



One North Central Avenue, Phoenix, AZ 85004 • (602) 366-7826

William E. Cobb
Director, Environmental Services

January 24, 2007



VIA FACSIMILE (580-363-5527)
AND FIRST CLASS MAIL

Ms. Sara J. Norris
City Manager
City of Blackwell
221 W. Blackwell Avenue
P.O. Box 350
Blackwell, Oklahoma 74361

Re: *City of Blackwell Reimbursement Agreement*

Dear Ms. Norris:

Please be advised that in accordance with Paragraph 5 of the Response Cost Reimbursement Agreement dated December 14, 2000, notice is hereby given on behalf of Blackwell Zinc Company, Inc., Cyprus AMAX Minerals Company, and Phelps Dodge Corporation that the Reimbursement Agreement is terminated, effective immediately. We will reimburse the City for its reasonable legal expenses incurred prior to today.

Please contact me if you have any specific questions regarding this notice.

Very truly yours,

William E. Cobb

cc: Jonathan Ihrig, Esq. (via facsimile)
Mary Ann Karns, Esq. (via facsimile)
David P. Page, Esq. (via facsimile)

RESPONSE COST REIMBURSEMENT AGREEMENT

THIS RESPONSE COST REIMBURSEMENT AGREEMENT (the "Agreement") is dated this 14th day of December, 2000 between the City of Blackwell, Oklahoma, a municipality chartered under the laws of the State of Oklahoma (the "City"), and Phelps Dodge Corporation, a New York corporation, acting on its own behalf and on behalf of its wholly owned subsidiaries Cyprus Amax Minerals Company, AMAX, Inc., and Blackwell Zinc Company, Inc. (collectively "PDC").

Recitals:

WHEREAS, the City and PDC are responding to releases of hazardous substances into the environment at and about a former zinc smelter site located within the corporate limits of the City ("Environmental Releases"); and

WHEREAS, the City has incurred, and continues to incur, direct and indirect costs in connection with its response to the Environmental Releases, which include without limitation legal and engineering consulting fees, sampling and analytical costs related to assessing the impact of the Environmental Releases on soils within the City and on the operation of the City's wastewater treatment plant, and increased wastewater treatment plant sludge disposal costs reasonably attributable to the Environmental Releases ("Response Costs"); and

WHEREAS, the City claims its Response Costs are recoverable at law against PDC; and

WHEREAS, PDC wishes to settle the City's Response Costs claims without admitting any liability for such claims; and

WHEREAS, pursuant to an agreement dated August 8, 2000, PDC paid the City \$380,000 in exchange for the City unconditionally and completely releasing PDC of all City claims against PDC for Response Costs incurred by the City through July 31, 2000 ("Past Response Costs"); and

WHEREAS, PDC is now prepared to reimburse the City for Response Costs incurred by the City after July 31, 2000 ("Future Response Costs") in exchange for the City unconditionally and completely releasing PDC of all City claims against PDC for such costs; and

WHEREAS, after good faith negotiations, PDC is willing to give, and the City is willing to receive, that consideration specified below, the sufficiency and adequacy of which are mutually acknowledged by the parties;

NOW THEREFORE, the City and PDC covenant and agree as follows:

Terms:

1. **Future Response Cost Claims.** At the close of every three-month period commencing January 1, 2001, the City shall submit to PDC a written statement identifying all

Future Response Costs incurred by the City during the concluded three-month period, which the City claims are reimbursable from PDC (the "Reimbursement Claim" or "Claim"). Each Reimbursement Claim shall be submitted to PDC within 20 days of the close of the three-month period covered by the Claim and shall be supported by such invoices, receipts or other documentation verifying the City's incurrence of the Future Response Costs identified in the Claim. In the case of legal and engineering consulting costs, invoices for such costs shall comply with the requirement set forth in Appendix A to this Agreement. PDC shall have no liability to the City for any Future Response Cost incurred by the City that the City does not identify in a Reimbursement Claim prepared in accordance with this Paragraph 1. For purposes of this Agreement, a "month" shall be deemed to be a "calendar month."

