Message

From: Gallo, Madeline [Gallo.Madeline@epa.gov]
Sent: 9/26/2019 7:00:39 PM
To: Tom, Priscilla [Tom.Priscilla@epa.gov]; David M. Metres [DMetres@bargcoffin.com]
CC: hkarr@nndoj.org; Vivian Craig, Sr. [viviancraig@navajo-nsn.gov]; Calanog, Steve [Calanog.Steve@epa.gov]; Zehner, Warren [zehner.warren@epa.gov]; Chilingaryan, Sona [Chilingaryan.Sona@epa.gov]; Stegman, Allen M [Allen.Stegman@bnsf.com]; Thomas, Charles D [Charles.Thomas@bnsf.com]; Mike W. Makerov (Mike.Makerov@BNSF.com) [Mike.Makerov@bnsf.com]; Brooke Kuhl - BNSF Railway Company (Brooke.Kuhl@BNSF.com) [Brooke.Kuhl@bnsf.com]; Werth, Drew [Andrew.Werth@arcadis.com]; Harmon, Alison [Ali.Harmon@arcadis.com]; John Barg [JBarg@bargcoffin.com]
Subject: RE: Haystack: Discussion Draft of Housing Agreement
Attachments: 2019-08-30 Haystack Housing Agreement (using EPA's NECR template) - 4819-4729-5139.1 minor edits.docx

Thanks to everyone for discussing the draft housing agreement earlier today. I have a few line edits – a couple of which we discussed on the phone, and the others are relatively minor and I didn't think they would be controversial. Please let me know if you would like to discuss any of them.

There are a few additional areas where I will continue to work on getting answers for you, such as the estimate for taxes and other expenses. I will let you know as soon as I have more information.

Thank you,
Maddy

From: Tom, Priscilla <Tom.Priscilla@epa.gov>
Sent: Monday, September 16, 2019 9:47 AM
To: David M. Metres <DMetres@bargcoffin.com>
Cc: hkarr@nndoj.org; Gallo, Madeline <Gallo.Madeline@epa.gov>; Vivian Craig, Sr. <viviancraig@navajo-nsn.gov>; Calanog, Steve <Calanog.Steve@epa.gov>; Zehner, Warren <zehner.warren@epa.gov>; Chilingaryan, Sona <Chilingaryan.Sona@epa.gov>; Stegman, Allen M <Allen.Stegman@bnsf.com>; Thomas, Charles D <Charles.Thomas@bnsf.com>; Mike W. Makerov (Mike.Makerov@BNSF.com) <Mike.Makerov@bnsf.com>; Brooke Kuhl - BNSF Railway Company (Brooke.Kuhl@BNSF.com) <Brooke.Kuhl@bnsf.com>; Werth, Drew <Andrew.Werth@arcadis.com>; Harmon, Alison <Ali.Harmon@arcadis.com>; John Barg <JBarg@bargcoffin.com>
Subject: Re: Haystack: Discussion Draft of Housing Agreement

Good morning all, I'm available that day and time

Sent from my iPhone

On Sep 16, 2019, at 10:24 AM, David M. Metres <DMetres@bargcoffin.com> wrote:

> Maddy,
>
> Thanks again for suggesting some times. Of the suggested slots, the best time for our team is on 9/26 at 9:00 or 10:00 AM Pacific. We have key folks out of the office on the other dates.
>
> It sounds like it works for Harrison (thanks, Harrison!) - any objections to that slot from the rest of this group?
>
> We can do some clean-up or additional discussion on 10/1 during our regular call, but it would be ideal to have focused time to discuss this agreement. We will also be missing Allen on 10/1.
>
> Best,

Dave

From: Harrison Karr <hkarr@nndoj.org>
Sent: Monday, September 16, 2019 8:53 AM
To: Gallo, Madeline <Gallo.Madeline@epa.gov>
Cc: David M. Metres <DMetres@bargcoffin.com>; Vivian Craig, Sr. <viviancraig@navajo-nsn.gov>; Calanog, Steve <Calanog.Steve@epa.gov>; Zehner, Warren <zehner.warren@epa.gov>; Tom, Priscilla <Tom.Priscilla@epa.gov>; Chilingaryan, Sona <Chilingaryan.Sona@epa.gov>; Stegman, Allen M <Allen.Stegman@BNSF.com>; Thomas, Charles D <Charles.Thomas@BNSF.com>; Mike W. Makerov (Mike.Makerov@BNSF.com) <Mike.Makerov@BNSF.com>; Brooke Kuhl - BNSF Railway Company (Brooke.Kuhl@BNSF.com) <Brooke.Kuhl@BNSF.com>; 'Werth, Drew' <Andrew.Werth@arcadis.com>; 'Harmon, Alison' <Ali.Harmon@arcadis.com>; John Barg <JBarg@bargcoffin.com>
Subject: RE: Haystack: Discussion Draft of Housing Agreement

