	Land and Water Program **Arizona Game and Fish Department** **5000 West Carefree Highway** **Phoenix Arizona 85086**
	Agreement Number: HAB-10-0308RHB (04-30-10)
	Property Name: Silver Creek Wildlife Area **Property Location: Sec 19 – T11N, R23E** **Navajo County, State of Arizona**

Agreement
Between
State of Arizona
Arizona Game and Fish Commission
and
White Mountain Bow Hunters Association

1. Parties. **THIS AGREEMENT** (Agreement) is entered into between the State of Arizona, by and through the Arizona Game and Fish Commission (the "Commission"), and the White Mountain Bow Hunters Association, a nonprofit corporation organized under the laws of the State of Arizona (the "Association"). The term "Department" and "Director" shall mean the Arizona Game and Fish Department and its Director, acting as administrative agent for the Commission.

2. Authority. The Commission may enter into this Agreement pursuant to Arizona Revised Statutes §§ 17-231(B)(7) and 17-273.

3. Duration of Agreement and Location. The Commission hereby authorizes the Association to develop and maintain a portion of Commission-owned property (the "Property") for a period commencing on May 15, 2010, and terminating on May 14, 2020, at a yearly fee of $10.00 payable on the first day of each year subsequent to the execution of this Agreement, as a public archery range complex and related recreational facilities, to-wit:

T.11N., R.23E., G. & S. R. B. & M., Navajo County, Arizona
Section 19, SW4, SW4
Comprising 40.00 acres more or less (See Exhibit A).

4. Use and Administration. It is understood and agreed that the Property shall be utilized by the Association solely for the purposes of development, operation, construction, and maintenance of a public archery range complex and related recreational facilities. The Property shall be administered by the Department as part of the Statewide Shooting Ranges Project, as defined in the Department approved Sport Fish and Wildlife Federal Aid Project (W98S) and Commission Policy A2.19.

5. Association as Independent Contractor. The State of Arizona does not assume any liability entering into this Agreement or by virtue of any designation of the Association as a nonprofit organization qualified to operate and maintain a public archery range. The

Association, its officers, directors, employees, agents, and contractors shall not be considered employees, contractors, or agents of the State, its agencies or commissions.

6. Purpose and Authority. It is understood and agreed that the purpose of this Agreement is to cause the development, operation, construction, and maintenance of a public archery range complex and related public recreational purposes. The public shall have equal and reasonable access to the archery range and recreational facilities without discrimination as to rates charged and without a requirement that the public become affiliated as a member or otherwise with the White Mountain Bow Hunters Association, its divisions, or any of its groups. The Commission shall have sole authority to determine the Association's compliance with the terms, conditions, and intent of this Agreement as expressed herein, and any such determination shall be binding upon the Association.

7. Federal and State Approval. The Association acknowledges that this Agreement is subject to the approval of the appropriate federal and state officials.

8. Range Policy Council. Upon the execution of this Agreement, a Range Policy Council shall be established composed of the Director or his representative and a representative of the Association. The Range Policy Council shall complete a master development plan of the Property outlining improvements to be contained therein. The Range Policy Council shall furthermore promulgate rules and regulations governing the establishment and management of the archery range and related recreational facilities, including but not limited to fees, charges, operating hours, safety requirements and restrictions, limitations, and conditions concerning the use of such archery range and related recreational facilities, subject to the approval of the Commission. In the event the Range Policy Council is unable to unanimously concur in the completion of a master development plan or in the promulgation of rules and regulations or any amendments thereto, the Commission's decision shall control and be binding on the Association.

9. Financial Responsibility for Development, Operation, and Maintenance. All facilities and improvements constructed upon the Property by the Association shall be at the Association's expense. The Association shall furthermore provide at its own expense personnel for the development, operation, and maintenance of the archery range complex and related recreational facilities.

10. Funding. The Department may at its discretion provide funding to the Association for safety-related or other range or recreation-related development projects for the Property as determined and agreed to by the Department and the Association. Such funding may be provided on an annual basis in the event that such funds become available.

11. Facility Inspections. The Department may conduct periodic inspections of the archery range complex and related recreation facilities, and the Association shall be required to comply with any item identified by the Department requiring correction as a result of such inspections.

12. Indemnity. The Association hereby agrees to indemnify and hold harmless the State of Arizona, the Commission and Department, and their representatives, officers and employees ("Indemnitees") from any and all claims, demands, actions, judgments, liabilities, losses, and costs caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Association or any of its owners, officers, directors, agents, employees or

contractors or members of the public arising out of or related to Association's occupancy and use of the Property.

13. Liability Insurance. The Association shall procure and maintain in full force and effect for the duration of this Agreement insurance against claims for injury to persons or damage to property for acts or conduct occurring at or on the Property. The insurance shall be placed with an insurer authorized to do business in the State of Arizona with an A.M. Best rating of not less than A-VII.

