

TOWN OF PINETOP-LAKESIDE

RESOLUTION NO. 07-957

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, ADOPTING A MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF PINETOP-LAKESIDE AND THE WHITE MOUNTAINS LAND ALLIANCE, INC., DBA THE WHITE MOUNTAINS LAND TRUST.

WHEREAS, the Town of Pinetop-Lakeside is in agreement with the terms and conditions of the Memorandum of Understanding between the Town of Pinetop-Lakeside and the White Mountains Land Alliance, Inc., dba the White Mountains Land Trust attached hereto as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, hereby adopt the Memorandum of Understanding between the Town of Pinetop-Lakeside and the White Mountains Land Alliance, Inc., dba the White Mountains Land Trust attached hereto as Exhibit "A."

PASSED AND ADOPTED by the Mayor and Council of the Town of Pinetop-Lakeside, this 15th day of November 2007.

TOWN OF PINETOP-LAKESIDE



LUKE SMITH, Vice Mayor

ATTEST:


LU ANNE FROST, Town Clerk

APPROVED:


JACK BARKER, Town Attorney

Memorandum of Understanding

This Memorandum of Understanding (the "Agreement") is made by and between the Town of Pinetop-Lakeside, an Arizona municipal corporation (the "Town") and the White Mountains Land Alliance, Inc., an Arizona nonprofit corporation dba the White Mountains Land Trust (the "Land Trust").

RECITALS:

WHEREAS, the Town is desirous of acquiring and preserving certain real property within its boundaries known as Woodland Lake Park (the "Park") and other identified open space property (collectively the "Preservation Properties").

WHEREAS, the Park is currently owned by the United States and under the control and management of the United States Forest Service (the "U.S.F.S.") which pursuant to United States Public Law 105-344 (the federal "Woodland Lake Park Protection Act" also hereinafter the "Act") can only be conveyed to the Town without further action by Congress; and

WHEREAS, the Land Trust wishes to help the Town acquire the Park and other identified open space property with funds it will acquire through the Land Trust's "Save Our Park" fundraising campaign; and

WHEREAS, the Land Trust will also develop and recommend strategies and ideas to the Town for acquiring the Preservation Properties; and

WHEREAS, both Parties believe that acquiring the Park and other open space will greatly benefit the citizens of the Town; and

WHEREAS, the funds collected by the Land Trust will be kept safely in federally insured accounts with State licensed banks or financial institutions and will regularly report the amount of such funds and the status of those accounts to the Town; and

WHEREAS, both Parties deem it in their mutual interest to cooperate in assuring that maximum possible benefit is achieved in applying funds collected during the "Save Our Park" campaign be applied wisely to the acquisition of the Preservation Properties.

Now, therefore, the parties agree as follows:

1. Purpose. The Parties agree to work with each other to find acceptable ways and means to acquire the Park and other open space within the Town boundaries. The Land Trust will appoint committees, think tank groups, and other groups to explore strategies for Park acquisition and will communicate those ideas and strategies to the Town through the Town Manager or other persons designated by the Town Council to receive this information. In addition, the Land Trust will raise funds through its "Save Our Park" campaign and other fundraising campaigns, which funds may only be used for purposes related to acquiring the Preservation Properties, and even then, only with the approval of both the Board of Directors of the Land Trust and the Town Council. The Parties understand that acquisitions of real property by the Town is often accomplished by the Town of Pinetop-Lakeside Municipal Property Corporation (the "M.P.C.") when directed by the Town, so that funds provided to the Town for acquisition of the Preservation Properties may actually be used by the M.P.C., and that the M.P.C. may be the legal owner of Preservation Properties which the Parties agree to acquire.

2. **Term.** The term of this Agreement shall be ten (10) years beginning on the date which both Parties have approved and signed this Agreement. The Agreement shall automatically be extended for additional terms of five (5) years unless otherwise terminated in accordance with paragraph 9, below.

3. **Acquisition of the Park.** The Parties agree that the primary focus of the Land Trust's fundraising efforts is to develop ideas and strategies, and to raise funds for the acquisition of the Park. However, both Parties recognize the secondary importance of preserving and acquiring other strategically located open space real property within the Town which acquisition would help preserve the natural beauty and mountain character of the Town.

4. **Land Trust Funds.** The Town understands and agrees that funds collected by the Land Trust shall be the sole property of and under the sole control of the Land Trust, and that the Town shall have no right to possession or control over such funds without the express permission of the Land Trust. The Land Trust shall be solely responsible for the safekeeping of all Land Trust funds. The Parties understand and agree that the Land Trust may expend some of the funds collected for advertising and promotion of its fundraising efforts, but the primary purpose of the Land Trust's fundraising efforts will be to acquire Woodland Lake Park and the other open space properties, the Preservation Properties. However, the Land Trust recognizes that providing the Town with copies of bank statements and financial statements pertaining to the Save Our Park campaign on a regular basis, at least semi-annually, will provide people who donate funds to the Land Trust with additional confidence that the funds are being safely kept. The Land Trust is expressly authorized to provide copies of this Agreement to any person who donates or who is contemplating a donation to the Land Trust. In addition, on the basis of the Town's receipt or review of the Save Our Park bank or financial statements from the Land Trust, the Town Council may request that the Land Trust Board of Directors have a financial audit performed, and if such audit is not performed within sixty (60) days thereafter, the Town may retain an auditor to perform an audit the Land Trust bank accounts and general corporate finances. If any audit performed by the Town reveals irregularities, inconsistencies, or expenditures of funds of \$5,000 or more by the Land Trust which are inconsistent with the Save Our Park campaign or this Agreement; then, the Land Trust shall immediately reimburse the Town for the costs associated with that audit. If the inconsistencies total less than \$5,000, the Parties shall equally share the cost of the audit. Nothing in this Agreement shall make the Town liable or responsible in any way for misfeasance or malfeasance by the Land Trust in handling and caring for the funds collected by the Land Trust – such liability or responsibility on the part of the Town is expressly denied. Nothing in this Agreement shall prevent the Land Trust from developing its own requirements for the safe handling and care of the funds collected by or donated to the Land Trust which requirements should include bonding for those persons with access to any such funds.

