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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

oOo

IN RE

NEVADA FIRE SAFE COUNCIL,

Debtor(s).

BK-N- 12-52625-btb
CHAPTER 7

Hearing Date: _____

and Time: _____

Mtn No. _____

Est Time: 25 Minutes

MOTION TO APPROVE COMPROMISE
OF ESTATE'S CLAIMS

COMES NOW Chapter Seven Trustee, Allen Dutra, by and through undersigned counsel and moves this Court to approve the compromise of the Estate's claims as outlined herein. This motion is made and based upon the pleadings on file herein and the Memorandum of Points and Authorities attached hereto.

1. Background

Due to many pressing issues, including the Angora Fire which had burned 3,000 acres and 250 homes, a Congressional delegation wanted to see fuels reduction work started as quickly as possible. Congress accomplished this through grant funding.

Nevada Fire Safe Council (Fire Safe) is a §501(c)(3) non-profit corporation. It began business in 1999. The focus of Fire Safe is to assist

1 communities to create defensible space within and surrounding
2 communities to protect them from destruction from wildfire.

3 Fire Safe applied to the United States Forest Service (USFS) and to
4 the Bureau of Land Management (BLM) for grant monies in order to
5 protect communities from destruction from wildfire.

6 Fire Safe entered into nine financial assistance agreements with
7 the Bureau of Land Management (BLM) and two with the United States
8 Forest Service (USFS). These agreements required Fire Safe to conduct
9 fuels reduction work in the Lake Tahoe region.

10 Fire Safe contracted with sub-recipients to perform the fuels
11 reduction work. These sub-recipients are not parties to any agreement
12 with the United States. Rather, they are paid by Fire Safe with the grant
13 monies it received for that purpose.

14 In July 2011, the Office of the Inspector General (OIG) reviewed a
15 hotline complaint alleging that Fire Safe was not conducting a fair and
16 competitive bidding process when hiring contractors to perform the
17 work related to the Recovery Act grant agreement.

18 During the OIG review of the hotline complaint, it found that Fire
19 Safe did not properly account for its grant funds. Funds from numerous
20 federal grants were commingled with Fire Safe's own funds and used to
21 pay unauthorized expenses.

22 As a result of the resulting audits and Fire Safe's numerous
23 violations of federal grant procedures, all grant funds were frozen. Fire
24 Safe filed bankruptcy on November 18, 2012.

25 **2. The Trustee's Position**

26 The Trustee took the position that Fire Safe utilized third party
27 vendors to provide goods and services for the benefit of BLM in excess
28

1 of the amount of consideration BLM furnished to Fire Safe with the grant
2 monies.

3 The Trustee also argued that Fire Safe utilized third party vendors
4 to provide goods and services for the benefit of USFS in excess of the
5 amount of consideration the USFS furnished to Fire Safe with the grant
6 monies.

7 The Trustee and counsel negotiated with the Department of Justice
8 regarding these issues. DOJ took the position that any suit brought
9 against the BLM or USFS to recover the benefit of services should be
10 adjudicated in the Court of Federal Claims in Washington, DC. See
11 McGuire v. U.S., 550 F.3d 903 (9th Cir. 2008) holding that a claim for just
12 compensation under the Takings Clause must be brought to the Court of
13 Federal Claims in the first instance, unless Congress has withdrawn the
14 Tucker Act grant of jurisdiction of the Court of Federal Claims. In other
15 words, If there is a taking, then the claim is "founded upon the
16 Constitution" and within the jurisdiction of the Court of Claims to hear
17 and determine.

18 There was no money in the estate to file in Washington, so
19 negotiations continued which resulted in the settlement offer that is the
20 subject of this motion.

