

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:22-cv-03290-MBD

PALMER NORTH AMERICA LLC, a
Delaware limited liability company

Plaintiff,

v.

WANZEK CONSTRUCTION, INC. a
North Dakota corporation, and
MASTEC, INC., a Florida corporation,

Defendants.

ANSWER AND COUNTERCLAIM

Defendant Wanzek Construction, Inc. (“Wanzek”), by and through undersigned counsel, hereby answers the Complaint of Palmer North America LLC (“Palmer”), pleads the following Affirmative Defenses, and asserts a Counterclaim, as follows:

ANSWER

GENERAL DENIAL AS TO MASTEC, INC.

This is the Answer of Defendant Wanzek. As to Defendant MasTec, Inc., the allegations in the Complaint relate to a defendant other than Wanzek, and therefore Wanzek need not respond to any allegations made against MasTec, Inc. Wanzek makes no admission of any allegations as to Defendant MasTec, and therefore denies all allegations in the Complaint as to MasTec, Inc.

NATURE OF ACTION

1. Admitted in part; denied in part. Defendant admits that it entered into a Construction Contract with Palmer on May 14, 2021. The remaining allegations in Paragraph 1 are denied. Palmer refers to the “Contract” and a “Parent Guaranty,” each of which are written instruments that speak for itself and any allegations inconsistent with those documents are denied. By way of further response, Paragraph 1 contains allegations against another defendant that do not apply to Wanzek, and no response is required. To the extent a response is required, Wanzek denies the allegations in Paragraph 1 that concern another defendant. By way of further response, Wanzek denies that there has been a breach and that any alleged breach caused significant and substantial damages to Palmer.

PARTIES

2. Admit. On information and belief, Defendant admits the allegations contained in Paragraph 2.

3. Admit. Defendant admits the allegations set forth in Paragraph 3 of the Complaint.

4. Denied. Paragraph 4 does not apply to Wanzek and therefore no response is required from Wanzek.

JURISDICTION AND VENUE

5. Upon information and belief, Defendant admits that diversity of citizenship exists between Palmer, Wanzek, and MasTec, Inc. Defendant further admits that the amount in controversy in this matter exceeds the sum of \$75,000, exclusive of interest and costs.

6. Defendant admits that pursuant to Article 31.1 of the Contract, the state and federal courts located in the State of Colorado have exclusive jurisdiction over any Dispute

between the Parties arising out of the Contract. The Contract is a writing that speaks for itself, and any allegations in Paragraph 6 contrary to the express terms of the Contract are denied.

7. Denied. Paragraph 7 does not apply to Wanzek and therefore no response is required from Wanzek. To the extent a response is required, the allegations are denied.

8. Admitted in part; denied in part. Defendant Wanzek admits the allegations contained in Paragraph 8 as to Wanzek. As to MasTec, the allegations refer to a defendant other than Wanzek, and therefore no response is required.

9. Admitted in part; denied in part. Defendant admits that pursuant to the Contract, the Parties consent to jurisdiction of the state and federal courts located in the State of Colorado and waive any other venue. By way of further response, the Contract is a writing that speaks for itself, and any allegations in Paragraph 9 contrary to the express terms of the Contract are denied. To the extent a response is required, the allegations contained in Paragraph 9 are denied.

GENERAL ALLEGATIONS

10. Denied. Defendant denies the allegation in Paragraph 10 that “[b]ased on the bid provided by Wanzek, and the promises and representations set forth therein, Plaintiff selected Wanzek to be the general contractor for the Project[.]” Wanzek lacks knowledge or information sufficient to form a belief as to the truthfulness of the allegation, and the allegation is therefore denied. By way of further response, Defendant denies that Exhibit A attached to Plaintiff’s Complaint is a true and correct copy of the Contract. Exhibit A is an incomplete version of the Contract because it excludes all attachments, appendices, and exhibits thereto. Defendant admits the remainder of the allegations in Paragraph 10.

11. Denied. Paragraph 11 does not apply to Wanzek and therefore no response is required from Wanzek. To the extent a response is required, the allegations are denied.

