

**A RESOLUTION****BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE**

**A RESOLUTION AUTHORIZING PAYMENT IN THE AMOUNT OF \$2,666.00 FROM FUND NUMBER 2J01 (WATER & WASTEWATER REVENUE FUND) ACCOUNT NUMBER 529005 (LITIGATION EXPENSE) AND CENTER NUMBER Q63501 (DRINKING WATER PRODUCTION) TO THE PHILIP SERVICES SITE SMALLER PARTY ESCROW ACCOUNT THROUGH THE ESCROW AGENT, RANDY C. SMITH, AMERICAN ENVIRONMENTAL CONSULTANTS, IN SETTLEMENT OF CLAIMS OF THE PHILIP SERVICES SITE POTENTIALLY RESPONSIBLE PARTY GROUP AGAINST THE CITY OF ATLANTA**

**WHEREAS**, the former City of Atlanta Department of Water (now known as City of Atlanta Department of Watershed Management, Bureau of Drinking Water) ("City") allegedly sent approximately 2,666 pounds of hazardous waste to the Philip Site (the "Site") in Rock Hill, South Carolina in 1997; and

**WHEREAS**, the Site was most recently used as a hazardous waste treatment, storage and disposal facility operating by incineration and was also used for solvent distillation and recycling and drum storage; and

**WHEREAS**, the Site was owned or operated by Philip Service Corporation from 1995-2003 and various other companies prior to 1995; and

**WHEREAS**, the State of South Carolina has, up to this date, paid most Response Costs incurred to investigate and remediate the Site from a fund established by Philip Services Corporation in a 2003 settlement with the State of South Carolina but, that fund will be insufficient to cover a large portion of the costs of remediation and Site cleanup; and

**WHEREAS**, the State of South Carolina has threatened to sue the parties that allegedly arranged to dispose hazardous waste or hazardous substances at the Site and is seeking to have these alleged arrangers for disposal contribute toward its unreimbursed past Response Costs and to have these parties perform the future remedial actions at the Site; and

**WHEREAS**, in 2005, several parties who are all alleged generators of hazardous waste or hazardous substances sent to the Site formed a Potentially Responsible Party ("PRP") Group and have incurred response costs; and

**WHEREAS**, the PRP Group is negotiating a final remedy for the Site and a judicially approved consent decree with the State of South Carolina in which it is anticipated that the State of South

Carolina will provide a covenant not to sue and contribution protection to all PRP Group members and all Settling Smaller Party Generators; and

**WHEREAS**, it is anticipated that the Settling Smaller Party Generators will have no obligation to perform future remedial action at the Site and will receive contribution protection from the State of South Carolina; and

**WHEREAS**, the consent decree will be lodged in federal court, along with a complaint, for judicial approval and entry by the court following a public comment period and as a judicially approved settlement, the consent decree will be judicially enforceable and establish the PRP Group's right to sue other PRP's for contribution in accordance with the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42, U.S.C. § 9601 *et seq.* ("CERCLA")

**WHEREAS**, the Settlement Agreement attached in part as **Exhibit A** provides the Smaller Party Generators, including the City of Atlanta, an opportunity to fully resolve their liability to the PRP Group for Response Costs and other Covered Costs for the Site and to avoid prolonged and complicated litigation costs;

**WHEREAS**, it is in the best interests of the City of Atlanta to enter into a Smaller Party Settlement Agreement and make a single payment of \$2,666.00 to the PRP Group to resolve all claims relating to response costs and other covered costs.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS:**

Section 1: That the City Attorney is hereby authorized on behalf of the City of Atlanta to enter into a Smaller Party Settlement Agreement with the Philip Service Site Potentially Responsible Party Group in the amount of two thousand six hundred sixty-six dollars (\$2,666) to resolve all liability of the City of Atlanta for response costs and other covered costs associated with the cleanup of the Site.