By January 20, 2001, the City shall submit to PDC a claim for reimbursement of all Future Response Costs incurred by the City from August 1 to December 31, 2000. This reimbursement claim shall be processed in the same manner as specified in Paragraph 2 of this Agreement and shall be subject to the same dispute resolution procedures as set forth in Paragraph 3 of this Agreement.

2. Processing of Claims. Within 30 days of its receipt of a Reimbursement Claim, PDC shall review the Claim to verify that the cost items identified in the Claim qualify as Future Response Costs and that the Claim's supporting documentation complies with the requirements set forth in Appendix A. Within 15 days of the close of the review period, PDC shall either pay or disapprove in writing the City's entire Reimbursement Claim. If PDC pays the entire Reimbursement Claim, the City shall, within 15 days of the City's receipt of PDC's payment, execute and submit to PDC the Release and Settlement Agreement set forth in Appendix B to this Agreement. If PDC disapproves of the entire Reimbursement Claim, PDC shall provide the City a written statement of PDC's rationale for the disapproval and the amount of the Claim PDC contends is not reimbursable to the City (the "Disapproval Notice"). Upon the City's receipt of a Disapproval Notice, PDC and the City shall enter into dispute resolution as set forth in Paragraph 3 of this Agreement.

3. Dispute Resolution. The procedures of this paragraph apply only in the event a Reimbursement Claim is disapproved. If a Reimbursement Claim is disapproved, PDC shall provide the City a Disapproval Notice specified in Paragraph 2 within 15 days of the close of the review period. Upon receipt of PDC's Disapproval Notice, the City shall review the disapproval and either agree or disagree in writing with the disapproval within 15 days of the receipt of the disapproval.

If the City agrees with PDC's Disapproval Notice, PDC shall pay the revised Reimbursement Claim within 30 days of its receipt of the City's statement, in writing, that it agrees with PDC's Disapproval Notice. Upon receipt of payment of the revised Reimbursement Claim, the City shall, within 15 days of the City's receipt of the PDC's payment, execute and submit to PDC the Release and Settlement Agreement set forth in Appendix B to this Agreement.

If the City disagrees with PDC's Disapproval Notice, the City shall notify PDC in writing of the City's disagreement within 15 days of the receipt of the disapproval, and PDC and the City shall enter into good faith negotiations to settle their dispute. If PDC and the City settle their dispute concerning a Reimbursement Claim, PDC and the City shall memorialize their settlement in writing,

and PDC shall pay the City the amount agreed to within 15 days of the settlement. Upon receipt of payment, the City shall, within 15 days of its receipt of the payment, execute and submit to PDC the Release and Settlement Agreement set forth in Appendix B to this Agreement. If PDC and the City cannot settle their dispute within 30 days, the City's disputed Reimbursement Claim shall be set aside without any resolution of the Claim and without prejudice to the rights of either PDC or the City with respect to that Claim.

4. **No Admission of Liability.** In making any payment under this Agreement, PDC does not admit any liability for the City's Response Costs, or for the Environmental Releases with which the City's Response Costs are associated.

5. **Termination.** Without prejudice to or effect on any release previously received from the City, PDC or the City may terminate this Agreement upon written notice to the other party. However, termination shall only affect Future Response Costs not yet incurred by the City and shall not affect the parties' obligations under this Agreement for Future Response Costs incurred prior to the date on which the notice of termination was received.

6. **Notices.** Unless otherwise specifically provided, all notices, Claims, Disapproval Notices, responses to Disapproval Notices, or other communication required hereunder shall be directed as follows:

If to PDC:
Senior Vice-President and General Counsel
Phelps Dodge Corporation
2600 North Central Avenue
Phoenix, Arizona 85004
Facsimile: (602)234-8050

If to City:
Sally Norris, City Manager
City of Blackwell
221 W. Blackwell Avenue
P.O. Box 350
Blackwell, Oklahoma 74631
Facsimile: (580)363-5527

Communication may be sent by facsimile to the numbers listed above.

7. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, the courts of which, state or federal, shall have sole and exclusive jurisdiction of all litigation arising hereunder. PDC and City hereby expressly consent and submit to the jurisdiction of said courts.

8. **Extent of Agreement.** This Agreement constitutes the entire agreement and understanding between the PDC and City with respect to the subject matter hereof, and expressly

supercedes and revokes all other prior or contemporaneous promises, representations and assurances of any nature whatsoever with respect to the subject matter hereof.

9. **Amendments; Mutual Negotiation.** No change in addition to, or waiver of, any of the provisions of this Agreement shall be binding upon either party unless in writing signed by an authorized representative of each party. No presumptions shall be deemed to exist in favor or against either party hereto as a result of the preparation and/or negotiation of this Agreement.

10. **Third-Party Beneficiaries.** This Agreement is intended only for the benefit of the Parties, and there shall be no third-party beneficiaries to this Agreement.


11. **Successors and Assigns.** This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Parties and their respective successors and assigns.

12. **Severability.** In the event that any of the provisions, or portions or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the City and PDC shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

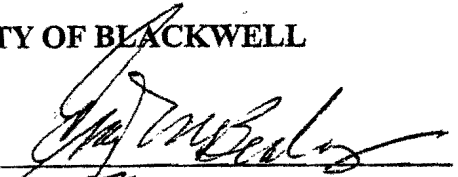
13. **Signatories.** Unless otherwise specified below, the following signatories are the authorized representatives upon whose decision and information each party may rely on for performance of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

PHELPS DODGE CORPORATION

By: 
Title: Senior Vice President & General Counsel

CITY OF BLACKWELL

By: 
Title: Mayor

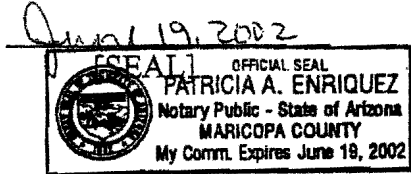
STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

This instrument was acknowledged before me on December 20, 2000 by S. David Colton as the Senior Vice President and General Counsel of Phelps Dodge Corporation.

Given under my hand and seal of office the day and year above written.

Patricia A. Enriquez
Notary Public

My commission expires:



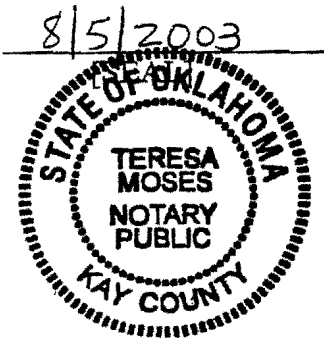
STATE OF OKLAHOMA)
) ss.
COUNTY OF KAY)

Before me, the undersigned, a Notary Public, in and for said county and State, on this 14th day of December, 2000, personally appeared Eugene M. Braly to me known to be the identical personal who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year above written.

Teresa Moses
Notary Public

My commission expires:



*Lafis
Willis*

Instructions for Invoices Relating to Legal and Technical Consulting Costs

Invoices for legal and technical consulting costs shall provide the following information:

1. A description of the work performed, identifying the individual performing such work, and the time expended.
2. A breakdown of the hourly billing rates for each individual performing services.
3. A breakdown of any out-of-pocket costs or disbursements identifying the services to which each pertain.
4. The following expenses must be separately stated and accounted for:
 - (a) Costs of entertainment, including amusement, diversion and social activities and any costs directly associated with such costs (such as tickets to shows or sporting events, meals, lodging, rentals, transportation and gratuities).
 - (b) Costs of alcoholic beverages.
 - (c) Costs for travel by commercial aircraft that exceed the amount of the standard commercial fare.

important

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is dated this 8th day of August 2000 between the City of Blackwell, Oklahoma, a body politic under the laws of the State of Oklahoma (the "City"), and Phelps Dodge Corporation, a New York corporation, acting on its own behalf and on behalf of its wholly owned subsidiaries Cyprus Amax Minerals Company, AMAX, Inc., and Blackwell Zinc Company, Inc. (collectively "PDC").