21 **3. The Settlement**

22 The United States agrees to pay \$2,025,906 to the Trustee. Of this
23 sum \$1,412,902.04 is not property of the estate and must be used by the
24 Trustee to pay specified sub-recipients that performed work relating to
25 unpaid claims allowable under Fire Safe's grants. The remaining
26 \$613,003.06 are reimbursements payable to the estate and may be used
27 by the Trustee to pay the allowed claims in this bankruptcy in order of
28

1 priority. Paragraph 22 of the agreement provides for payment of the
2 Trustee's commission based upon all amounts that he distributes to
3 creditors and designated sub-recipients as well as allowed attorney fees
4 for undersigned counsel, not to exceed \$40,000.00. These fees shall be
5 paid out of the \$613,003.96 paid to the Estate. A copy of the Settlement
6 Agreement between the Trustee and the United States is attached hereto
7 as Exhibit "1". Exhibit "A" of the Settlement Agreement specifies the sub-
8 recipients and vendors who will be paid from the \$1,412,902.04 Grant
9 Sub-Recipient Fund and the amounts of allowed claims associated with
10 them.

11 The Creditors who are listed on Exhibit "A" of the Settlement
12 Agreement and who have filed claims shall be paid out of the
13 \$1,412,902.04 portion in the amount of 100% of the lower of the amount
14 listed in Exhibit "A" or the Sub-Recipient's proof of claim amount.

15 The Trustee shall also file a new notice to file claims and establish
16 a bar date. This notice shall be mailed to the Sub-Recipients identified in
17 Exhibit "A".

18 **4. The Settlement Does not Unfairly Discriminate**
19 **Between Similarly Situated Creditors of the Same**
20 **Priority**

21 A Trustee may not discriminate against similarly situated creditors
22 of the same priority. Each must receive the same pro-rata distribution
23 from the estate. The Trustee urges this Court to adopt the Settlement
24 Agreement for two reasons.

25 First, there is no money for anyone if it is not approved. If the
26 agreement is approved, the non-sub-recipient creditors will share pro-
27 rata in the \$613,003.96 Estate Fund, which is being paid into the estate
28 under the settlement.

1 Second, the Sub-Recipient Fund to be distributed by the trustee is
2 not property of the estate. Rather, the trustee will perform the duties of
3 the debtor grant recipient as required under 28 U.S.C. § 959(b) to
4 distribute -grant monies to the proper sub-recipients. *See National Labor*
5 *Relations Board v. Bildisco and Bildisco*, 465 U.S. 513, 534 (1984) (debtor
6 in possession "not relieved of all obligations under [federal law] simply
7 by filing a petition for bankruptcy").

8 When a debtor is required to distribute grant monies to third
9 parties, the terms of the grant dictate whether or not the debtor holds a
10 legal interest in the funds. This was illustrated in *In Re Joilet-Will*
11 *County Community Action Agency* 847 F.2d 430 (7th Cir. 1988).

12 That debtor was a private nonprofit community service
13 organization financed exclusively by federal and state grants. The debtor
14 used this money for a foster grandparents program and other aid to the
15 poor. The debtor was mismanaged, and ultimately went broke and filed
16 a petition under Chapter Seven. At that time, the debtor had \$97,000 in
17 assets, which exceeded the claims of its trade creditors. The federal and
18 state agencies claimed that all of the debtor's assets belonged to them
19 because they were purchased with grant money.

20 The bankruptcy court and the district court disagreed, holding that
21 the debtor's assets should be distributed to the trade creditors. The 7th
22 Circuit disagreed and reversed.

23 The Court of Appeals held that the question of whether or not the
24 assets were property of the estates depended on the terms of the grant.
25 The Court set forth two possibilities: The grants could designate the
26 debtor as a trustee or other intermediary who was to operate as a
27 conduit to pass the funds on to the intended recipient. In the alternative,
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1 the grants could be more like payment under a contract for promised
2 performance not actually performed.

3 The Court found the language of the grants made the debtor a
4 conduit for payment of grant funds to intended recipients. The grants
5 contained a budget. They were specific about what could be bought and
6 how much could be spent. The debtor could not switch unused funds
7 between items. The Court found these restrictions to make the debtor's
8 ownership of the assets nominal, like a trustee's. For that reason, it held
9 that the assets were not property of the bankruptcy estate.

10 In the case at bar, the grants are federal in nature. Federal
11 regulations require recipients to properly account for the receipt,
12 obligation and expenditure of Federal grant funds. These regulations also
13 require that key accounting functions be performed to ensure grant
14 funds are segregated among different people to reduce the risk of error
15 and fraud. Finally, the regulations require that recipients funded on a
16 reimbursement basis pay their grant-related expenditures before
17 requesting reimbursements from the Federal awarding agency and that
18 non-Federal entities expending more than \$500,000 in Federal funds be
19 audited annually. See the Office of Management and Budget (herein
20 OMB) Circular A-133, *Audits of States, Local Governments, and Non-*
21 *Profit Organizations*, June 26, 2007.