My availability:

9/26: "between 9am and 4pm Pacific" - OK

9/27: "I believe some people on our biweekly call had conflicts on Fridays, but if that is not the case, EPA could meet between 9am and 3pm Pacific." - I'm not available 9-11 am Pacific; otherwise ok.

9/30: "9-11am, 12:00, or 2:00 Pacific" - OK

10/1: "we have our normally scheduled call at 1:00 Pacific, so we could potentially use that time to discuss the draft agreement" - OK

10/2: "10am-3pm Pacific" - OK

On Sep 12, 2019 6:12 PM, "Gallo, Madeline" <Gallo.Madeline@epa.gov> wrote:

> Dave,
>
> As discussed on last week's call, the next step for this draft housing agreement is for BNSF, Navajo EPA, Navajo DOJ, and US EPA to discuss any issues or sticking points as a group. Although I had hopes for being able to have that call this week, it appears that it will have to wait until the end of this month. The quarterly meeting between US EPA and Navajo EPA is next week, and many people working on Haystack will be at the meeting during the early part of next week. I will be out September 19-25.
>
> I propose that we find a time that works for everyone on one of the following dates:
>
> 9/26: between 9am and 4pm Pacific

9/27: I believe some people on our biweekly call had conflicts on Fridays, but if that is not the case, EPA could meet between 9am and 3pm Pacific.

9/30: 9-11am, 12:00, or 2:00 Pacific

10/1: we have our normally scheduled call at 1:00 Pacific, so we could potentially use that time to discuss the draft agreement

10/2: 10am-3pm Pacific

Thank you,

Maddy

From: David M. Metres <DMetres@bargcoffin.com>
Sent: Friday, August 30, 2019 2:48 PM
To: Gallo, Madeline <Gallo.Madeline@epa.gov>; Vivian Craig <viviancraig@navajo-nsn.gov>; Calanog, Steve <Calanog.Steve@epa.gov>; Zehner, Warren <zehner.warren@epa.gov>; Tom, Priscilla <Tom.Priscilla@epa.gov>; Chilingaryan, Sona <Chilingaryan.Sona@epa.gov>
Cc: Stegman, Allen M <Allen.Stegman@BNSF.com>; Thomas, Charles D <Charles.Thomas@BNSF.com>; Mike W. Makerov (Mike.Makerov@BNSF.com) <Mike.Makerov@BNSF.com>; Brooke Kuhl - BNSF Railway Company (Brooke.Kuhl@BNSF.com) <Brooke.Kuhl@BNSF.com>; 'Werth, Drew' <Andrew.Werth@arcadis.com>; 'Harmon, Alison' <Ali.Harmon@arcadis.com>; John Barg <JBarg@bargcoffin.com>
Subject: RE: Haystack: Discussion Draft of Housing Agreement

Thanks, Maddy.

Agreed – that is a good plan. Have a great weekend.

Best,

Dave

From: Gallo, Madeline <Gallo.Madeline@epa.gov>
Sent: Friday, August 30, 2019 2:44 PM
To: David M. Metres <DMetres@bargcoffin.com>; Vivian Craig <viviancraig@navajo-nsn.gov>; Calanog, Steve <Calanog.Steve@epa.gov>; Zehner, Warren

<zehner.warren@epa.gov>; Tom, Priscilla <Tom.Priscilla@epa.gov>; Chilingaryan, Sona <Chilingaryan.Sona@epa.gov>
Cc: Stegman, Allen M <Allen.Stegman@BNSF.com>; Thomas, Charles D <Charles.Thomas@BNSF.com>; Mike W. Makerov (Mike.Makerov@BNSF.com) <Mike.Makerov@BNSF.com>; Brooke Kuhl - BNSF Railway Company (Brooke.Kuhl@BNSF.com) <Brooke.Kuhl@BNSF.com>; 'Werth, Drew' <Andrew.Werth@arcadis.com>; 'Harmon, Alison' <Ali.Harmon@arcadis.com>; John Barg <JBarg@bargcoffin.com>
Subject: RE: Haystack: Discussion Draft of Housing Agreement

Dave,

Thank you for sending this draft for discussion. With the holiday this weekend, it may be too ambitious to discuss all of our comments in detail during Tuesday's call. Perhaps for Tuesday, we can plan to talk about initial impressions, big picture issues, and a timeline for providing additional feedback after everyone has a chance to conduct a more thorough review.