Section 2: That the Chief Financial Officer be and is hereby authorized to pay, upon presentation and approval by the City Attorney the above mentioned sum from Fund Number 2J01 (Water and Wastewater Revenue Fund) Account Number 529005 (Litigation Expense) and Center Number Q63501 (Drinking Water Production). Payment shall be in the form of a check in the amount of \$2,666, payable to Philip Services Site Smaller Party Escrow Account.

Section 3: That the City Attorney is authorized to prepare the appropriate agreement.

Section 4: All resolutions and parts of resolutions in conflict herewith are hereby repealed.

**EXHIBIT A**

**PHILIP SERVICES CORPORATION SUPERFUND SITE  
SMALLER PARTY SETTLEMENT AGREEMENT**

This Smaller Party Settlement Agreement (hereinafter "Agreement") is entered into between the Philip Site PRP Group members identified on Exhibit A (as may from time to time be amended to add new members) and each Smaller Party Generator identified on Exhibit B who elects to participate in the settlement and complies with the provisions required by this Agreement. The purpose of this Agreement is to provide each Smaller Party Generator with an opportunity to resolve all claims for Response Costs in connection with the Philip Site.

**I. DEFINITIONS**

A. "Philip Site" or "Site" shall mean the facility at 2324 Vernsdale Road, Rock Hill, South Carolina formerly operated by Philip Services Corporation and other companies, along with any areas where contamination released from the facility has come to be located. The former operations at the Philip Site are further described in Section II, Paragraph 1 below.

B. "Philip Site PRP Group" or "PRP Group" shall mean the parties identified on Exhibit A. All of these parties allegedly sent hazardous substances to the Philip Site. In response to the State of South Carolina's threats of litigation, these parties have formed an unincorporated association joined by a PRP Group Organization Agreement.

C. "Smaller Party Generators" shall mean those parties listed on Exhibit B, each of whom sent no more than 15,000 pounds of hazardous substances to the Philip Site as determined by review of hazardous waste manifests dating from between 1980 and 1999 documenting the delivery of hazardous substances to the Philip Site.

D. "Settling Smaller Party Generator" shall mean any Smaller Party Generator who enters into this Agreement.

E. "Smaller Party Settlement Payment" shall mean the amount of money to be paid by a Settling Smaller Party Generator pursuant to the provisions of this Agreement. Settling Smaller Party Generators contributing 500 pounds or fewer of hazardous substances shall pay \$500; Settling Smaller Party Generators contributing 501 to 1,000 pounds of hazardous substances shall pay \$1,000; Settling Smaller Party Generators contributing 1,001 to 2,000 pounds of hazardous substances shall pay \$2,000; and Settling Smaller Party Generators contributing 2,001 to 15,000 pounds shall pay \$1.00 per pound of hazardous substances sent to the Philip Site. Exhibit B lists the Smaller Party Settlement Payment for each Smaller Party Generator, assuming that such Smaller Party Generator does not have information indicating that it sent more hazardous substances to the Philip Site than is listed on Exhibit B.

F. "Remedial Action" shall be defined as provided for in CERCLA, 42 U.S.C. § 9601(24). For purposes of this Agreement, the term "Remedial Action" shall also include any and all past, present, and future work undertaken to investigate, monitor, or assess the extent of contamination of soil, surface water, groundwater, or other media at the Site, to determine what remedy is appropriate, or to implement, operate, and maintain the approved remedy.

G. "Response Costs" shall mean all past, present, and future costs incurred with respect to the Remedial Action or any removal action at the Philip Site, including, without limitation, the cost of work to support, evaluate, or perform any remedial investigation/feasibility study ("RI/FS") to determine the extent of soil, groundwater and/or other contamination and appropriate remedy for the Site, the cost of the final remedy adopted to address contamination at the Site, enforcement activities related thereto, and the costs incurred by governmental agencies for contractors and oversight work. The Site will be remediated pursuant to CERCLA; however,

in the event that the remediation at the Site is conducted under any other law(s) or regulation(s), Response Costs shall also include any costs incurred under such other law(s) or regulation(s).