22 See also *In Re Lan Tamers* 329 F.3d 204 (1st Cir. 2003), finding that
23 the debtor served only as a delivery vehicle for federally regulated
24 reimbursements derived from the federal telecommunications Universal
25 Service Fund. The debtor was not an owner of those funds, nor did it
26 have the right to receive them.

1 These USFS and BLM grant restrictions make Fire Safe nothing
2 more than a conduit for payment to the sub-recipients out of the Grant
3 Sub-Recipient Fund. Accordingly, the Grant Sub-Recipient Fund is not
4 property of the estate and is not subject to Bankruptcy Code priorities.

5 The restrictions contained in a grant are not the only basis to
6 exclude grant funds as estate property. The extent of governmental
7 regulation can also remove them as estate property.

8 *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F3d 233,
9 243-46 (3d Cir. 2001) held that a federal agency's supervisory interest
10 over the administration of a grant program can result in the exclusion of
11 a grantee's interest in the grant relationship from §541's property
12 definition if the interest is sufficiently weighty.

13 In that case, the Court found that HUD had a strong supervisory
14 interest in safeguarding the effective administration of program funds.
15 It also examined the debtor's interest as a private non-profit community
16 service organization. These interests operated to exclude the program
17 funds from estate property.

18 In the case at bar, the grants are heavily regulated.

19 Federal grant recipients are required to hire independent auditors
20 to review and test their organization's internal controls and financial
21 processes to ensure the recipients are complying with all Federal
22 requirements and properly accounting for Federal grant funds.

23 Federal grant recipients are required to maintain records which
24 identify the source and use of funds provided for each grant-funded
25 activity. These records must contain information documenting each
26 grant's authorizations, obligations, unobligated balances, assets,
27 liabilities, expenditures, and income.

1 The Office of Management and Budget issued Memorandum 09-15
2 in April 2009 specifically directing grant recipients to separately
3 identify the source and use of Recovery Act funds, and prohibiting grant
4 recipients from commingling Recovery Act funds with other Federal
5 funding.

6 The Office of Management and Budget also requires that non-
7 Federal entities receiving Federal awards establish and maintain internal
8 controls designed to reasonably ensure compliance with Federal laws,
9 regulations, and program compliance requirements. Please see 2 CFR
10 Part 215.

11 To summarize, the grant funds being paid into the Grant Sub-
12 Recipient Fund are not property of the estate. The trustee must
13 distribute the funds to the designated sub-recipients according to the
14 terms of the grant because failure to do so could create post-petition
15 liability for the estate if the trustee were to violate the terms of the
16 grant and fail to comply with applicable non-bankruptcy law as required
17 under 28 U.S.C. §959(b). *Texas Comptroller of Public Accounts v.*
18 *Megafoods Stores, Inc. (In re Megafoods Stores, Inc.)*, 163 F.3d 1063, (9th
19 Cir. 1998) (citing *Reading Co. v. Brown*, 391 U.S. 471 (1968) and *In re*
20 *DAK Indus., Inc.*, 66 F.3d 1091, 1094 (9th Cir. 1995), to hold that debtor
21 in possession's postpetition mismanagement of trust fund taxes - not
22 property of debtor's estate - resulted in administrative expense liability
23 because utilization of funds as part of bankruptcy estate directly and
24 substantially benefitted estates).

25 In contrast, the \$613,003.96 Estate Fund distributed to the trustee
26 under the Settlement Agreement is comprised of reimbursements owed
27 to the debtor or its estate for past allowable expenses incurred by the
28

1 debtor. The Estate Fund is the portion of the Settlement Payment not
2 associated with specific sub-recipients. Accordingly, the trustee may
3 administer such funds as he would other property of the estate
4 according to the Bankruptcy Code. The trustee acknowledges, however,
5 that monies paid into the Estate Fund, are federal financial assistance
6 funding, and are paid subject to the terms of the Agreements.

