Agreement No 09FCUT-RA07

AGREEMENT BETWEEN THE

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

and the

UTE INDIAN TRIBE

For

AMERICAN RECOVERY AND REINVSETMENT ACT
Control of Noxious Weeds on the Lower Duchesne River Wetlands Mitigation Project

I. Authority

This Agreement, hereinafter the AGREEMENT, between the Utah Reclamation Mitigation and Conservation Commission, hereinafter the COMMISSION and the Ute Indian Tribe, hereinafter the TRIBE, jointly and collectively known as the PARTIES, is made and entered into pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, the Act of April 11, 1956 (70 Stat. 105, 43 U.S.C. 620, et seq. (1982)); and especially pursuant to the provisions of Titles II through VI of the Reclamation Projects Authorization and Adjustment Act of 1992, (P.L. 102-575), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Reclamation Laws; and the American Recovery and Reinvestment Act of 2009 (ARRA or "the Recovery Act") (P.L. 111-5).

II. Background

The Central Utah Project (CUP) Completion Act, (ACT), is contained within Titles II through VI of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575). Its purpose is to provide for the orderly completion of the CUP, which is the largest participating project of the 1956 Colorado River Storage Project (CRSP). The ACT does this by authorizing an increase in the appropriations ceiling for CUP, for which Titles II, III and IV specifically address fish, wildlife, and related outdoor recreation mitigation and enhancement. Title III of the ACT also establishes the COMMISSION to expend Federal funds appropriated under Titles III and IV and those funds appropriated under Title II that are for fish, wildlife and recreation mitigation purposes in fulfillment of the 1988 Definite Plan Report as amended (DPR) for the Bonneville Unit.

The 1965 Fish and Wildlife Coordination Act Report, the 1964, 1988 and 2004 Supplements to the Definite Plan Report and the 1973 Environmental Impact Statement (EIS) for the Bonneville

Unit, Central Utah Project include commitments for mitigation of wetlands losses and construction of waterfowl habitats along the Duchesne River between Bridgeland and Ouray. These areas are largely Indian owned, either by the UTE TRIBE or individual Tribal members. Wetland enhancement and creation within these management areas was proposed to replace wetland losses associated with construction of the Strawberry Aqueduct and Collection System (SACS) and to partially compensate the UTE TRIBE for the Central Utah Project.

The Department of the Interior, UTE TRIBE and COMMISSION conducted scoping and public involvement for the proposed project in 2001. A Draft EIS was issued for the project in November, 2003 with a Final EIS in April, 2008. The COMMISSION issued a Record of Decision in May, 2008, selecting the Proposed Action as described in the Final EIS for implementation.

A major component of the LDWP is control of noxious weeds, especially Russian olive, and other pests on the LDWP lands. This AGREEMENT will provide funds for the UTE TRIBE to procure equipment and supplies needed for its weed control program for the LDWP.

III. Purpose and Objectives

This AGREEMENT is for the purpose of implementing the Recovery Act and procuring equipment, supplies and other resources necessary for an effective weed and pest control program, especially to remove Russian olive, for the LDWP project.

IV. Term of Agreement

This AGREEMENT shall become effective upon execution by the PARTIES and shall remain in force and effect until June 30, 2010 at which time the Scope of Work described herein shall be completed unless extended by mutual agreement.

V. Scope of Work - Specific Obligations of the Parties

A. UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION WILL:

1. Reimburse the TRIBE for purchase of equipment and supplies necessary for the LDWP approved noxious weed control program, as described in Attachment A, up to a total of $100,000.00.

Funds in the amount of $100,000 are reserved to cover costs incurred under this Agreement. Funds remain available until expended or until the Agreement terminates. No legal liability on the part of the COMMISSION for any payment may arise from performance under this AGREEMENT until funds are made available for performance.

2. Appoint a person to be its Project Officer to represent the COMMISSION at all times in carrying out its obligations under this AGREEMENT and to monitor and assist with implementation of this Scope of Work.

