

Item #9-10

**City of Carson City
Agenda Report**

Date Submitted: June 7, 2010

Agenda Date Requested: June 17, 2010
Time Requested: Consent Agenda

To: Mayor and Supervisors
From: Public Works

Subject Title: Action to approve Cooperative Agreement No. 68-9327-10-13 between the United States Department of Agriculture Natural Resources Conservation Service (NRCS) and Carson City for a grant in the amount of \$337,500.00 toward the cost of constructing Phase III implementation of the Waterfall Fire Natural Resource Assessment and Action Plan. (*Robert Fellows*)

Staff Summary: The primary purpose of this agreement is to provide reforestation and erosion control. The Waterfall Fire of 2004 devastated 8700 acres reaching across the entire west side of Carson City and removed all vegetation, as the fire burned extremely hot. Carson City now faces threats from flooding and potential debris flows and severe damage to surface water supplies. Congress has earmarked funding to assist in the erosion control project.

Type of Action Requested: (check one)

☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to approve Cooperative Agreement No. 68-9327-10-13 between the United States Department of Agriculture Natural Resources Conservation Service (NRCS) and Carson City for a grant in the amount of \$337,500.00 toward the cost of constructing Phase III implementation of the Waterfall Fire Natural Resource Assessment and Action Plan. (*Robert Fellows*)

Explanation for Recommended Board Action: The primary purpose of this agreement is to provide reforestation and erosion control for Phase III implementation of the Waterfall Fire Natural Resource Assessment and Action Plan. This project includes the design, construction and Implementation of the Action Plan. The proposed work to occur under Phase III is to complete the sediment and flood flow attenuation basins for Kings Canyon Watershed. The purpose of the basins is to settle sediments during flood events and to collect excessive sediment loading from the waterfall fire burn area. A side benefit is that for smaller events there will be some flood flow attenuation downstream.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 408

Fiscal Impact: No additional fiscal impact. Grant amount is \$337,500.

Explanation of Impact: Amount of Grant.

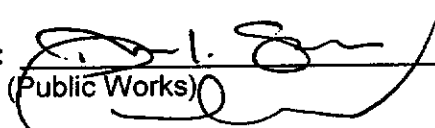
Funding Source: N/A

Alternatives: Provide other direction pursuant to Board Action.

Supporting Material: NRCS Agreement No. 68-9327-10-13

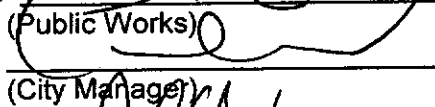
Prepared By: Robert Fellows, Senior Project Manager.

Reviewed By:


(Public Works)

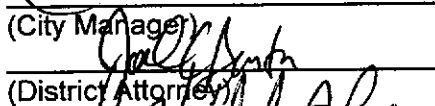
Date:

6/8/10


(City Manager)

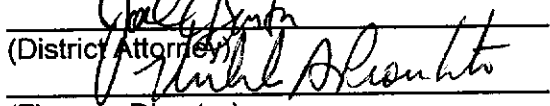
Date:

6/8/10


(District Attorney)

Date:

6/9/2010


(Finance Director)

Date:

6/8/2010

Board Action Taken:

Motion: _____

1) _____
2) _____

Aye/Nay

(Vote Recorded By)

COOPERATIVE AGREEMENT
BETWEEN
CARSON CITY
AND THE
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

This agreement is made on this _____ day of _____, 2010 between Carson City hereinafter referred to as the City, and the United States Department of Agriculture, Natural Resources Conservation Service in Nevada, hereinafter referred to as NRCS.