7 **5. The A&C Properties Factors**

8 Federal Rule of Bankruptcy Procedure 9019 governs compromises
9 of settlement in bankruptcy. It provides, in pertinent part:

10 (a) Compromise. On motion by the trustee and after a
11 hearing on notice to creditors, the debtor and indentured
12 trustee as provided in Rule 2002(a) and to such other
13 entities as the court may designate, the court may approve a
compromise or settlement.

14 Fed.R.Bankr.P. 9019(a).

15 Generally, compromises are favored in bankruptcy. See, 9 *Collier*
16 *on Bankruptcy*, ¶ 9019.03[1] (15th ed. 1990). The law favors
17 compromise and not litigation for its own sake, *In re Blair*, 538 F.2d 849,
18 851 (9th Cir. 1976), and as long as the bankruptcy court amply considers
19 the various factors that determined the reasonableness of the
20 compromise, the court's decision must be affirmed. *Matter of Walsh*
21 *Constr., Inc.*, 669 F.2d 1325, 1328 (9th Cir.1982).

22 Thus, the court must consider whether the settlement is
23 reasonable given the particular circumstances of the case. *In re A & C*
24 *Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). In the Ninth Circuit,
25 the fair and equitable settlement standard requires consideration of:

- 26 1. The probability of success in the litigation;
27
28

- 1 2. The difficulties, if any, to be encountered in the matter
2 of collection;
- 3 3. The complexity of the litigation involved and the
4 expense, inconvenience and delay necessarily attending
5 it;
- 6 4. The interest of the creditors and a proper deference to
7 their reasonable views in the premises, which is
8 considered paramount.

9 Id., quoted with approval in *In re Woodson*, 839 F.2d 610, 620
10 (9th Cir.1988). The Court need not conduct a mini trial, but should
11 canvass the issues in order to determine that the settlement meets the
12 standards set forth in *A & C Properties. In re Schmitt*, 215 B.R. 417, 423
13 (9th Cir BAP 1997). When assessing a compromise, courts need not rule
14 upon disputed facts and questions of law, but rather only canvass the
15 issues. Otherwise, there would be no point in reaching a settlement, and
16 the parties may as well try the case. *In re HyLoft*, 451 B.R. 104, 109
17 (Bkrtcy. D. Nev. 2011).

18 A. THE PROBABILITY OF SUCCESS IN THE LITIGATION

19 For the reasons stated in the preceding section, the Trustee
20 believes that he would not be likely to succeed in recovering the frozen
21 grant monies on behalf of the estate.

22 B. THE DIFFICULTIES OF COLLECTION

23 The Trustee does not believe there would be any problem in
24 collecting the settlement amount against the United States.

25 C. THE COMPLEXITY OF THE LITIGATION INVOLVED AND
26 THE EXPENSE, INCONVENIENCE AND DELAY NECESSARILY
27 ATTENDING IT

28 The legal issues are factually complex as the issue hinges on the
right of the estate to recover the frozen grant funds. This, in turn, is
determined by the restrictions in the grants and the pervasiveness of

1 regulation by the federal government. The expense is also a factor, any
2 case would be tried in the Court of Federal Claims, the expert tribunal
3 for determining such claims against the federal government, and there is
4 no money to pay an attorney licensed there to file such an action.

5
6 D. THE INTEREST OF THE CREDITORS AND A PROPER
7 DEFERENCE TO THEIR REASONABLE VIEWS IN THE
8 PREMISES

9 The Trustee understands that the creditors excluded from Exhibit
10 "A" may object to the settlement. However, something is better than
11 nothing. Simply put the estate does not have any money to pursue the
12 United States government. The Settlement Agreement provides not only
13 for payment out of the Grant Sub-Recipient Fund of over \$1.4 million in
14 claims that would otherwise be asserted against the estate, but also
15 provides for payment of \$613,003.96 into the Estate Fund, enabling the
16 trustee to make substantial distributions to the remainder of creditors
17 with unpaid, allowed claims against the estate. For those reasons, the
18 motion should be approved.