12. Denied. Defendant denies the allegations in Paragraph 12. By way of further response, the Project began experiencing delays due to Owner's failure to, among other things, provide Defendant timely access to the site, complete all prerequisite work prior to site turnover, furnish a completed design for the Project, and provide all necessary engineering deliverables in accordance with the timing set forth in the Contract.

13. Admitted in part; denied in part. Defendant admits that pursuant to the Contract, it was obligated to submit a proposed construction work schedule. Defendant denies the remainder of the allegations contained in Paragraph 13. By way of further response, Owner unreasonably rejected Contractor's proposed work schedule.

14. Denied. The allegations contained in Paragraph 14 relate to the Contract. The Contract is a writing that speaks for itself, and any allegations contained in Paragraph 14 contrary to the express terms of the Contract are denied. Defendant denies the remainder of the allegations contained in Paragraph 14.

15. Denied. The allegations contained in Paragraph 15 relate to the Contract. The Contract is a writing that speaks for itself, and any allegations contained in Paragraph 15 contrary to the express terms of the Contract are denied. Defendant denies the remainder of the allegations contained in Paragraph 15.

16. Admitted in part; denied in part. It is admitted that the original Construction Concrete Superintendent and a Project Controls Manager are no longer working on the Project. Defendant denies the remainder of the allegations contained in Paragraph 16.

17. Denied. Defendant denies the allegations contained in Paragraph 17.

18. Denied. Defendant denies the allegations contained in Paragraph 18.

19. Denied. Defendant denies the allegations contained in Paragraph 19.

20. Denied. Defendant denies the allegations contained in Paragraph 20.

21. Denied. The allegations contained in Paragraph 21 relate to the Contract. The Contract is a writing that speaks for itself, and any allegations contained in Paragraph 21 contrary to the express terms of the Contract are denied. Defendant denies the remainder of the allegations contained in Paragraph 21.

22. Admitted in part; denied in part. It is admitted that on December 21, 2022, Plaintiff provided to Wanzek the letter that is attached to Plaintiff's Complaint as Exhibit C. By way of further response, the letter attached to Plaintiff's Complaint as Exhibit C is the first time Plaintiff provided written notice to Wanzek of a Notice of Default. Indeed, on the very same day that Plaintiff issued the letter attached as Exhibit C, Plaintiff was meeting with Defendant to discuss the appropriate financial and schedule relief that Plaintiff would be providing Defendant. Defendant denies the remainder of the allegations contained in Paragraph 22. The remainder of the allegations contained in Paragraph 22 relate to the Contract and Exhibit C, each of which are writings that speak for itself, and any allegations contained in Paragraph 22 contrary to the express terms of the Contract and statements in Exhibit C are denied.

23. Admitted in part; denied in part. It is admitted that on December 21, 2022, Plaintiff provided to Wanzek a letter titled "Demand for Punctual Performance." The remainder of the allegations contained in Paragraph 23 are denied. Exhibit D to Plaintiff's Complaint is a writing that speaks for itself, and any allegations contained in Paragraph 23 contrary to the express statements in Exhibit D are denied.

24. Denied. Defendant denies the allegations contained in Paragraph 24. By way of further response, Palmer filed its Complaint just hours after it issued its Default Notice. Palmer failed to afford Wanzek the contractually required 10-day cure period before alleging that

Wanzek “failed or refused to cure its breaches.” By doing so, Palmer’s issuance of the Default Notice and subsequent filing of the Complaint was done in contravention of the Contract and in bad faith.

COUNT 1: FIRST CLAIM FOR RELIEF

(Breach of Contract against Wanzek)

25. Defendant hereby incorporates its Answers to Paragraphs 1 through 24 above as if fully set forth herein.

26. Admitted in part; denied in part. It is admitted that on May 14, 2021, Plaintiff and Wanzek executed the Contract. The remainder of the allegations contained in Paragraph 26 are denied. The remainder of the allegations constitutes conclusions of law to which no response is required. By way of further response, the remainder of the allegations in Paragraph 26 relate to the Contract. The Contract is a writing that speaks for itself, and any allegations in Paragraph 26 contrary to the express terms of the Contract are denied.

27. Denied. The allegations contained in Paragraph 27 constitute a conclusion of law to which no response is required. To the extent the allegations contained in Paragraph 27 are deemed to be factual in nature, the allegations are denied.