I am also looking forward to hearing an update on the bid walk next Tuesday.

Thanks, and I hope everyone enjoys the holiday weekend!

Maddy

From: David M. Metres <DMetres@bargcoffin.com>
Sent: Friday, August 30, 2019 2:33 PM
To: Vivian Craig <viviancraig@navajo-nsn.gov>; Calanog, Steve <Calanog.Steve@epa.gov>; Zehner, Warren <zehner.warren@epa.gov>; Gallo, Madeline <Gallo.Madeline@epa.gov>; Tom, Priscilla <Tom.Priscilla@epa.gov>; Chilingaryan, Sona <Chilingaryan.Sona@epa.gov>
Cc: Stegman, Allen M <Allen.Stegman@BNSF.com>; Thomas, Charles D <Charles.Thomas@BNSF.com>; Mike W. Makerov (Mike.Makerov@BNSF.com) <Mike.Makerov@BNSF.com>; Brooke Kuhl - BNSF Railway Company (Brooke.Kuhl@BNSF.com) <Brooke.Kuhl@BNSF.com>; 'Werth, Drew' <Andrew.Werth@arcadis.com>; 'Harmon, Alison' <Ali.Harmon@arcadis.com>; John Barg <JBarg@bargcoffin.com>
Subject: Haystack: Discussion Draft of Housing Agreement

Dear Vivian, Maddy, Steve, Warren, Priscilla, and Sona,

Please find attached a discussion draft of the agreement for alternative housing for the Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP), submitted on behalf of BNSF Railway Company. We used the EPA—Northeast Church Rock housing agreement as the template for this agreement, which fulfills BNSF's requirements under the AOC, meets the requirements of EPA's guidance, and responds to the issues identified in EPA's July 24, 2019 letter and NNDOJ's July 15 comments as well as comments received in subsequent discussions with the agencies. We appreciate your guidance, experience, and input.

This is a discussion draft being submitted to the agencies for review and comment prior to finalization and eventual transmission to the Ex. 6 Personal Privacy (PP) In other words, this is not the final form of the agreement, but we think it is close. We tailored EPA's template to the current PRP-led relocation, with the goal of providing the Ex. 6 Personal Privacy (PP) satisfactory alternative housing and associated needs consistent with EPA's relocation guidance. At the same time, we sought to ensure that the cleanup can proceed expeditiously and to completion without additional complications related to the relocation. On that note, we have drafted a non-interference clause, but request your suggestions on crafting an appropriate remedy. BNSF welcomes the feedback of the agencies on crafting the housing agreement to address these and any other issues.

Note that there are a few items where we will need input from NNEPA and others with local knowledge, and that we still expect to refine the agreement more as we receive additional information regarding the schedule and placement of utilities and the proposed roadway access to the homesite. We are also investigating how to purchase the mobile homes for Ex. 6 Personal Privacy (PP) but ensure that the warranty is held in their name and for their benefit alone. We also expect that this team may have gained additional knowledge during the bidwalk this week that will need to be integrated into the agreement. However, given the August 30 deadline, we wanted to provide this advanced draft for review and discussion.

Additionally, as you know, we are currently preparing a revised schedule for carrying out the TCRA construction work in 2020 to account for the time to obtain the necessary utilities and approvals and to prepare the homesite for the Ex. 6 Personal Privacy (PP). We expect to submit that revised schedule to this group for review by September 6th .

We ask that the agencies review the draft agreement and agree to discuss at our next Haystack call on Tuesday. We look forward to discussing further then.

Sincerely,

Dave

David M. Metres | Attorney
BARG COFFIN LEWIS & TRAPP, LLP
600 Montgomery Street, Suite 525
San Francisco, CA 94111
Direct (415) 228-5488
dmetres@bargcoffin.com | www.bargcoffin.com

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