H. "Covered Costs" shall mean (i) any and all Response Costs and (ii) any and all past, present, or future fines, penalties, attorneys' fees, litigation costs, expenses, claims, or damages associated with the implementation of the RI/FS or Remedial Action at the Site.

I. "Covered Matters" shall be defined as provided in Section III, Paragraphs 1 and 2 of this Agreement.

## II. FACTUAL BACKGROUND

1. The Potentially Responsible Parties ("PRPs") listed on Exhibits A and B have been identified on hazardous waste manifests as having sent hazardous waste and/or hazardous substances to the Philip Site. The manifests are uniform shipment records required under federal and state law to be used for transportation and disposal of hazardous wastes. The Philip Site was most recently used as a hazardous waste treatment, storage and disposal facility operating by incineration. The Site was also used for solvent distillation and recycling and drum storage. The Site was owned or operated by Philip Services Corporation (1995 and after), ThermalKEM (1987-1995), American NuKEM (1986-1987), Stablex, Inc. (1983-1986), and two companies operated by Walter and Peggy Neal, Quality Drum Company and Industrial Chemical Company (1966-1983). The dates of ownership and operation provided are believed to be accurate, but are not material to this settlement. Site operators also used the trade names "PSC" and "Petro-Chem."

2. The State of South Carolina has, up to this date, paid most Response Costs incurred with respect to the Site from a fund established by Philip Services Corporation in its 2003 settlement with the State of South Carolina. That fund, however, will be insufficient to cover a large portion of the costs of remediation and Site cleanup. The State of South Carolina

has threatened to sue the companies that allegedly arranged to dispose hazardous waste or hazardous substances at the Philip Site. The State of South Carolina seeks to have these alleged arrangers for disposal contribute toward the State's unreimbursed past Response Costs and to have these parties perform the future Remedial Actions at the Site.

3. In 2005, the parties listed on Exhibit A, who are all alleged generators of hazardous waste or hazardous substances sent to the Philip Site, formed a PRP Group and have incurred Response Costs. The PRP Group has, among other things: (a) gathered Site manifests and transformed them into an interim waste-in database, (b) collected and analyzed records concerning prior environmental work at the Site, (c) presented the findings of that analysis to the State of South Carolina, and (d) assisted the State of South Carolina in making the Remedial Action at the Site more cost-efficient and effective.

4. The PRP Group is negotiating a final remedy for the Site and a judicially approved consent decree with the State of South Carolina. The PRP Group anticipates the State of South Carolina will provide a covenant not to sue and contribution protection to all PRP Group members and to all Settling Smaller Party Generators. Under the expected consent decree, the PRP Group will perform the Remedial Action, and the consent decree will refer to PRP Group members as "Performing Parties." Settling Smaller Party Generators will be referred to in the expected consent decree as "Non-Performing Parties", will have no obligation to perform future Remedial Action at the Site, and will receive contribution protection from the State of South Carolina.

5. The consent decree will be lodged in federal court, along with a complaint, for judicial approval and entry by the court following a public comment period. As a judicially approved settlement, the consent decree will be judicially enforceable and establish the PRP

Group's right to sue other PRPs for contribution in accordance with the provisions of CERCLA as interpreted by the U.S. Supreme Court.

6. Each of the Smaller Party Generators listed on Exhibit B all arranged for the disposal of no more than 15,000 pounds of hazardous substances at the Site.

7. This Agreement provides the Smaller Party Generators listed on Exhibit B an opportunity to resolve fully their liability to the PRP Group for Response Costs and other Covered Costs for the Philip Site and avoid prolonged and complicated litigation costs.

### **III. OBLIGATIONS OF THE PARTIES**

#### **1. Covered Matters**

The matters covered by this Agreement are as follows.

For all Smaller Party Generators listed on Exhibit B who sign this Agreement and pay the Smaller Party Settlement Payment: all past, present, and future claims, liabilities, contribution, demands, and/or other proceedings for all Covered Costs related to the Philip Site.

#### **2. Not Covered Matters**

This Agreement does not cover claims for personal injury, diminution of value of property, natural resource damages, or other matters that are not specifically covered by this Agreement.