28. Denied. The allegations in Paragraph 28 and its subparts (a) through (f) are denied.

29. Denied. The allegations contained in Paragraph 29 constitute a conclusion of law to which no response is required.

30. Denied. The allegations contained in Paragraph 30 constitute a conclusion of law to which no response is required. To the extent the allegations in Paragraph 30 are deemed factual in nature, the allegations are denied.

31. Denied. The allegations in Paragraph 31 are denied.

COUNT II: SECOND CLAIM FOR RELIEF

(Breach of the Covenant of Good Faith and Fair Dealing against Wanzek)

32. Defendant hereby incorporates its Answers to Paragraphs 1 through 31 above as if fully set forth herein.

33. Denied. The allegations contained in Paragraph 33 constitute a conclusion of law to which no response is required. To the extent the allegations in Paragraph 33 are deemed factual in nature, the allegations are denied.

34. Denied. The allegations contained in Paragraph 34 constitute a conclusion of law to which no response is required. To the extent the allegations in Paragraph 34 are deemed factual in nature, the allegations are denied.

35. Denied. The allegations contained in Paragraph 35 constitute a conclusion of law to which no response is required. To the extent the allegations in Paragraph 35 are deemed factual in nature, the allegations are denied.

COUNT III: SECOND[SIC] CLAIM FOR RELIEF

(Breach of Contract against MasTec)

36. Defendant hereby incorporates its Answers to Paragraphs 1 through 35 above as if fully set forth herein.

37. Denied. Paragraph 37 does not apply to Wanzek and therefore no response is required from Wanzek. To the extent a response is required, the allegations are denied.

38. Denied. Paragraph 38 does not apply to Wanzek and therefore no response is required from Wanzek. To the extent a response is required, the allegations are denied.

39. Denied. Paragraph 39 does not apply to Wanzek and therefore no response is required from Wanzek. To the extent a response is required, the allegations are denied.

40. Denied. Paragraph 40 does not apply to Wanzek and therefore no response is required from Wanzek. To the extent a response is required, the allegations are denied.

41. Denied. Paragraph 41 does not apply to Wanzek and therefore no response is required from Wanzek. To the extent a response is required, the allegations are denied.

DEMAND FOR JURY TRIAL

42. Denied. The allegations contained in Paragraph 42 constitute a conclusion of law to which no response is required.

PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully requests that the Court deny the claims asserted against Defendant in Counts I and II of the Complaint and enter judgment in favor of Defendant, as well as grant such other relief that the Court deems just and appropriate, including attorneys' fees, costs, and expenses.

AFFIRMATIVE DEFENSES

43. Plaintiff fails to state a claim upon which relief can be granted.

44. Plaintiff's claims are barred by the terms of the Contract.

45. Plaintiff's claims are barred as a result of its breaches of the Contract.

46. Plaintiff's claims are barred by the doctrine of waiver or release.

47. Plaintiff's claims are barred by the doctrine of estoppel.

48. Plaintiff's claims are barred by the doctrine of unclean hands.

49. Plaintiff's claims are barred or limited by its failure to mitigate its damages, if any.

50. Plaintiff's claims are barred because it has failed to comply with conditions precedent under the Contract.

51. Plaintiff's claims are barred because Plaintiff's knowing and reckless misrepresentations induced Contractor into executing the Contract.

52. Plaintiff's claims are barred because it has violated the implied duty of good faith and fair dealing.

53. Plaintiff's claims are barred or limited by its breach of the implied warranty of the accuracy and suitability of Plaintiff's plans and specifications.

COUNTERCLAIMS

Defendant and Counterclaimant Wanzek Construction, Inc. ("Wanzek"), by and through undersigned counsel, by way of Counterclaims against Plaintiff, Palmer North America LLC ("Palmer" or "Owner"), alleges as follows:

1. This Action arises from a \$300-plus million contract executed between Wanzek and Palmer on May 14, 2021 (the "Contract") under which Wanzek agreed to build a rail service center and a rail weld line, and to expand a rail rolling mill at Palmer's steel mill site in Pueblo, Colorado (the "Project"). Palmer uses the site to process scrap metal and other materials to make train rails and other manufactured steel items. The expansion of existing facilities and construction of new facilities by Wanzek is expected to allow Palmer to significantly increase its capacity to process metal and to fabricate 100 meter (~328 feet) long train rails that will be welded together to produce one-quarter mile long rail that Palmer can ship throughout the country.