14. Minimum Scope and Limits of Insurance. The Association shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form.

• General Aggregate	$2,000,000
• Products – Completed Operations Aggregate	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Each Occurrence	$1,000,000
• Blanket contractual Liability – Written and Oral	$1,000,000
• Fire Damage (Any one fire)	$ 500,000

Arizona Game and Fish Department Agreement No. HAB-10-0308RHB (04-05-10) and the Property name and location are to be noted on each such certificate of insurance.

15. State as Additional Insured. The policy shall be endorsed to include as additional insureds the State of Arizona, the Arizona Game and Fish Commission, the Arizona Game and Fish Department, and their officers, officials, agents and employees with respect to liability arising out of the use and/or occupancy of the Property.

16. Verification of Coverage. The Association shall furnish the Department all signed certificates of insurance and/or endorsements to the Department for review and approval by not later than May 15, 2010, and shall thereafter furnish to the Department evidence of insurance policy renewal, due on or before the first day of March for each year thereafter. All insurance coverages required by this Agreement shall remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal is a material breach of this Agreement.

17. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Department. Such notice shall be sent directly by the insurer and by the Association to the Department in accordance with Par. 16 and shall be sent by certified mail, return receipt requested.

18. Commission Reservations. The Commission excepts and reserves from this Agreement all oils, gases, coals, ores, limestone, minerals, fossils, and fertilizers of every name and description that may be found in or upon the Property or any part thereof. The Commission further reserves the right to grant easements or other land use agreements for the Property, such as but not limited to, utility rights-of-way, which are compatible with the uses and occupancy as authorized in this Agreement.

19. Non-Liability for Early Cancellation or Termination. In the event this Agreement and/or the Association's interests or rights hereunder are canceled or terminated prior to its expiration, or in the event the Commission's interest or right to possession in the Property or any portion thereof is terminated prior to the expiration of the term of this Agreement or any extension thereof, the State of Arizona, the Commission, the Department, and their officials, agents and employees shall be wholly absolved from any liability or damages resulting to the Association.

20. Other Government Regulations. The Association agrees that in its use and occupancy of the Property, the Association will comply with all applicable laws, rules, regulations, and ordinances of every governmental body or agency whose authority extends to the premises or to any activities conducted upon the Property, whether or not such laws, rules, regulations, and ordinances are referred to in this Agreement.

21. Property Improvements, Maintenance and Ownership. The design and construction of improvements to the Property shall be in conformity with all applicable state, county and local laws, ordinances and building and fire safety codes and is further subject to consent of any federal or state agencies. The Association agrees that at its own expense it will keep and maintain the Property and all improvements placed thereon by the Association in good condition and repair.

22. No Liens on Improvements. The Association agrees to keep the premises, structures and improvements thereon free and clear from any and all liens of laborers, mechanics, or materialmen and all liens of a similar character arising out of the design, construction, repair, or alteration and maintenance of such improvements.

23. Commission-owned Improvements. All improvements placed on the premises or funded by the Commission are the property of the Commission and any other improvements purchased or acquired by the Commission in any manner whatsoever shall remain the property of the Commission. The Association agrees that all improvements placed or affixed upon the Property shall thereupon become the property of the Commission, and that upon the expiration of the term of this Agreement or any extension thereof, or upon the termination or cancellation of this Agreement, the Association will promptly surrender to the Commission the premises together with all permanent structures, facilities, fixtures and improvements thereon. The Association shall have the right to remove from the premises all items of personal property not permanently affixed to the real property. The Commission shall not be liable or responsible for the payment of the cost or value of any structures, facilities, fixtures or improvements of whatsoever kind and nature placed upon the Property, which shall be deemed to be surrendered to and the ownership thereof vested in the Commission without any right to or claim for reimbursement by the Association or its successors or assigns.

24. Non-Assignability. The Association shall not assign this Agreement without the prior written consent of the Commission. Such assignment shall be subject to those terms and conditions as determined by the Commission in its unreviewable discretion.

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25. Termination by Commission Due to Noncompliance. In the event of a material breach of this Agreement, or in the event the Association fails to correct any default or fails to be in full compliance with the terms and conditions of this Agreement within sixty (60) days after written notice by the Department or Commission itemizing the breach or default and the terms for returning into compliance, then this Agreement and any and all of Commission's obligations hereunder shall terminate at the option of the Commission, without prejudice to the right of Commission to recover from Association all damages, losses or sums payable incurred as a result of the Association's breach or default with any term of this Agreement. A waiver by the Commission of any breach or default or any extension of time granted to the Association to cure any breach or default shall not constitute a waiver of any other requirement of this Agreement or a waiver of the requirement that time is of the essence of this Agreement.