19 Dated: This 11 day of April, 2016

20
21 By: [Signature]

22 Michael Lehnors, Esq.
23 429 Marsh Ave.
24 Reno, Nevada 89509
25 Nevada Bar Number 003331
26
27
28

Exhibit 1

Exhibit 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into by each party through the undersigned, as among:

- A. UNITED STATES OF AMERICA, through the U.S. Department of Justice and on behalf of the U.S. Department of the Interior Bureau of Land Management (BLM) and U.S. Department of Agriculture Forest Service (Forest Service),
- B. ALLEN DUTRA, the Trustee for the Estate of the Nevada Fire Safe Council (Trustee),
and
- C. The CALIFORNIA FIRE SAFE COUNCIL.

The United States, the Trustee, and the California Fire Safe Council are "Parties" to this Settlement Agreement and Release. This Settlement Agreement and Release is subject to approval of the Bankruptcy Court under Rule 9019 of the Federal Rules of Bankruptcy Procedure after execution by the Parties.

I.
INTRODUCTION AND SUMMARY OF PROCEEDINGS

1. The Nevada Fire Safe Council (Council) entered into nine (9) financial assistance agreements with BLM and two (2) with the Forest Service to conduct fuels reduction work in the Lake Tahoe region. The following financial assistance agreements are referred to herein as "the Agreements."

BLM Agreements

The BLM Agreements were entered into under the Southern Nevada Public Land Management Act of 1998, P.L. 105-263, as amended (SNPLMA).

- a. **L08AC14109** Carson Range Round 8 SNPLMA;
- b. **L08AC13486** Spring Mountain Round 8 SNPLMA;

- c. **L08AC14628** Tahoe Round 8 SNPLMA;
- d. **L09AC15358** Tahoe Round 9 SNPLMA;
- e. **L11AC20345** Carson Range Hazardous Fuels Reduction Round 9 SNPLMA;
- f. **L11AC20347** Tahoe Round 10 SNPLMA;
- g. **L11AC20348** Spring Mountain Hazardous Fuels Reduction Round 10 SNPLMA;
- h. **L11AC20349** Carson Round 11 SNPLMA; and
- i. **L11AC20350** Tahoe Round 11 SNPLMA.

Forest Service Agreements

- j. Grant No. **09-DG-11051900-009**, provided under the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 and the Consolidated Security, Disaster Assistance, and Continuing Appropriation Act, 2009, P.L. 110-329 (February 2009); and
- k. Federal Financial Assistance Award of Recovery Act Domestic Grant **09-DG-11059702-009** Between The Nevada Fire Safe Council and the United States Department of Agriculture, Forest Service Lake Tahoe Basin Management Unit (July 2009).

2. The Council contracted with sub-recipients to perform fuels reduction work in the Lake Tahoe region. The sub-recipients are not parties to any agreements with the United States. Under the Agreements, the BLM and Forest Service paid the Council for allowable costs based on invoices and documentation submitted. The Agreements are governed by Federal law, including the terms of Office of Management and Budget Circulars A-110 (2 C.F.R. § 215) and A-122 (2 C.F.R. § 230).

3. The BLM and Forest Service suspended funding on the Agreements after determining that the Council improperly commingled funds among the Agreements and failed to satisfy other accounting requirements.

4. The Council filed for chapter 7 bankruptcy in November 2012 in the Bankruptcy Court for the District of Nevada (Bankruptcy Court). The Bankruptcy Court assigned Allen Dutra as trustee for the estate of the Nevada Fire Safe Council. *In re Nevada Fire Safe Council*, No. 12-52625 (Bankr. D. Nev.).

5. Based on documentation possessed at the time, the Forest Service and BLM filed proofs of claim in the bankruptcy proceeding for \$5,735,265.23 and \$3,958,795.18, respectively. The claims were filed subject to amendment and reserved the United States' setoff rights.

6. The Forest Service and BLM subsequently requested and obtained additional documentation about work performed by the Council through its sub-recipients. This process was complicated because the Council no longer had staff and had employed improper accounting practices.