3. Provide program oversight and administration pertinent to the project, including oversight required as per the Recovery Act. Provide technical advice at the request of the other PARTIES. Assure National Environmental Policy Act (NEPA) compliance.

4. Convene at least one checkpoint conference annually during the term of the AGREEMENT for the purpose of exchanging technical information, receiving progress reports from the PARTIES and conducting other business as necessary to ensure timely completion of the purpose and objectives of this AGREEMENT. Participate in other meetings and discussions on a weekly and/or monthly basis or as needed to administer this AGREEMENT.

5. In coordination with the PARTIES, review progress of work done under this AGREEMENT and notify the PARTIES in advance of substantive changes in work to be done or expected accomplishment. All such changes shall be subject to negotiations between the PARTIES and modification pursuant to Article VIII.

B. UTE INDIAN TRIBE WILL:

1. The Tribe will purchase equipment and supplies for the LDWP project noxious weed control program. The Tribe will procure a tracked compact loader (skidsteer) and attachments, trailer and tree saw for same. Specific items authorized for procurement are shown in Attachment A.

2. Appoint a person as Project Officer to represent the TRIBE in carrying out its obligations under this AGREEMENT, and subordinate staff to implement this Scope of Work.

3. Develop an internal fiscal process that provides financial reports to the COMMISSION detailing expenditures. See also Article VI. AMERICAN RECOVERY AND REINVESTMENT ACT and Article VIII. PAYMENT OF FUNDS.

4. Attend the checkpoint conference as scheduled and provide weekly and/or monthly progress reports and other information as requested by the COMMISSION pertaining to activities and problems associated with this AGREEMENT.

5. Submit completed form 424B "Assurances – Non-Construction Programs" attached hereto and incorporated herein, to the COMMISSION's Project Officer.

C. THE PARTIES MUTUALLY AGREE TO THE FOLLOWING:

1. The COMMISSION and TRIBE will work together to:

a. review progress of work done under this AGREEMENT and notify one another in advance of substantive changes in work to be done or expected accomplishment. All such changes shall be subject to negotiation, agreement, and modification of the AGREEMENT by the PARTIES, pursuant to Article VIII.

b. arrange for, or confirm, all necessary compliance with Federal and state laws.

2. The PARTIES acknowledge:

a. the COMMISSION does not acquire title or other ownership interest in the items purchased as a result of participating in this AGREEMENT, unless specifically and mutually agreed by the PARTIES through other agreements not incorporated herein;

b. the Commission does not assume any responsibility for any operation, maintenance, or subsequent replacement costs, actions or liabilities of or for facilities rehabilitated or constructed as a result of participating in this AGREEMENT, unless specifically and mutually agreed by the PARTIES through other agreements not incorporated herein;

c. the COMMISSION reserves the right to review and approve solicitation documents and award packages prior to the award of any subcontract. All solicitations and subcontracts shall be in writing with a copy furnished to the COMMISSION. If any subcontracts are utilized, the terms of the following clause shall apply:

UTILIZATION OF SMALL BUSINESS CONCERNS
AND SMALL DISADVANTAGED BUSINESS CONCERNS

It is the policy of the United States to award a fair share of contracts to small and minority business firms. The TRIBE hereby agrees to take similar appropriate affirmative action to support women's enterprises and to procure goods and services from labor surplus areas to the fullest extent consistent with efficient Agreement performance. The TRIBE further agrees to cooperate on any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the recipient's compliance with this clause.

As used in this AGREEMENT the term "small business concern" shall mean a small business as defined pursuant to the Small Business Act (15 U.S.C. 631 et seq.) and relevant regulations promulgated pursuant thereto. The term "small business concern

owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern:

a. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

b. Whose management and daily business operations are controlled by one or more such individuals.

The TRIBE shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to the Small Business Act (15 U.S.C. 631 et seq.).