2. Under the Contract, Palmer had several fundamental obligations upon which the Contract's price and schedule were based. Palmer was required to provide Wanzek with access to the site and an area to stage equipment and materials for construction. Palmer was also required to provide Wanzek with the design and engineering for the Project to enable construction of the Project, and Palmer is required to pay Wanzek for the Work.

3. As more fully set forth below, Palmer has failed to fulfill its fundamental contractual obligations making it all but impossible for Wanzek to substantially perform its own obligations under the Contract.

i. Palmer represented during the bid phase of the Project that its design would be complete by November 2021, and even went so far as to describe that date as a “line in the sand.” Wanzek reasonably relied on Palmer’s representations concerning the status of the design and the timeline in which Palmer would release the final design. Wanzek’s price and schedule for the Work were based on Palmer’s representations concerning the design and engineering. Despite Palmer’s express representations that it would timely finish its design to enable construction to progress, Palmer never met its design deadlines and in fact the design remains incomplete as of this date.

ii. Palmer continues to change the design documents that it has issued either to add more work or correct errors or omissions in the design documents. Indeed, Palmer has ordered extensive additional work to a degree never contemplated by the Contract nor consistent with Palmer’s express representations by issuing thousands of new or revised design drawings after November 2021.

iii. During the Project, Wanzek repeatedly raised concerns about the incomplete design with Palmer Project personnel and upper-level management. Palmer represented to Wanzek that it would complete its design to mitigate further delay. However, in reality, Palmer never met any

of its deadlines. Palmer misrepresented to Wanzek the status of the design and Palmer's intention to complete the design apparently so as to induce Wanzek to continue performance.

iv. Palmer turned over the site to Wanzek later than required under the Contract. When Palmer finally did turn over the site, it quickly became apparent that Palmer's site preparation contractor did not adequately prepare the site. Wanzek had to move over 70,000 cubic yards of earth before Wanzek could start construction.

v. Despite delaying and disrupting Wanzek's work and ordering Wanzek to perform additional work, Palmer steadfastly refuses to pay Wanzek for the ensuing increased costs. Palmer has withheld contractually owed milestone payments for no reasoned basis; Palmer has refused to acknowledge the increased costs associated with its directing of additional Work; Palmer has refused to compensate Wanzek for Palmer's failure to issue a design in a timely manner and failure to release a design that meets the appropriate standard of care; Palmer has failed to meet its basic obligations concerning the adequacy of the site; and Palmer has refused to recognize the schedule impact that its breaches have caused Wanzek.

4. The consequences of Palmer's misrepresentations about the status of its design and other material breaches of its fundamental contractual obligations are extreme. Under the Contract, the Project was to be complete by February 10, 2023, but due to the Owner-caused delays, disruptions, and Changes to the Work, as of December 23, 2022, the Project is just 48% complete. Under the current conditions, Wanzek projects that the Project will not reach final

completion until February 2024. In addition, Project costs have soared. Wanzek estimates that the costs to complete the Project under current conditions will more than double, increasing from a Contract Price of approximately \$302 million to over \$600 million. Wanzek has already incurred over tens of millions in additional costs, and its costs grow by hundreds of thousands of dollars each day.

5. Over the last year, Wanzek has repeatedly explained to Palmer the obstacles the Project faces due to the incomplete design and other breaches of the Contract. Palmer has promised in meetings that it would address the design issues and compensate Wanzek fairly. However, in reality Palmer continually fails to fulfill its promises and refuses to accept any responsibility for the Project delays and rising costs, and has failed to limit the damages it has caused by issuing a completed design.

6. Palmer's failure to perform and refusal to pay Wanzek even a portion of its additional costs to date due to Palmer-caused impacts is a wrongful attempt to require Wanzek to finance the Project's significant increased costs, which is not contemplated by the Contract.