Recitals:

WHEREAS, the City and PDC are responding to releases of hazardous substances into the environment at and about a former zinc smelter site located within the corporate limits of the City ("Environmental Releases"); and

WHEREAS, the City has incurred, and continues to incur, direct and indirect costs, including without limitation legal and engineering consulting fees, in connection with its response to the Environmental Releases ("Response Costs"); and

WHEREAS, the City claims its Response Costs are recoverable at law against PDC; and

WHEREAS, PDC wishes to settle certain Response Costs claims of the City without admitting any liability for such claims; and

WHEREAS, after good faith negotiations, PDC is willing to give, and the City is willing to receive, that consideration specified below, the sufficiency and adequacy of which are acknowledged by the parties, for a complete and final resolution of the City's Response Costs claims against PDC;

NOW THEREFORE, the City and PDC covenant and agree as follows:

Terms:

1. **Payment.** Within three (3) business days of PDC's receipt of a copy of this Agreement executed by the City and of wire transfer instructions from the City, PDC shall pay the City three-hundred-and-eighty-thousand U.S. dollars (\$380,000) to obtain the release and covenant not to sue set forth in Paragraph 2 below (the "Settlement Payment"). The Settlement Payment shall be made by Fed Wire Electronic Funds Transfer ("EFT" or wire transfer) to an account specified by the City in accordance with current electronic funds transfer procedures. PDC shall be deemed to have made the Settlement Payment upon PDC's completion of all procedures necessary to accomplish the wire transfer. In making the Settlement Payment, PDC does not admit any liability for the City's Past Response Costs, or for the Environmental Releases with which the City's Response Costs are associated.

2. **Release.** Upon the City's receipt of the Settlement Payment, the City, without any reservation of right, forever releases, discharges, and covenants not to sue PDC, including its officers, directors, shareholders, employees, agents, subsidiaries, related corporations, successors, insurers and assigns, with respect to any and all Response Costs incurred by the City through July 31, 2000, regardless of the nature of such Response Cost and regardless of whether such Response Cost was known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted.

3. **Notices.** Unless otherwise specifically provided, all notices or other communication required hereunder shall be directed as follows:

If to PDC:
Senior Vice-President and General Counsel
Phelps Dodge Corporation
2600 North Central Avenue
Phoenix, Arizona 85004

If to City:
Sally Norris, City Manager
City of Blackwell
221 W. Blackwell Avenue
P.O. Box 350
Blackwell, Oklahoma 74631

4. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, the courts of which, state or federal, shall have sole and exclusive jurisdiction of all litigation arising hereunder. PDC and City hereby expressly consent and submit to the jurisdiction of said courts.

5. **Extent of Agreement.** This Agreement constitutes the entire agreement and understanding between the PDC and City with respect to the subject matter hereof, and expressly supersedes and revokes all other prior or contemporaneous promises, representations and assurances of any nature whatsoever with respect to the subject matter hereof.

6. **Amendments; Mutual Negotiation.** No change in addition to, or waiver of, any of the provisions of this Agreement shall be binding upon either party unless in writing signed by an authorized representative of each party. No presumption shall be deemed to exist in favor or against either party hereto as a result of the preparation and/or negotiation of this Agreement.

7. **Third-Party Beneficiaries.** This Agreement is intended only for the benefit of the Parties, and there shall be no third-party beneficiaries to this Agreement.

8. **Successors and Assigns.** This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Parties and their respective successors and assigns.

