Message

From: Carl Garvey [cgarvey@racertrust.org]
Sent: 9/29/2021 6:01:01 PM
To: Ludmer, Margo [ludmer.margo@epa.gov]
CC: Doyle, James [Doyle.James@epa.gov]; Brendan Mullen [bmullen@racertrust.org]
Subject: RE: OU-2 RD AOC/SOW
Attachments: Ley Creek AOC.pdf

Hi Margo: Thanks for your clarifying message below. RACER's signed signature page is attached. Please send us a PDF copy of the fully-executed AOC once Pat has signed. Thanks. --Carl

From: Ludmer, Margo <ludmer.margo@epa.gov>
Sent: Wednesday, September 29, 2021 12:12 PM
To: Carl Garvey <cgarvey@racertrust.org>
Cc: Doyle, James <Doyle.James@epa.gov>
Subject: RE: OU-2 RD AOC/SOW

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Hi Carl,

Thanks for the email. The "best efforts" language in Paragraph 30 of the AOC is expressly tied to the requirements of the Trust CD. The language requires RACER to use "best efforts" pursuant to the budget approval procedures set forth in the Trust CD, including Paragraph 50, which discusses cushion funding eligibility. Nothing in Paragraph 30 of the AOC would compel RACER to agree with EPA's interpretation of Paragraph 50 of the Trust CD. "Best efforts" does not require RACER to do something that is otherwise legally impermissible. Further, the "best efforts" language is limited to the work under this order, i.e., the RD and the FFS. We understand that there is $18 million in the combined OU-1/OU-2 property funding account, and our estimate of the cost of the work under this AOC is around $1 million. Although we understand that the OU-1 remediation will require significant funding (we recall an estimate of $10 million), we fail to see how we would realistically confront a funding shortfall for the OU-2 *RD* work to be performed over the next few years. Please let us know your thoughts.

Thanks,
Margo

From: Carl Garvey <cgarvey@racertrust.org>
Sent: Wednesday, September 29, 2021 11:21 AM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Doyle, James <Doyle.James@epa.gov>
Subject: Re: OU-2 RD AOC/SOW

We are trying to address a question that Elliott has posed to us. How would you respond to the question of whether "best efforts" to secure funding (Para. 30) would include RACER's support for a Cushion Funding Account request by Region 2? All in all, we are thinking that we should amend the Para. 30 language to make it clear that "best efforts" does not include RACER supporting such a request. Would the Region agree to that change? Thanks. —Carl

Sent from my iPhone

On Sep 29, 2021, at 7:37 AM, Ludmer, Margo <ludmer.margo@epa.gov> wrote:

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Hi Carl,

Are there any updates on RACER's signature of the order?

Many thanks,
Margo

From: Ludmer, Margo
Sent: Tuesday, September 28, 2021 10:49 AM
To: Carl Garvey <cgarvey@racertrust.org>
Cc: Doyle, James <Doyle.James@epa.gov>
Subject: RE: OU-2 RD AOC/SOW

Hi Carl,

Attached is the RD AOC with the new docket number, as discussed below. I have included a Word version as well as a PDF version for signature.

I am also attaching a Word and PDF version of the final SOW. I removed the header indicating that the document is subject to further governmental review (although we are still awaiting final approvals), but it is otherwise unchanged from the version that I sent on 9/24.

Many thanks,
Margo

From: Carl Garvey <cgarvey@racertrust.org>
Sent: Monday, September 27, 2021 4:44 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Doyle, James <Doyle.James@epa.gov>
Subject: RE: OU-2 RD AOC

No concerns, thank you Margo. We've briefed Elliott on the final AOC, but those changes won't affect the document's substance. --Carl

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From: Ludmer, Margo <ludmer.margo@epa.gov>
Sent: Monday, September 27, 2021 4:42 PM
To: Carl Garvey <cgarvey@racertrust.org>
Cc: Doyle, James <Doyle.James@epa.gov>
Subject: OU-2 RD AOC

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Hi Carl,

We are in the process of obtaining a new index number for the RD AOC that reflects the correct fiscal year. Once obtained, we will be updating the caption, Paragraph 47(a)(iii), and Paragraph 79. Please let us know if you have any concerns. We should have the updated draft ready for you by tomorrow.

Thanks,
Margo

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