7. However, if Wanzek attempts to limit the financial exposure by exercising its contractual right to stop the work because of Palmer's repeated material breaches of the Contract (without a declaration from this Court permitting Wanzek to do so), Wanzek risks significant financial and reputational harm, including potential termination of the Contract and an argument that the Contract's limitations of liability are void.

8. Palmer's actions and refusal to accept any responsibility for its delayed engineering and design and its purported bases to not pay Wanzek any of its increased costs incurred to date have caused Wanzek concern as to whether Palmer is even capable of compensating Wanzek for its Work.

9. These concerns are heightened by recent world events that transpired after Wanzek entered into the Contract. Palmer is a wholly owned subsidiary of Evraz North America Plc (“Evraz NA”). Evraz NA is a wholly owned subsidiary of Evraz Plc, a Russian multinational steel company traded on the London Stock Exchange.¹ Upon information and belief, Evraz Plc’s primary shareholders are Russian Oligarchs, including Roman Abramovich, Aleksander Frolov, and Alexander Abramov.

10. In February 2022, more than nine months after the Contract was executed, Russia commenced its unprovoked and wrongful invasion of the Ukraine. The Russian invasion forced world governments, including the United Kingdom and Canada, to impose severe sanctions on certain affiliates of Owner, including Evraz Plc and Evraz Plc’s primary shareholders, including Russian Oligarchs Mr. Abramovich, Mr. Frolov, and Mr. Abramov.

11. After Russia invaded the Ukraine in February 2022, Wanzek immediately requested in various meetings and by letter that Palmer provide adequate assurances that it could continue to pay Wanzek for the Work on the Project in light of the recent world events. Palmer assured Wanzek that the events surrounding the Ukraine would not impact the Project or its ability to pay Wanzek for Work performed.

12. The situation in the Ukraine has only deteriorated since February 2022, including a stepped-up approach to the imposition of sanctions on Russian affiliated entities and its various Oligarchs. As a result of such sanctions, and the overall business climate involving Russian based and owned companies, Evraz Plc has publicly stated its intent to sell off its North American assets, including its Rocky Mountain Steel Mill site upon which the Project sits.

¹ See <https://www.evrazna.com/Company/Overview/tabid/57/Default.asp>.

13. The financial health of Palmer and Evraz NA, Palmer's Guarantor, cannot be ascertained because both are private companies that do not appear to release yearly financial data to any regulatory agency or organization. Wanzek has no reliable insight into the current financial position of Palmer or how the conflict in the Ukraine, current sanctions, or sale of the Project affects Palmer's financial wherewithal.

14. Given Wanzek's serious concerns about Palmer's ability to pay Wanzek all of its additional costs, Wanzek has twice requested that Palmer provide it with adequate assurances that it can actually pay Wanzek the over \$424 million in the original Contract Price as adjusted by approved and submitted change orders, let alone the \$600 million that Wanzek estimates it will cost to complete the Work. Palmer has not provided any adequate assurances, such as contemporaneous financial data, that it can pay for the work it is directing Wanzek to perform. As a consequence, Wanzek may be forced to finance millions of dollars of the Project.

15. Given Palmer's on-going material breaches of the Contract, on November 29, 2022, Wanzek issued a notice to Palmer demanding that it cure its material breaches of the Contract ("Cure Notice").

16. Palmer provided no response to Wanzek's Cure Notice. Palmer has not shown any willingness to rectify its failures to comply with its contractual obligations and cure its material breaches of the Contract.

17. Palmer has also failed to adequately assure Wanzek that it can pay all of the costs that Wanzek currently estimates it will take to complete the Project due to Palmer-caused delays, disruptions, and Changes to the Work.

18. Rather than attempt to cure its material breaches of the Contract, shortly after receiving Wanzek's Cure Notice, Palmer removed its Vice President and point of contact

with Wanzek. Then, on December 21, 2022, Palmer issued a retaliatory Notice of Default to Wanzek and demanded that Wanzek cure the alleged events of default within ten days. This thinly veiled attempt to obfuscate its own failures was done in bad faith, is without merit, and is detached from the realities of the Project. The timing of the Notice of Default alone—twenty-two days after Wanzek issued its Cure Notice for legitimate and well documented Palmer material breaches—reveals Palmer’s true intent.