- I. Authority: Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2009, Public Law 110-161 Conservation Technical Assistance Program (CTA), 16. U.S.C. 590a-590f, 590q, 7 CFR part 610 and the Grants and Cooperative Agreements Act of 1977 and H.R. 1105, Public Law 111-8, Omnibus Appropriations Act of 2009.
- II. Purpose and Objectives: The primary purpose of this agreement is to provide reforestation and erosion control. Carson City suffered a devastating wild fire in July of 2004. Over 8700 acres reaching across the entire west side of Carson City were blackened. This devastation removed all vegetation, as the fire burned extremely hot. Carson City now faces threats from flooding and potential debris flows and severe damage to surface water supplies. Congress earmarked funding to assist in the erosion control project. Phase III implementation of the Waterfall Fire Natural Resource Assessment and Action Plan. The proposed work to occur under Phase III is to complete the sediment and flood flow attenuation basins for Kings Canyon Watershed. The purpose of the basins is to settle sediments during flood events and to collect excessive sediment loading from the waterfall fire burn area. A side benefit is that for smaller events there will be some flood flow attenuation downstream.

To extend funding for this project, the excavated soil from the basin(s) construction will be used nearby. Specifically the project requires the existing road to the treatment plant to be moved to make room for the sediment basin. The existing AC grindings would be salvaged from the road prior to obliteration and re-used on site. The raised down-gradient basin edge would double as access road to the water treatment plant. This combination of storm water basin and raised road will assure that the only road into the plant will be protected during flood events.

III. The City agrees to:

A. Complete Phase III of the design which will include:

- Clearing and grubbing the basin area.
- BMP's for water quality protection during construction
- Remove existing road and salvage AC grindings
- Onsite basin #1 cut to fill (on road).
- Onsite basin #1 cut to stockpile (on City property)
- Resurface road
- Install 36" culvert pipe
- Slow drain
- Spillway erosion mat
- Install rip rap
- Plant revegetation

If funding permits:

- Onsite Basin #2 cut to fill (on road)
- Onsite Basin #2 cut to stockpile (on City Property)

- B. Contract for outside professional services that are required to construct the project, which may include, but not limited too, appraisal services, title searches, legal analysis, GIS support and other mapping services.
- C. Ensure payment, of consultants, contractors and administration of all contracts for outside professional services. Accept all financial and other responsibilities for securing any permissions, permits, accesses or other rights from private landowners that may be needed to construct the projects described in Section II.
- D. Comply with the Special Provisions as provided for in Attachment A.
- E. Ensure that all contracts for Phase I, II and III implementation of the Waterfall Fire Natural Resource Assessment and Action Plan, include the provisions contained in Attachment A.
- F. Provide to NRCS a copy of the final written report.
- G. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of any contract(s) entered into with consultants hired to provide professional services under this agreement. This includes, but is not limited to disputes, claims, protest of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the City including legal expenses.
- H. Verify that phase III implementation of the Waterfall Fire Natural Resource assessment and action plan, we completed in accordance with contractual requirements.

Natural Resources Conservation Service
Agreement No. 68-9327-10-13

- I. Upon acceptance of the work from consultants hired to provide professional services, assume responsibility for their work as a part of the final report.
- J. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the City under this agreement or resulting from the work provided for in this agreement.
- K. This agreement will be administered in accordance with 7 CFR 3015 Uniform Federal Assistance Regulations, 7 CFR 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, OMB Circulars A-87 Cost principals for State, Local and Indian Tribal Governments. Forms and Circulars may be obtained at:

<http://www.whitehouse.gov/WH/EOP/OMB/html/circular.html>

The City will submit request for reimbursements for payment under this agreement by submitting Standard Form 270 Request for Advance or Reimbursement, with supporting documentation. Advance payments can be made for immediate disbursement up to a maximum of 30 days (Treasury Circular 1075). A SF-270 with the following information must be submitted to:

- 1. Certify that the funds requested are necessary to meet planned activities and will be utilized within 30 days.
- 2. A plan of anticipated expenditures our outlays for that period. The Debt Collection Improvement Act of 1996 specifies that all Federal Payments be made by electronic funds transfer (EFT), unless a waiver is granted.