7. Separately, the California Fire Safe Council received two relevant awards from the Forest Service: (1) 2010-DG-11052012-094; and (2) 09-DG-11052012-158. The California Fire Safe Council in turn issued 12 sub-awards to the Nevada Fire Safe Council related to those two awards. The Forest Service is not a party to the sub-awards. The California Fire Safe Council filed a proof of claim in *In re Nevada Fire Safe Council* for \$614,400 based on sub-awards 10-USFS-ES-305 (\$25,000); 10-USFS-ES 386 (\$84,000); 10-USFS-ES 388 (\$84,000); 10-USFS-ES 406 (\$22,400); 10-USFS-ES 407 (\$61,000); 10-USFS-ES 414 (\$84,000); 11-USFS-ES 94 (\$50,000); 11-USFS-ES 95 (\$50,000); 11-USFS-ES 96 (\$40,000); 11-USFS-ES 138 (\$11,400); 11-USFS-ES 142 (\$57,000); 11-USFS-ES 147 (\$45,600). The amounts listed next to each sub-grant represent the amount paid by the California Fire Safe Council to the Nevada Fire Safe Council.

II.
GENERAL MATTERS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set below, IT IS AGREED AS FOLLOWS:

Effective Date

8. The "Effective Date" is the date on which the Bankruptcy Court's order approving the Settlement Agreement and Release becomes final. For purposes of this Settlement Agreement and Release, "becomes final" means the later of: (1) the time for an appeal or other motion challenging the approval expires, and no such appeal or motion has been filed; or (2) if a motion or appeal is filed, after all avenues of review are exhausted, or the time for seeking such review expires, and the approval has not been modified, amended or reversed.

Settlement Payment

9. The United States agrees that a payment of \$2,025,906 (Settlement Payment) shall be made to the Trustee as follows: The Forest Service shall pay the Trustee \$701,330, and the BLM shall pay the Trustee \$1,324,576, provided that the payments shall be made within 10 calendar days after the Trustee provides written notice to the United States of the proposed distributions to creditors. The Trustee shall provide the written notice to the United States via its undersigned counsel at the Department of Justice via electronic mail or overnight delivery. The Trustee shall provide electronic funds transfer instructions in advance of the Settlement Payment.

10. The Trustee acknowledges that the Settlement Payment is federal financial assistance funding that is governed by the terms of the Council's Agreements with the BLM and Forest Service.

United States Summary

11. Attached as Exhibit A to this Settlement Agreement is the “United States Summary,” which lists sub-recipients (“Sub-Recipients”) identified in the United States’ review of the Council’s accounts as having performed work resulting in net allowed claims for the Council under the Agreements.

12. The United States Summary reflects only net amount of the allowed claims due to the Council in connection with work performed by the Sub-Recipients but does not necessarily reflect payments amounts owed by the Council to the Sub-Recipients. The Sub-Recipients have no relationship with the United States, and the United States has no liability to any third party Sub-Recipient.

The Grant Sub-Recipient and Estate Funds

13. The Settlement Payment comprises two funds: a “Grant Sub-Recipient Fund” and an “Estate Fund.”

14. *Grant Sub-Recipient Fund:* The amount of \$1,412,902.04 identified as the “total” in Exhibit A (United States Summary) is the Grant Sub-Recipient Fund. The Trustee shall not use the Grant Sub-Recipient Fund or any portion of it to pay creditors other than Sub-Recipients.

15. *Estate Fund:* The \$613,003.96 remaining of the Settlement Payment is the Estate Fund, which constitutes a separate fund which is being paid into the bankruptcy estate and may be used by the Trustee. The Trustee may distribute the Estate Fund to creditors of the Council’s estate according to the Bankruptcy Code (including but not limited to the Sub-Recipients) and for attorney and administration fees, as set forth below in Paragraph 23.

Trustee’s Administration

16. The Trustee shall move the Bankruptcy Court for an extended Bar Date to permit all Sub-Recipients on the United States Summary to file proofs of claim within 30 days of the Court's approval of the extended Bar Date. Within two (2) business days after the Court's entry of an order approving an extended Bar Date, the Trustee shall provide, via First Class U.S. Mail, each Sub-Recipient identified on the United States Summary with a bar date notice identifying the amount listed on the United States Summary. If the Court declines to extend the Bar Date despite the Trustee's request to do so, this Settlement Agreement and Release remains effective as to all other Paragraphs.