The TRIBE, acting in good faith, may rely on written representation by their sub-recipients or contractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

d. for the limited purpose of compelling compliance with the terms of this agreement, the Ute Indian Tribe of the Uintah and Ouray Reservation waives the defense of sovereign immunity as to claims brought by any party to this agreement to enforce the terms of this agreement. Any action to compel compliance with the terms of this agreement shall be brought in the United States District Court of the District of Utah.

VI. American Recovery and Reinvestment Act

Funds for this AGREEMENT are provided in whole by the Federal Government from the American Recovery and Reinvestment Act, Public Law 111-5, (the Recovery Act) and the following provisions apply.

A. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (2 CFR §176.140)

(a) **Definitions**. As used in this award term and condition—
"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been --

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act)(Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows: NONE .

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs

associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) **Data.** To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of Measure	Quantity	Cost (Dollars)*
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]
[* Include all delivery costs to the construction site.]

B. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (29 CFR 5.5)

Note - Applicability to States and their Political Subdivisions: Davis-Bacon Act wage rate requirements **do not** apply to government agencies (such as States or their political subdivisions) where the construction work is performed by the government agency's own employees. Davis-Bacon Act wage rate requirements **do** apply to contracts issued by government agencies for construction work. Monitoring contractor performance and compliance is the primary responsibility of the TRIBE . The TRIBE agrees to comply

with Article VI.B. for all construction activities performed with an estimated value that exceeds $2,000.

(1)(a) Certified Payrolls. The TRIBE will obtain certified payrolls from all contractors and subcontractors performing construction activities in support of this agreement on a weekly basis. Further, the TRIBE shall review a representative sample of the data within these payrolls as well as compare them with the independent inspection interviews conducted on site to ensure that all contractors and subcontractors are in compliance with the Prevailing Wage Rates that are Attachment B of this agreement. The Recipient shall provide the certified payrolls, the independent inspection documentation, and the documentation of reviews to the COMMISSION's Project Officer on a monthly basis.

(b) Signage Requirements. The wage determination (including any additional classifications and wage rates conformed) and a Davis-Bacon poster (WH-3121) must be posted at all times by the TRIBE at the site of the work in a prominent and accessible place where it can be easily seen.

(c) Independent Inspections. As part of the construction inspection responsibilities of the TRIBE , the TRIBE is responsible for ensuring that a sampling of interviews with on-site laborers are conducted on at least a weekly basis. This documentation is to be submitted to the COMMISSION's Project Officer at the same time as the certified payrolls are submitted.

(d) Resolution. Resolution of apparent discrepancies noted between the prevailing wage rates and the certified payrolls is the responsibility of the TRIBE, the COMMISSION's Project Officer, and the contractor. Documentation of any resolutions must be provided to the COMMISSION's Project Officer in a timely fashion.

2. The Recipient shall comply with the following wage rate requirements. In the context of these provisions of this AGREEMENT, the following terms are held to be equivalent: "Contracting Officer" and "Grants Officer"

a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. These regulations apply to any sub-award made pursuant to this Agreement.

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of

1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto as Attachment A and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a

report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The TRIBE shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any

subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the COMMISSION may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the COMMISSION if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner (the TRIBE), as the case may be, for transmission to the COMMISSION. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the COMMISSION if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the COMMISSION, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a ``Statement of Compliance,'' signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

> (1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
> (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
> (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the COMMISSION or the Department of Labor, and shall permit such

representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the COMMISSION may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

C. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUB-RECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)(Recovery Act) as required by Congress and in accordance with 2 CFR 215, subpart 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular -133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the

Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of RECOVERY ACT funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

D. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111-5

In addition to the reporting requirements in Article VIII. PAYMENT OF FUNDS of this AGREEMENT, the following reporting requirements apply.

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

(e) The report is to include, at a minimum:

i. Amount of recovery funds received
ii. Amount of funds obligated / expended; also unobligated balances
iii. Detailed list of project activities funded including name, description, evaluation of completion status, estimated numbers of jobs created and retained
iv. For infrastructure investments – purpose, total cost, and rationale
v. All sub-contracts (1st level, not sub-sub-contracts) are required to submit the same information required in (i) through (iv) of this part, with all data elements required by the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282).