- L. The Technical Point of Contract for the city is:

Mr. Robert Fellows, P.E.
Chief Stormwater Engineer
Phone (775) 283-7370
Fax (775) 887-2164
e-mail: RFellows@carson.org
3505 Butti Way
Carson City, NV 89701

Natural Resources Conservation Service
Agreement No. 68-9327-10-13

M. Payment requests will be sent to:

TECHNICAL APPROVAL
USDA-NRCS
State Conservation Engineer
Mr. Vinh Hoang
Reno, Nevada 89502
Phone (775) 857-8500 ext 104

PAYMENT PROCESSING
USDA-NRCS
Accounting Technician
Mrs. Jill Redwine
Reno, Nevada 89502
Phone (775) 857-8500 ext 116

The City will submit SF 525 Financial Status Report along with the final SF-270 no later than January 20, 2012.

IV. NRCS Agrees to:

- A. Provide \$337,500.00 toward the cost of constructing Phase III implementation of the Waterfall Fire Natural Resource Assessment and Action Plan.
- B. Provide technical guidance and consultation upon request from Carson City.
- C. Reimburse funds to the City pursuant to this agreement with a request submitted on a SF 270 Request for Advance or Reimbursement.

V. It is Mutually Agreed:

- A. This agreement shall be effective on the date appearing in the first paragraph and shall terminate on January 27, 2012 and must be completed and request for payments submitted to NRCS by December 1, 2011. This agreement may be amended, extended, or modified by a written amendment as mutually agreed by both parties.
- B. This agreement may be terminated by either party hereto by written notice to the other party at least 30 days in advance of the effective date of the termination.
- C. It is the intent of the NRCS to fulfill its obligations under this agreement; however, NRCS cannot make commitments in excess of the appropriated funds authorized by law or administratively made available. If the NRCS cannot fulfill its obligations because of lack of appropriated funds, this agreement will automatically terminate.
 - a. In the event this agreement is terminated for any reason, financial obligations of the parties will be as set forth in termination 7 CFR 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government.

No member of or delegate to Congress, or resident commissioner after his/her election or appointment either before or after he/she has qualified; and no

officer, agent or employee of the government shall be admitted to any share or part of this agreement or any benefit to arise there from.

The provision herein with respect to the interest of members of, or delegates to Congress and any resident commissioners shall not be construed to extend to any incorporated company where such agreement is made for the general benefit of such incorporated company.

- b. The program or activities conducted under this agreement will be in compliance with the nondiscrimination provision contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes; namely, section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975 and American's with Disabilities Act of 1990. They will also be in accordance with regulations of the Secretary of Agriculture (7 CFR-15, Subparts A&B) which provide that no person in the United States shall on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Agriculture or any agency thereof.

D. Comply with Attachment A – Special Provisions.

“The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director Office of Civil Rights, 1400 Independence Avenue, S.S., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.”

Natural Resources Conservation Service
Agreement No. 68-9327-10-13

CARSON CITY

By: _____ Date: _____

UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

By: _____ Date: _____

BRUCE PETERSEN
State Conservationist

ATTACHMENT A – SPECIAL PROVISIONS

- I. DRUG-FREE WORKPLACE CERTIFICATION**
- II. CERTIFICATION REGARDING LOBBYING**
- III. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS**
- IV. CLEAN AIR AND WATER CERTIFICATION**
- V. ASSURANCES AND COMPLIANCE**
- VI. EXAMINATION OF RECORDS**

ATTACHMENT A – SPECIAL PROVISIONS

The grantee/cooperator agrees to comply with the following special provisions hereby attached as an integral part of the foregoing Agreement.

I. DRUG-FREE WORKPLACE –

By signing this Agreement, the grantee/cooperator is providing the certification set out below. If it is later determined that the grantee/cooperator knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the Natural Resources Conservation Service (NRCS), in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee/cooperator who is directly engaged in the performance of work under a Federal grant. This definition includes (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of sub-recipients or subcontractors in covered workplaces).