5. **Town's Acceptance of Funds.** Although the Parties acknowledge that the funds collected by the Land Trust are to help acquire the Preservation Properties, the Parties also understand and agree that that the Town shall have and may exercise its sole discretion in accepting or denying funds for acquisition of the Preservation Properties or as otherwise offered to the Town by the Land Trust. All requests for funds from the Town shall be made on motion or resolution of the Town Council at a public meeting along with the approval of the Board of Directors of the Town of Pinetop-Lakeside Municipal Property Corporation when applicable. Any delivery of funds to the Town by the Land Trust shall only be after the approval by the Land Trust in accordance with its Bylaws and with the approval of its Board of Directors. The Parties further understand and agree that once any Land Trust funds are accepted by the Town, that the Town may only use such funds for the express purposes authorized by the Land Trust. Acceptance of such funds by the

Town does not give the Town the right to use the Town's discretion in the expenditure of the funds, and the funds may not be used for general purposes or comingled with the Town's General Fund monies. All funds received by the Town from the Land Trust shall be used for purposes consistent with the letter and spirit of this Agreement – the acquisition of the Preservation Properties. The Land Trust also understands and agrees that any ideas or strategies offered by the Land Trust can be considered only as recommendations by the Town, and that the Town may acquire the Park or open space property with or without Land Trust input or funds.

6. Land Trust Status. The Land Trusts will maintain its nonprofit status with the Internal Revenue Service, and shall also be a corporation in "good standing" with the Arizona Corporation Commission during the term of this Agreement. The Land Trust will immediately notify the Town of any change of either status which occurs during the term of this Agreement.

7. Applicable Law. The Parties acknowledge that the Act currently provides that the U.S.F.S. may only approve a sale of the Park to the Town. However, both Parties acknowledge that this can be changed by an act of Congress, and that the Park is real property which constitutes an island of U.S.F.S. property totally surrounded by private or Town land, and that the U.S.F.S. would prefer to divest itself of the Park. Interpretations or enforcement of this Agreement shall be in accordance with Arizona Law and all lawsuits relating to this Agreement shall be brought in courts within Navajo County, Arizona.

8. Administrative Costs. It is further expressly agreed by the Parties that any and all administrative costs incurred by either in carrying out the terms of this Agreement shall be borne solely by that party, respectively, unless otherwise agreed by the Parties.

9. Termination. Either Party may terminate this Agreement upon ninety (90) days prior written notice to the other Party with or without cause, for any reason or no reason, except that once the Town has received funds from the Land Trust the Town may not terminate this Agreement until the Land Trust funds have been expended for the purpose(s) designated by the Land Trust.

10. Notices. Any notices requested or required under this agreement shall be in writing, and placed in the U.S. mails, first class postage, registered, return receipt requested, prepaid, addressed as follows:

If to White Mountains Land Alliance, Inc.:

White Mountains Land Trust, Inc.
P. O. Box 803
Lakeside, Arizona 85935

Copy to:

F. Morgan Brown, Esq.
Brown and Brown Law Offices
P. O. Box 3128
Pinetop, Arizona 85935-3128

It to Town of Pinetop-Lakeside:

Kelly Udall, Town Manager
Town of Pinetop-Lakeside
1360 North Niels Hansen Lane
Lakeside, Arizona 85929

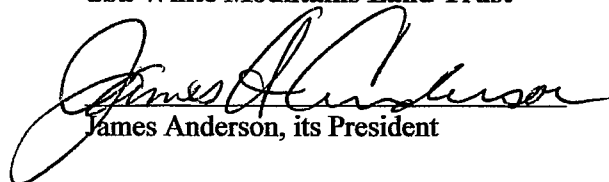
Copy to:

Jack Barker, Esq.
Jack Barker, P.C.
P. O. Box 1459
Pinetop, Arizona 85935-1459


Either Party may change the address to which it receives notices by sending a written change of address notice to the other Party.

SIGNED and DATED this 15th day of November 2007.

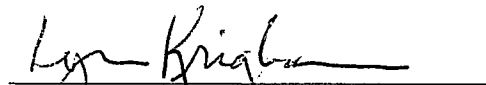
**White Mountains Land Alliance, Inc.
dba White Mountains Land Trust**

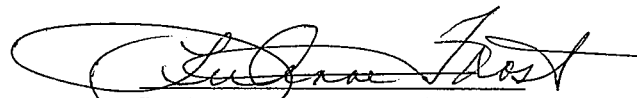

James Anderson, its President

**Town of Pinetop-Lakeside,
an Arizona Municipal Corporation**


Luke Smith, Vice-Mayor

Attest:


Lynn Krigbaum, its Secretary


Lu Anne Frost, Town Clerk

Approved:


F. Morgan Brown, Esq.

Approved:


Jack Barker, Town Attorney