(f) Recipient's Failure to Comply with Reporting Requirements - Noncompliance with reporting requirements requires immediate suspension of payments.

E. FRAUD

The TRIBE and each sub-recipient awarded funds made available under the Recovery Act shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

F. WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The following applies to the TRIBE and each contractor and sub-contractor awarded funds made available under the Recovery Act:
(a) The TRIBE shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).
(b) The TRIBE shall include the substance of this clause including this paragraph (b) in all contracts or subcontracts.

VII. Project Officers

For the COMMISSION:

Mr. Mark Holden, Projects Manager
Utah Reclamation Mitigation and Conservation Commission
230 South 500 East, #230
Salt Lake City, Utah 84102
801/524-3146 FAX 801/524-3148

For the TRIBE:

Mr. Harley Cambridge, Project Manager
Ute Indian Tribe Wetlands Office
PO Box 190
Ft. Duchesne, UT
435/823-1975 FAX 435/722-2677

VIII. Payment of Funds

Within 10 days of the end of each month the TRIBE shall provide to the Commission, documentation of actual expenses incurred under this Agreement during the respective period. The following forms ***must*** be submitted with supporting documents for reimbursement:

1.	SF-270	Standard Form 270 Request for Reimbursement
2.	MCC -100	Mitigation Commission Reimbursement Form
3.	Narrative Report	Description of activities and accomplishments under each approved task. Identify activities planned for next month.
4.	MCC -300	Capital Asset Inventory (*Only prepare if property or capital equipment is purchased)*
5.	SF-269A	Standard Form Financial Status Report (*Only With Final Request for Reimbursement)*

The TRIBE shall retain all original receipts, invoices, vouchers, etc. substantiating all expenses and reimbursement requests and make same available to the Commission upon request. The above listed forms with documentation shall be mailed to:

Utah Reclamation Mitigation & Conservation Commission
Attn: Financial Officer, Channa Vyfvinkel
230 South 500 East, Suite 230
Salt Lake City, Utah 84102-2045
801/524-3146 FAX 801/524-3148

The COMMISSION'S Project Officer will provide a timely verification and approval of the reimbursement request. Upon approval, the COMMISSION will authorize the TRIBE to utilize the Department of Treasury's Automated Standard Application for Payments [ASAP] system to request reimbursement. ASAP is a recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. Once a request is made through ASAP, funds are provided to the recipient either through ADH or Fedwire.

A copy of said authorization will simultaneously be mailed to the recipient agency's Contracting Officer and Accounting Officer.

The TRIBE is required to submit, independently, a completed Standard Form 269A, Financial Status Report, along with the ***final*** request for reimbursement. Final payment will be withheld pending receipt of the completed FS-269A.

IX. Modifications

Modifications to this AGREEMENT may be proposed by any PARTY and shall become effective only upon being reduced to a written instrument executed by signature of all PARTIES.

The PARTIES, respectively, will assume all risks, liabilities, and consequences of performing additional work outside of their specified scope of work, unless prior written approval is secured from the COMMISSION's Project Officer.

X. Termination

This AGREEMENT may be terminated prior to the completion date specified in Article IV by any PARTY upon thirty (30) days written notice to the others. Upon receipt of such written notice, the PARTY(s) will provide an accounting of remaining funds and outstanding contractual obligations of funds and return such funds to the COMMISSION. Upon termination pursuant to this Article, all materials produced under this AGREEMENT, whether complete or incomplete, shall be immediately provided by the PARTY(s) to the COMMISSION.

The COMMISSION shall pay for all work which, in the exercise of due diligence, the PARTY(s) is unable to cancel prior to the effective date of termination. Payments made under this AGREEMENT, including payments under this article, shall not exceed the ceiling amount elsewhere specified herein.