26. Termination Due to Changes in Association Status. In the event the Association ceases to exist as a nonprofit corporation in good standing in the State of Arizona, or ceases to be active in the management and/or development of the Property, and/or ceases to maintain the public archery range complex and related recreational facilities for public recreational purposes with equal and reasonable access by the public within the framework and requirements of this Agreement, the Commission shall terminate this Agreement and may negotiate with any other public or private entity for the purpose of assuming the continued maintenance and the operation of the Property, all without any liability or obligation whatsoever by the Commission to the Association.

27. Termination Due to Conflict of Interest. This Agreement may be terminated as provided herein, or subject to cancellation pursuant to A.R.S. Section § 38-511 for a conflict of interest.

28. Renewal. Upon the expiration of the term of this Agreement and in the event the Association shall be in complete and full compliance with all of its terms and conditions, the Association shall have an option to renew this Agreement for an additional ten-year period upon terms and conditions as determined by the Commission and subject to continuing authority and jurisdiction in the Commission to approve the exercise of an option to renew. The exercise of such option to renew by the Association shall be accomplished by the delivery or mailing of written notice of intention to the Director at least sixty (60) days prior to the termination of this Agreement.

29. Amendments. Either the Department or the Association may propose amendments to this Agreement. Amendments shall be in writing, approved by both parties and executed as an addendum to this Agreement.

30. Arbitration. To the extent required pursuant to A.R.S. § 12-1518, and any successor statutes, the parties agree to use arbitration, after exhausting all applicable administrative remedies, to resolve any dispute arising out of this Agreement with each party to bear its own attorneys' fees and costs.

31. Audits. Pursuant to A.R.S. §§ 35-214, 35-215 and § 41-1279.04, as amended, all books, accounts, reports, files and other records of the Association or its contractors relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State for the term of this Agreement and for five years after completion of this Agreement.

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32. State Nondiscrimination Orders. In the event that it applies, the parties agree to comply with Governor's Executive Order No. 99-4, amending 75-5, entitled "Prohibition of discrimination in State Contracts – Non-Discrimination in Employment by Government Contractors and Subcontractors".

33. Federal Nondiscrimination Acts. The Association shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the American with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and shall offer all persons the opportunity to participate in programs or activities regardless of race, color, national origin, religion, age, sex, or disability. No individual shall be turned away from, or otherwise denied access to, or benefit from any program or activity that is directly associated with the Arizona Game and Fish Department on the basis of race, color, national origin, religion, age, sex, or disability.

34. Federal Immigration – Contractors. In accordance with A.R.S. § 41-4401, the parties shall not award a contract to any contractor or subcontractor without complying with federal immigration laws and the e-verify requirements of A.R.S. § 23-214(A). A failure to comply with A.R.S. §23-214(A) shall be deemed a material breach of this Agreement.

34. National Environmental Policy Act. The Association agrees to comply with the National Environmental Policy Act of 1969 and obtain all necessary federal, state, or local approvals/permits for construction and management of the projects contemplated herein before any improvements or other lawful development begins.

35. Cultural Resources. Pursuant to A.R.S. § 41-844, the Association shall report to the Department and Arizona State Museum any archaeological or paleontological site or object that is discovered on lands whose use by the Association, its guests or invitees, is authorized under this Agreement and immediately cease land-disturbing activities.

36. Native Plants. If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this Agreement, the Association must previously acquire the written permission of the Arizona Commission of Agriculture and Horticulture to remove those plants.

37. Enforcement of Conditions. The failure of the Commission to require strict performance of any term or condition of this Agreement shall not constitute a waiver of the right of the Commission to strictly enforce any other term or condition of this Agreement.

38. Other Government Regulations. The Association agrees that in its use and maintenance of the Property, it shall comply with all applicable laws, rules, regulations, and ordinances of every governmental body or agency whose authority extends to the premises or to any activities conducted upon the subject easement whether or not such laws, rules, regulations and ordinances are mentioned herein.

39. Clause Numbers and Headings. Clause numbers and headings are for convenience only and are not to be construed as part of this Agreement.

40. Notices. Notices shall be in writing and shall be delivered in person to the other party or forwarded by certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) For the Commission:

Director, Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, Arizona 850856

(b) For the Association:

President, White Mountain Bow Hunters Association
857 E. White Mountain Blvd.
Pinetop, Arizona 85935

Or to other addressees as either party may from time to time furnish in writing to the other party. Notice shall be deemed to have been given upon receipt**.**

IN WITNESS WHEREOF, each person signing this Agreement warrants that he/she has the authority to execute this Agreement on behalf of the parties herein.

Arizona Game and Fish Commission

By: _____
Larry D. Voyles, Secretary
to the Commission, and Director,
Arizona Game and Fish Department

Date: _____

White Mountain Bow Hunters Association

By:_____
President

ATTEST:

By: _____
Secretary

Date: _____