#### **3. Covenant Not to Sue**

Each Settling Smaller Party Generator shall pay its respective Smaller Party Settlement Payment and send such payment in accordance with Paragraphs 12 and 13 below, and in exchange the PRP Group members on Exhibit A covenant not to sue such Settling Smaller Party Generator with respect to the Covered Matters.

4. **Assignment of Claims for Response Costs**

Each Settling Smaller Party Generator assigns to the PRP Group any rights, entitlements, causes of action and claims it may have against former Philip Site owners or operators or any other party for Covered Costs.

5. **Consent Decree and Contribution Protection**

The Philip Site PRP Group Members identified in Exhibit A shall negotiate with the State of South Carolina for a judicially approved settlement agreement or consent decree that (a) provides a covenant not to sue and contribution protection to both PRP Group members and Settling Smaller Party Generators, and (b) creates no obligation upon Settling Smaller Party Generators to perform any Remedial Action or incur any Response Costs at the Site other than the Smaller Party Settlement Payment. (Hereinafter, such a settlement agreement or consent decree will be referred to as an "Acceptable Consent Decree.") The cost of negotiating, drafting and entering the Acceptable Consent Decree will not be charged to any Settling Smaller Party Generator.

If no Acceptable Consent Decree is judicially approved and entered by January 2, 2009, the Smaller Party Settlement Payment shall be refunded to the Settling Smaller Party Generators, along with the *pro rata* amount of interest earned (if any), less taxes and administration expenses paid (if any), on such Smaller Party Settlement Payment while in escrow, and the covenant not to sue and assignment of claims set forth above in Paragraphs 3 and 4 shall have no effect.

6. **Escrow of Smaller Party Settlement Payments**

The Smaller Party Settlement Payments sent by Settling Smaller Party Generators to the PRP Group shall be held in an escrow account, pending the judicial approval and entry in a United States District Court of the Acceptable Consent Decree described in Paragraph 5. At the

discretion of the PRP Group, the funds may be held in an interest-bearing or non-interest-bearing account. Reasonable fees and costs to administer the escrow fund shall be paid out of funds in the escrow account.

7. **Reopeners and Exclusions**

The PRP Group members reserve, and this Agreement is without prejudice to, all rights against the Settling Smaller Party Generators with respect to all matters not expressly included within the covenant not to sue found in Paragraph 3 above. Notwithstanding any other provision of this Agreement, the PRP Group reserves all rights against Smaller Party Generators with respect to:

- a. Liability for failure to meet a requirement of this Agreement;
- b. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. Liability based upon ownership or operation of the Philip Site; and/or
- d. Liability based on any transportation, treatment, storage, or disposal of hazardous substances (or arrangement for same) undertaken by a Settling Smaller Party Generator after the date it signed this Agreement.

8. **No Admission**

Participation in this Agreement shall not be considered to be an admission of any facts, allegations, or liability with respect to the Site. The parties entering into this Agreement specifically deny any liability and are participating in this Agreement solely to resolve a disputed claim without litigation. Payments made under this Agreement are not in whole or in part a fine, penalty, or monetary sanction of any kind.

9. **Scope**

Nothing in this Agreement is intended to be, nor shall it be construed as, a release, indemnity or covenant not to sue, for any claim or cause of action, past or future, in law or in equity, which any PRP Group member or any Settling Smaller Party Generator may have against any other person, firm, corporation, or any other entity not a signatory to this Agreement.

10. **Successors or Assigns**

This Agreement is binding upon PRP Group members, upon Settling Smaller Party Generators, and their successors and assigns; provided, however, that succession or assignment by a Settling Smaller Party Generator shall only convey rights pertaining to the shipments of hazardous wastes and hazardous substances that comprise the amount listed for that Settling Smaller Party Generator on Exhibit B.

11. **Certification**

Each Settling Smaller Party Generator shall provide with its signature upon this Agreement the certification found on the attached signature page, signed by an authorized representative of the Settling Smaller Party Generator.