XI. Resolving Disagreements

The PARTIES agree to work harmoniously to achieve the objectives of the project. When disagreements arise between/among the PARTIES, they must be resolved according to the procedures discussed below:

1. The PARTIES shall attempt first to resolve disagreements through informal discussion among the subordinate staff responsible for project implementation.

2. If the disagreement cannot be resolved through informal discussion, each shall document the nature of the disagreement and bring it to the attention of their respective Project Officers.

3. After reviewing the facts of the disagreement, the Project Officers will arrange a formal meeting. The PARTIES will collectively decide on any varied approaches which might be used to resolve the disagreement. The PARTIES shall be responsible for their individual expenses related to any approach utilized to resolve the disagreement.

4. Ultimately, if all other attempts at resolving the disagreement fail, a decision will be made by the COMMISSION, whose decision shall be final and conclusive.

Any post award issue will be open for resolution in accordance with the above procedures, with the exception of continuation of the AGREEMENT (since either party may terminate the AGREEMENT with the specified notice), or other matters specifically addressed by the AGREEMENT itself.

XII. Property Ownership, Disposition and Management

Title to all equipment and supplies acquired with AGREEMENT funds shall be vested in the recipient, so long as the equipment and supplies shall be used for the authorized purposes of the project. Should the recipient wish to take unrestricted title, dispose of or change the use of equipment and supplies so acquired, such transactions shall be in accordance with OMB Circular A-102. Unless otherwise specified in this AGREEMENT all procurement of equipment in excess of $5,000 per item shall be approved in writing by the COMMISSION prior to the transaction being initiated. In addition, a physical inventory of all property acquired with AGREEMENT funds greater than $5,000 shall be taken and the results provided to the COMMISSION by January 31 of every year.

XIII. Contingent Upon Appropriation

The liability of the COMMISSION under this AGREEMENT is contingent upon appropriation and reservation of funds being made therefore.

XIV. Office of Management and (OMB) Budget Circulars

The following OMB Circulars are incorporated herein by reference and apply to Indian Tribes.

1. A-87, "Cost Principles for State, Local and Indian Tribal Governments."
2. A-102, "Grants and Cooperative Agreements With State and Local Governments."
3. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

XV. Data Files.

All data files developed in fulfillment of the terms of this agreement shall become the property of the COMMISSION (this includes but is not limited to GIS coverages, databases, reports, inventories, drawings, maps, etc.). Prior to final payment being made, the COMMISSION's Project Officer shall be contacted to determine the disposition of data.

IN WITNESS WHEREOF, each party hereto has caused this AGREEMENT to be executed by an authorized official on the day and year set forth opposite their signature below.

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

By: [redacted] Date: DEC 16 2009
Title: Jody Williams, Chair

Approved: [redacted]
Intermountain Region Office of the Solicitor

UTE INDIAN TRIBE

By: [redacted] Date: Jan 5, 2010
Title: Curtis Cesspooch, Chairman, Ute Indian Tribe Business Committee

Attachment A

ITEMS APPROVED FOR PURCHASE		ESTIMATED COST
1.	Tracked skidsteer suitable for use with 15" (minimum size) tree saw	$60,000.00
2.	Backhoe attachment for skidsteer	$10,000.00
3.	Minimum 15" tree saw (Marshall Tree Saw or equivalent)	$16,000.00
4.	Minimum 18' trailer for above equipment	$ 9,000.00
5.	Related and required miscellaneous items up to budget	$ 5,000.00
BUDGET NOT TO EXCEED		$100,000.00

10. Will comply, if applicable, with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (E.O.)11514; (b) notification of violating facilities pursuant to E.O. 11738; (c) protection of wetlands pursuant to E.O. 11990; (d) evaluation of flood hazards in floodplains in accordance with E.O. 11988; (e) assurance of Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C.§§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Arc) Implementation Plans under Section 176© of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) Related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S. C. 470), E.O. 11590 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) Pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirement of all other Federal laws, Executive Orders, regulation and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
[redacted]	Chairman
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

UTE INDIAN TRIBE
AGREEMENT 09FCUT-RA07