

COMMITTEE AMENDMENT FORM

DATE: 3/26/13

COMMITTEE CITY UTILITIES

PAGE NUM(S) 3

ORDINANCE I. D. #13-O-

SECTION (S)

RESOLUTION I. D. #13-R- 0501

PARA.

AMENDS THE LEGISLATION BY REVERSING THE PLACEMENT OF THE TWO “BE IT FURTHER RESOLVED CLAUSES”.

13-R-0501

A RESOLUTION

COUNCILMEMBER HOWARD SHOOK

AS SUBSTITUTED AND AMENDED BY CITY UTILITIES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY TO RESOLVE ALLEGED VIOLATIONS OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT AND THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) owns and operates the Clear Creek Combined Sewer Overflow Control Facility (“Facility”), located in Piedmont Park, as part of its water and wastewater treatment system; and

WHEREAS, on July 12, 2012, a reportable quantity of sodium hypochlorite spilled from the Facility during a seventy (70) minute window between when the chemical feed to the combined sewer influent was started and when the chemical feed was stopped due to a pressure relief valve along the sodium hypochlorite supply line having been sheared off or cut off at the ground surface, below the backflow preventer, by causes unknown to the City; and

WHEREAS, safety personnel of the City’s Department of Watershed Management (“Department”) were notified of the spill at approximately 1:00 p. m on July 12, 2012 by the Piedmont Park Conservancy (“PPC”), Department Pollution Control Maintenance personnel were dispatched to the spill location, and repairs were completed at approximately 3:30 p. m on July 12, 2012; and

WHEREAS, on July 13, 2012, the PPC contacted the Department about impacts the spill material was having on vegetation within the vicinity of the spill and, based upon inquiry made subsequent to this contact, the Department determined that a reportable quantity of sodium hypochlorite had been released from the Facility, and the spill was reported to the National Response Center at 12:37 p. m on July 13, 2012; and

WHEREAS, Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) requires that any person in charge of a facility to, as soon as he has knowledge of any release (other than a federally permitted release) of a reportable quantity of a hazardous substance from such facility, immediately notify the National Response Center established under the Clean Water Act of such release; and

WHEREAS, Section 304(a) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”) requires the owner or operator of a facility to immediately notify the State Emergency Response Commission and the Local Emergency Planning Committee after a reportable quantity of a hazardous substance was released from a facility of such release; and

WHEREAS, Section 304(c) of EPCRA requires the owner or operator of a facility to submit a written follow-up emergency notice to the State Emergency Response Commission and the Local Emergency Planning Committee as soon as practicable after a reportable quantity of a hazardous substance was released from a facility of such release; and

WHEREAS, the United States Environmental Protection Agency (“EPA”), after conducting an investigation and holding a Show Cause Hearing with the City, alleges the City is in violation of Section 103(a) of CERCLA and Sections 304(a) and 304(c) of EPCRA for failure to comply with the notification requirements contained therein; and

WHEREAS, the City and the EPA wish to cooperate fully, to resolve the City’s alleged noncompliance with Section 103(a) of CERCLA and Sections 304(a) and 304(c) of EPCRA, and to ensure future compliance; and

WHEREAS, the City has two options for resolving the City’s alleged violations; enter into a Consent Agreement and Final Order (“CAFO”) for full payment of penalties or perform a Supplemental Environmental Project (“SEP”) and pay a reduced penalty; and

WHEREAS, should the City choose to enter into a CAFO, the full payment of penalties to resolve the alleged violations of Section 103(a) of CERCLA and Sections 304(a) and 304(c) of EPCRA will be in the amount of Fifty-One Thousand, Eight Hundred Five Dollars and Zero Cents (\$51,805.00) (“Full Penalty”), payable to the Treasurer of the United States of America; and

WHEREAS, should the City choose to perform a SEP, the value of the SEP will be used to mitigate up to Seventy-Five Percent (75%) of the Full Penalty, Thirty-Eight Thousand, Eight Hundred Fifty-Four Dollars and Zero Cents (\$38,854.00), in addition, a payment of Twelve Thousand, Nine Hundred Fifty-One Dollars and Zero Cents (\$12,951.00) will be required to mitigate the remaining Twenty Five Percent (25%), such payment shall be payable to the Treasurer of the United States of America; and

WHEREAS, for all categories of SEPs, other than a Pollution Prevention SEP, the City can receive up to an Eighty Percent (80%) credit for each dollar spent on the SEP, which requires the City to spend a minimum of Forty-Eight Thousand, Five Hundred Sixty-Seven Dollars and Zero Cents (\$48,567.00) in the performance of the SEP; and

WHEREAS, should the City choose to perform a SEP, it will be an Emergency Planning and Preparedness SEP involving the purchase and donation of equipment or supplies to the City of Atlanta Fire Department (“Fire Department”) intended to assist the Fire Department fulfill its obligations under EPCRA, collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, develop emergency response plans, train emergency response personnel, or better respond to chemical spills; and