CERTIFICATION:

A. The grantee/cooperator certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee/cooperator's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about –

- (1) The danger of drug abuse in the workplace;
- (2) The grantee/cooperator's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs, and;
- (4) The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace.

(c) Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above;

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

- (1) Abide by the terms of the statement and;
- (2) Notify the employer in writing of his or her conviction, resulting from a violation of a criminal drug statute occurring in the workplace, no later than five calendar days after such a conviction.

(e) Notifying the NRCS in writing, within ten calendar days after receiving notice under paragraph (d)(2) above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice (including position title) to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (d)(2) above, with respect to any employee who is so convicted –

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended or;
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health agency, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f) above.

(h) Agencies shall keep the original of all disclosure reports in the official files of the agency.

B. The grantee/cooperator may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

II. CERTIFICATION REGARDING LOBBYING – (7 CFR 3018 - Applicable if the agreement exceeds \$100,000.)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the grantee/cooperator, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement; and includes the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, “*Disclosure Form to Report Lobbying*”, in accordance with its instructions.
- (3) The grantee/cooperator shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

III. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - Primary Covered Transactions (7 CFR 3017)

- (1) The grantee/cooperator certifies, to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the primary grantee/cooperator is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to the foregoing Agreement.

IV. CLEAN AIR AND WATER CERTIFICATION - (Applicable if the agreement exceeds \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c) and is listed by the Environmental Protection Agency, or is not otherwise exempt.)

The grantee/cooperator signatory to the foregoing Agreement certifies as follows:

- (a) Any facility to be utilized in the performance of this proposed Agreement is _____ or is not _____ listed on the Environmental Protection Agency List of Violating Facilities. N/A
- (b) To promptly notify the State or Regional Conservationist prior to the signing of the Agreement by NRCS of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency indicating that any facility which he/she proposes to use for the performance of the Agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.
- (c) To include substantially this certification, including this subparagraph (c), in every nonexempt sub-agreement.

Clean Air and Water Clause

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c) and is listed by EPA or the agreement is not otherwise exempt.)

A. The grantee/cooperator agrees as follows:

- (1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604); and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act,

respectively; and all regulations and guidelines issued thereunder before the signing of the foregoing Agreement by the NRCS.

- (2) That no portion of the work required by the Agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when the Agreement was signed by the NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use a best effort to comply with clean air standards and clean water standards at the facilities in which the Agreement is being performed.
- (4) To insert the substance of the provisions of this clause in any nonexempt sub-agreement including this subparagraph A.(4).

B. The terms used in this clause have the following meanings:

- (1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).
- (2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-55).
- (3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d), and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d).
- (4) The term "clean water standards" means any enforceable limitation, control condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment requirements identified in section 307 of the Water Act (33 U.S.C. 1317).
- (5) The term "compliance" means compliance with clean air or water standards. "Compliance" shall also mean compliance with the schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.
- (6) The term "facility means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operation which is owned, leased, or supervised by a grantee/cooperator to be utilized in the performance of an agreement or sub-agreement. Where a location or site of

operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency determines that independent facilities are co-located in one geographical area.

V. ASSURANCES AND COMPLIANCE

As a condition of the grant or cooperative agreement, the grantee/cooperator assures and certifies that it is in compliance with and will comply during the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015, 3016, 3018, 3019, and 3051 which are hereby incorporated into the foregoing Agreement by reference, having the same force and effect as if provided in full text; and such other statutory provisions as are specifically set forth herein.

VI. EXAMINATION OF RECORDS

The grantee/cooperator agrees to provide to the NRCS or the Comptroller General (through any authorized representative) access to and the right to examine all records, books, papers, or documents related to the foregoing Agreement. All records relating to the Agreement shall be retained by the grantee/cooperator for a period of three years following completion of the terms of the Agreement in accordance with the applicable OMB Circular.