands the Tribe elects to negotiate an Agricultural Lease on with a lessee of their choice.
  5. Notice of the highest responsible bid or offer to lease Agricultural Land shall be provided to each Registered Tribal Entity that submitted a Notice of Intent for those lands only

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indicated in their Notice of Intent after bids have been accepted or rejected by the Tribal Council or the Superintendent.

6. The highest responsible bid is one which: (a) provides for the payment of yearly acceptable rental or some other appropriate valuation method; or (b) one which is negotiated by the parties to be an acceptable annual amount.
7. A Registered Tribal Entity that submitted a Notice of Intent must, immediately after bids are publicly opened, submit in writing the lands for which it intends to match the highest responsible bid or offer for any Agricultural Land offered or advertised for lease by the Tribe or BIA. This Notice of Intent requirement does not pertain to those Tribal lands the Tribe elects to negotiate an Agricultural Lease on with a lessee of their choice.
8. In a situation where two (2) or more Registered Tribal Entities submit a Notice of Intent, those prospective Registered Tribal Entity tenants will be permitted to submit a sealed bid immediately following the public bid opening. The Registered Tribal Entity submitting the highest bid will be awarded the lease, subject to approval by the Tribal Council.
9. Rent payments in fixed amounts or based on a share of the agricultural products generated by the lease, or a percentage of the income to be derived from the sale of such agricultural products are permitted if approved by the Tribal Council.
10. The Tribe or BIA may authorize and approve an Agricultural Lease of Tribal land at a nominal rent, or at less than a fair annual rental, if the Tribe determines that such lease is in the best interest of the Tribe.
11. No Agricultural Lease will be granted or approved at less than a fair annual rental, as previously determined by an appraisal or some other appropriate valuation method, unless approved by the Tribal Council.
12. The Tribe reserves the right to reject any and all bids without explanation and to negotiate with any interested bidder if they so choose.
13. A Tribal Entity shall not be required to provide a bond under an Agricultural Lease.
14. These policies and procedures are intended to supersede federal leasing regulations under 25 CFR Part 162 as set forth in 25 CFR §162.203.
15. Individual owners of trust land may exempt their Agricultural Land from the application of these policies and procedures if the Indian owners of at least 50% of the trust or restricted interest in the land submit a written objection to the BIA before a lease is granted or approved in accordance with 25 C.R.R. §162.205.
16. The Winnebago Tribe Land Management Department shall provide notice of these policies and procedures to affected person or entities undertaking activities on Agricultural Land. Such notice will be provided by:

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- a. Written notice included in an advertisement for lease; or
  - b. By public notice posted at the tribal community building or in the United States Post Office.
17. The Tribal Council shall provide the BIA with an official copy of these policies and procedures and shall cause a copy to be published in the tribal newspaper at the time these policies and procedures are adopted.
18. This Tribal Agricultural Land Lease Policy and Procedures does not pertain to those Tribal lands the Winnebago Tribe elects to negotiate an agricultural lease on with a lessee of their choice.
19. The Winnebago Tribe of Nebraska only shall be allowed to amend these policies.

TC Approved: 2012-01-11.  
Amended: 2014-1-8; 2021-12-20.