12. **Payments, Execution of Agreement, and Notices**

Each party to this Agreement shall sign this Agreement on a separate signature page which will be attached to this Agreement. Signature pages, Smaller Party Settlement Payments, and other submissions and notices required by this Agreement shall be sent to:

Philip Services Smaller Party Generators Settlement Escrow  
Attn: Randy C. Smith – Escrow Agent  
30 Purgatory Road, P.O. Box 310  
Mont Vernon, NH 03057

All Smaller Party Settlement Payments made pursuant to this Agreement shall be made payable to the "Philip Services Site Smaller Party Escrow Account."


13. **Deadline for Response**

Each Settling Smaller Party Generator shall submit its signature page and its check for its Smaller Party Settlement Payment in an envelope delivered or postmarked no more than **90 days after the date such Settling Smaller Party Generator received this Agreement**. At the PRP Group's discretion, a delinquent settlement penalty may be applied to parties sending Smaller Party Settlement Payments more than 90 days after the date such party received this Agreement. This Agreement shall be effective on March 15, 2007 for the PRP Group and for each Settling Smaller Party Generator that submits the signature page and payment required by this Agreement.

14. **Confidentiality**

The parties agree to maintain as confidential both the existence and terms of this Agreement; provided, however, the PRP Group may disclose to the State of South Carolina or the United States the names of the parties who sign this Agreement. The PRP Group shall maintain the terms and amounts paid in this Agreement as confidential information, even if requested by the State of South Carolina or United States. If it is necessary for any party to share the terms of this Agreement with a person not a party such as an insurer, the person to whom the Agreement is disclosed shall also agree in writing to this confidentiality provision.

**On behalf of, and as authorized by vote by, the  
MEMBERS OF THE PHILIP SITE PRP  
GROUP:**



William W. Toole  
Common Counsel, Philip Services Site PRP Group

4/11/07  
Date

**PHILIP SERVICES CORPORATION SUPERFUND SITE  
EXHIBITS TO SMALLER PARTY SETTLEMENT AGREEMENT**

EXHIBIT A: List of PRP Group Members

EXHIBIT B: List of Smaller Party Generators, including three columns:

- PRP Name
- Waste-In (lbs)
- Smaller Party Settlement Payment

ALSO IN PACKET:

- Manifest(s)
- Invoice for Smaller Party Settlement Payment

**SETTLING SMALLER PARTY GENERATOR SIGNATURE PAGE TO  
PHILIP SERVICES CORPORATION SUPERFUND SITE  
SMALLER PARTY SETTLEMENT AGREEMENT**

The Settling Smaller Party Generator identified below accepts and agrees to the foregoing Philip Services Corporation Superfund Site Smaller Party Settlement Agreement.

Pursuant to Section III of the Agreement, the Settling Smaller Party Generator identified below also certifies that it has conducted an investigation regarding its shipments to the property and facility at 2324 Vernsdale Road, Rock Hill, South Carolina (which operated under the names Philip Services Corporation, Petro-Chem, PSC, ThermalKEM, American NuKEM, Stablex, Quality Drum Company, and Industrial Chemical Company), and the volume set forth on Exhibit B for the Settling Smaller Party Generator is accurate.

If, for any reason, the representations made in this certification are not accurate or become inaccurate as a result of newly discovered information, the Settling Smaller Party Generator shall promptly provide the corrected information to the PRP Group's designated representative, Randy Smith. If the corrected volume would require an increase in the Smaller Party Settlement Payment set forth on Exhibit B and the Settling Smaller Party Generator, the PRP Group shall have the right to rescind this Agreement with respect to the Settling Smaller Party Generator upon written notice and return any moneys paid by the Settling Smaller Party Generator.

Name of PRP: **ATLANTA CITY RIVER INTAKE & RELATED PARTIES**

\_\_\_\_\_  
Settling PRP Name if Different than above

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

An Officer of the Settling Smaller Party  
Generator Authorized to Legally Bind the  
Settling Smaller Party Generator to This  
Agreement.

\_\_\_\_\_  
Date

[NOTARY SEAL]