17. For creditors who filed a proof claim in the bankruptcy proceeding and who are listed on the United States Summary as a Sub-Recipient, the Trustee shall use the Grant Sub-Recipient Fund to pay 100 percent of the lower of: (1) the amount listed on the United States Summary in connection with that Sub-Recipient, or (2) the amount asserted in the Sub-Recipient's proof of claim.

18. After all distributions under Paragraph 17 are made, the Trustee may distribute the remainder of the Grant Sub-Recipient Fund to the Sub-Recipients who have filed proofs of claim that exceed amounts associated with such Sub-Recipient in the United States Summary, so that each sub-recipient is paid a *pro rata* share based on the amount its claim asserted in the proof of claim exceeds the amount listed in the United States Summary.

19. With any payment to a Sub-Recipient from either the Grant Sub-Recipient Fund or the Estate Fund, the Trustee shall include written notice to the creditor that the payment is subject to restrictions on funds from federal financial assistance agreements, which in the case of any local fire district, includes without limitation Office of Management and Budget Circulars A-102 and A-87.

20. In the unlikely event that any of the Grant Sub-Recipient Fund remains after the approved distributions, the funds shall be returned to the United States within 90 days after the deadline for creditors to cash their checks from the Trustee. The Department of Justice will provide wire transfer instructions separately.

Trustee Requests Payment for Work Performed

21. In the course of its review, the Forest Service disallowed \$815,861.33 in payments that it previously made to the Council. To address that debt, the Trustee hereby is deemed to submit to the Forest Service claims in the amount of \$815,861.33 for work by sub-recipients that the Council did not previously submit to the Forest Service or BLM for payment. For purposes of settlement, that work is allowed by the Forest Service. A net zero payment is due by the Forest Service for the work requested in this Paragraph.

BLM, Forest Service, and California Fire Safe Council Proofs of Claim

22. The Trustee's satisfactory completion of the obligations under this Settlement Agreement and Release will constitute a full accord and satisfaction of the claims asserted by the United States and the California Fire Safe Council in its proofs of claims in the bankruptcy case.

III.
ATTORNEY FEES AND REASONABLE COSTS

23. The Trustee may seek court approval of the following payments from the Estate Fund: (a) trustee fees not exceeding the limits set forth in 11 U.S.C. § 326; and (b) attorney fees allowable under 11 U.S.C. § 328 and not exceeding \$40,000.

IV.
RELEASES

Agreements between Nevada Fire Safe Council and Forest Service or BLM.

24. Upon the Effective Date, the United States releases the Trustee from claims for payment related to the BLM and Forest Service Agreements enumerated in Paragraph 1. The

United States releases any claims for interest, attorney fees, and costs. Notwithstanding anything to the contrary in this Settlement Agreement and Release, the United States does not release: (i) any civil, criminal or administrative liability arising under Title 26 of the United States Code (the Internal Revenue Code); (ii) any criminal liability; (iii) any liability under subchapter III of chapter 37 of Title 31 of the United States Code; (iv) any claims for fraud; or (v) any claim of any agency of the United States other than BLM and the Forest Service that are subject of this Settlement Agreement and Release.

25. Upon the Effective Date, the Trustee releases the United States from all claims relating to the BLM and Forest Service Agreements listed in Paragraph 1. This includes, but is not limited to, claims for fraudulent conveyance, breach of contract, quantum meruit, or under 11 U.S.C. § 550. The Trustee releases any claims against the United States for payment based on claims that sub-recipients performed work benefitting the United States that has not been compensated. The Trustee releases any claims for interest, attorney fees, and costs.

Agreements Between Nevada Fire Safe Council and California Fire Safe Council

26. Upon the Effective Date, the United States releases the California Fire Safe Council and the Trustee from claims that the Forest Service is due payment or reimbursement relating to the Nevada Fire Safe Council's sub-grants from the California Fire Safe Council listed in Paragraph 7. This release includes any claims for interest, attorney fees, and costs.

Notwithstanding anything to the contrary in this Settlement Agreement and Release, the United States does not release: (i) any civil, criminal or administrative liability arising under Title 26 of the United States Code (the Internal Revenue Code); (ii) any criminal liability; (iii) any liability under subchapter III of chapter 37 of Title 31 of the United States Code; (iv) any claims for

fraud; or (v) any claim of any agency of the United States other than BLM and the Forest Service.