WHEREAS, the City and the EPA wish to enter into and execute a negotiated agreement solely for the purpose of resolving and disposing the alleged violations of Section 103(a) of CERCLA and Sections 304(a) and 304(c) of EPCRA, such agreement shall not constitute any finding, determination or adjudication of a violation of any federal laws, rules, standards or requirements, nor does it constitute a finding or adjudication of liability to a third party or parties.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor, or his designee, the Commissioner of the Department of Watershed Management, acting on behalf of the City, is authorized to enter into a Consent Agreement and Final Order (“CAFO”) with the United States Environmental Protection Agency for full payment of penalties and in full settlement of the July 12, 2012 sodium hypochlorite spill;

BE IT FURTHER RESOLVED, that the Chief Financial Officer of the City is authorized to issue payment to the Treasurer of the United States of America in an amount not to exceed Fifty-One Thousand, Eight Hundred Five Dollars and Zero Cents (\$51,805.00) to resolve the alleged violations of Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act and Sections 304(a) and 304(c) of the Emergency Planning and Community Right-to-Know Act; and

BE IT FURTHER RESOLVED, that, in the alternative, the Mayor, or his designee, the Commissioner of the Department of Watershed Management, acting on behalf of the City, is authorized to perform a Supplemental Environmental Project (“SEP”) to purchase and donate equipment or supplies to the City of Atlanta Fire Department that meet the requirements of an Emergency Planning and Preparedness SEP in an amount not less than Forty-Eight Thousand, Five Hundred Sixty-Seven Dollars and Zero Cents (\$48,567.00) and pay a reduced payment of penalties in full settlement of the July 12, 2012 sodium hypochlorite spill;

AND FINALLY BE IT RESOLVED, that said payment will be charged to and paid from the Fund Department Organization and Account Number 5051 (Water & Wastewater Revenue Fund) 170201 (DWM Wastewater Treatment & Collections) 5750002 (Property/Liquidation) 4310000 (Sanitary Administration).

A RESOLUTION BY

Howard Shook

COUNCIL MEMBER HOWARD SHOOK

AUTHORIZING PAYMENT OF STIPULATED PENALTIES IMPOSED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AND THE ENVIRONMENTAL PROTECTION DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF GEORGIA (EPD) IN THE AMOUNT OF \$_____ AS STIPULATED PENALTIES FOR THE VIOLATION OF CSO FECAL COLIFORM OPERATIONAL STANDARDS _____ PURSUANT TO THE CSO CONSENT DECREE, CIVIL ACTION FILE NO. 1:95-CV-2550-TWT; TO IDENTIFY THE SOURCE OF FUNDING; AND FOR OTHER PURPOSES.

WHEREAS, the City has experience a violation to the CSO Consent Decree set out in Exhibit "A" hereto; and

WHEREAS, this violation is subject to stipulated penalties imposed at the discretion of the Environmental Protection Agency (EPA) and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia (EPD) pursuant to the CSO Consent Decree, Civil Action File No. 1:95-CV-2550-TWT; and

WHEREAS, the Department of Watershed Management of the City does not dispute the fact this violation did occur; and

WHEREAS, the payment to EPA and EPD of this assessment by the City does not constitute a finding or adjudication, is not to be evidence of a violation of state or federal laws by the City, nor does the City by its consent agree to any violations of state or federal laws or admit any liability to any third party or parties; and

WHEREAS, funds for this purpose are available in Fund, Account and Center Number 2J01-529017-Q31001; and

WHEREAS, the CSO Consent Decree, Section XI. O. similarly provides for payment of interest on late payment of stipulated penalties; and

WHEREAS, it is deemed to be in the best interest of the City to accept the proposed stipulated penalties and to pay the incident assessments to the Environmental Protection Agency (EPA) and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia (EPD).

NOW, THEREFORE, BE AND IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

Section 1: That the Chief Financial Officer of the City of Atlanta is authorized to issue checks payable in the amount of \$_____ to the **State of Georgia** and in the amount of \$_____ to the **Treasurer, United States of America** as stipulated penalties imposed pursuant to the CSO Consent Decree at the discretion of the Environmental

Protection Agency and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia.

Section 2: That said payments shall be charged to and paid from the Fund, Account and Center provided.

Section 3: That all resolutions and parts of resolutions in conflict herewith be and are hereby waived in this instance only.

EXHIBIT A

The City is subject to stipulated penalties for violations of the CSO Consent Decree, per Section _____ as follows:

CSO Consent Decree Section

| Date | Facility | Colonies/100 ml | Penalty | Comment |
|-------------|-----------------|------------------------|----------------|----------------|
|-------------|-----------------|------------------------|----------------|----------------|