27. Upon the Effective Date, the California Fire Safe Council releases the Trustee and the United States from all claims, including for payment or reimbursement, relating to the sub-awards between the California Fire Safe Council and the Nevada Fire Safe Council listed in Paragraph 7. This release includes any claims for payment against the United States based on the relevant Forest Service awards listed in Paragraph 7 that are associated with the sub-awards. This release also includes any claims for interest, attorney fees, and costs.

28. Upon the Effective Date, the Trustee releases the United States and the California Fire Safe Council from all claims, including for payment or reimbursement, relating to the sub-grants between the California Fire Safe Council and the Nevada Fire Safe Council listed in Paragraph 7. This release includes any claims for payment against the United States based on the relevant Forest Service awards listed in Paragraph 7 that are associated with the sub-awards. This release also includes any claims for interest, attorney fees, and costs.

V.
MISCELLANEOUS

29. This Settlement Agreement and Release does not create any rights in third-parties or any third-party beneficiaries, including but not limited to the Sub-Recipients. The Sub-Recipients may or may not be due any payment from the Trustee and are not intended beneficiaries of this Settlement Agreement and Release.

30. If the Bankruptcy Court does not approve this Settlement Agreement and Release in the form agreed by the parties hereto, or if the Effective Date does not occur, or this settlement does not become final for any other reason, this Settlement Agreement shall be null and void.

31. This Settlement Agreement and Release may be executed by the United States, the Trustee, and the California Fire Safe Council in counterparts and as executed shall constitute one Agreement. The Agreement is deemed executed when all Parties have signed.

ON BEHALF OF
Allen Dutra, Trustee for the Estate
Of the Nevada Fire Safe Council

By: _____

ON BEHALF OF
The United States of America

By: _____

RUTH A. HARVEY
Director
TRACY J. WHITAKER
MARGARET NEWELL
Assistant Directors
ALICIA M. HUNT
(D.C. Bar No. 484620)
Trial Attorney
U.S. Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, DC 20044
alicia.m.hunt@usdoj.gov

Dated: _____

Dated: _____

ON BEHALF OF
California Fire Safe Council

By: _____

Dated: _____

EXHIBIT A – UNITED STATES SUMMARY

Sub-Recipients	Net Amount of Allowed Claims
Adkins	7,760.00
Affordable Tree Service	7,550.00
American Eagle Fire Protection	1,200.00
Arborscape, Inc. Tree Care	87,280.00
Carson City Fire Department	8,668.51
CTL Forest Management Inc	17,009.56
Comstock Seed	638.50
Conservation Camp Billing Invoice NVDNR	41,443.90
C.A. Department of Forestry and Fire Protection	3,101.28
D-Space: Gansinger, Jim	1,000
D-Space: Gellings, Pat & Clark	572.50
D-Space: Huber, Mary	377.25
D-Space: Huffman, Nancy & Ross	850.00
D-Space: Hurtz, Judie	400.00
D-Space: Jones, Danny	850.00
D-Space: Maddox, Robert	785.00
D-Space: McCue, Linda	765.59
D-Space: Meyer, Bruce	987.50
D-Space: O'Neill, Maureen	1,000.00
D-Space: Reese, David	1,000.00
D-Space: Simons, Caren	750.00
D-Space: Swift, Susan	750.00
D-Space: Taylor, Carol	450.00
D-Space: Wilbur, Jim	855.00
Douglas Weed Control	810.00
Eagle Ridge Fire Management	2,738.00
Elwood Miller	32,389.77
Everell G. Hayes	29,823.29
Evergreen Recycling	2,100.00
Meeks Bay Fire Protection District	194,805.40
Muckel Anderson	37,851.09
North Lake Tahoe Fire Protection District	190,823.02

North Tahoe Fire Protection District	34,463.45
Pied Piper Pest Control	6,580.00
Sierra Fire Protection District	145,307.51
Sierra Peaks Enterprises	37,452.50
Smith & Jones	271.00
Steven J. Harcourt	448.70
Tahoe Douglas Fire Protection District	441,073.72
Winningham Forest Management Inc.	69,920.00

TOTAL: \$1,412,902.04