19. Despite the mandated ten-day cure period in the Contract, also on December 21, 2022, Palmer filed the instant Complaint against Wanzek but somehow takes the position that Wanzek failed and refused to cure its breaches of the Contract. Palmer filed its Complaint just hours after Palmer provided the Notice of Default to Wanzek, choosing gamesmanship over attempting to productively advance the Project and take accountability for its failed obligations.

20. Wanzek has reason to believe that at the same time Palmer is requiring Wanzek to shoulder the financial burden to try and overcome the Palmer-caused obstacles, Palmer is negotiating with another contractor to complete the work in an attempt to avoid its financial obligations to Wanzek.

21. Given the harm that Wanzek suffers with each day that passes, Wanzek seeks a speedy hearing pursuant to Fed. R. Civ. P. 57 and declarations of Wanzek’s and Palmer’s respective rights and obligations under the Contract. More specifically, Wanzek seeks declarations that: (a) Palmer has materially breached the Contract; and (b) under the Contract, Wanzek is entitled to immediately stop the work and, if necessary, terminate the Contract pursuant to Section 29.4 of the Contract. Wanzek also brings a counterclaim for breach of contract seeking compensation for the additional costs that Wanzek has incurred due to Palmer’s breaches of the Contract.

I. PARTIES, JURISDICTION, AND VENUE

22. Wanzek is incorporated in North Dakota with its principal place of business at 4850 32nd Ave. S, Fargo, ND 58105 and thus for purposes of diversity jurisdiction is deemed a citizen of North Dakota.

23. Palmer is a Delaware limited liability company with its headquarters located at 71 S. Wacker Drive, Suite 1700, Chicago, IL 60606. Upon information and belief, Palmer is a wholly owned subsidiary of Evraz NA. Evraz NA is a corporation that is incorporated in the United Kingdom, with its principal place of business in Illinois. Thus, for the purposes of diversity jurisdiction Palmer is deemed a citizen of Illinois and the United Kingdom.

24. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

25. The Project that is the subject of this dispute is located in Pueblo, Colorado and a substantial part of the events giving rise to Wanzek's counterclaims arose there. Accordingly, and pursuant to 28 U.S.C. § 1391, venue is proper in this District.

II. GOVERNING LAW

26. The Contract provides that it "shall in all respects be governed by and construed in accordance with the laws of the State of Colorado, including with respect to all matters of construction, validity and performance, without giving effect to any choice of law rules thereof which may direct the application of the laws of another jurisdiction." Accordingly, Colorado law governs the Contract.

III. STATEMENT OF FACTS

27. Palmer hired Wanzek to construct a rail rolling mill, rail service center, and weld line at Palmer's steel mill site in Pueblo. The new and upgraded facilities are intended to substantially increase Palmer's capacity for processing scrap metals and fabricating both short and long track rails that Palmer can then ship throughout the country. The basic layout of the Project site is provided below.

Site Logistics Map



28. On May 14, 2021, Palmer and Wanzek executed the Contract, whereby Wanzek agreed to provide certain construction services in exchange for a Contract Price of \$302,184,932, as subject to adjustment in accordance with the terms of the Contract. Palmer is in possession of a copy of the complete Contract.

29. The Contract described in detail, among other things, the Project Schedule, the parties' roles and responsibilities, and the manner in which Wanzek would be compensated for the Work, including for Changes, delays, or disruptions to the Work.

30. Wanzek was to achieve Final Mechanical Completion by February 10, 2023. *See* Contract, § 19.1.

31. Under the Contract, Palmer is responsible for the engineering and design of the Project. *See* Contract, §§ 2.3; 3.4. As part of the bid process and as memorialized in the Contract, Palmer provided a detailed preliminary design to Wanzek that encompassed hundreds of drawings and thousands of different line items of Work encompassed by Palmer's design. Further, because a completed design is necessary for construction, the Contract provided a detailed schedule that set out the dates by when Palmer's engineer, JNE Consulting and Engineering ("JNE"), was required to release Issued-for-Construction ("IFC") drawings. The IFCs were intended to be released in tranches that related to various scopes of work, e.g., deep and concrete foundations, electrical, miscellaneous steel, and piping.

32. In the final stages of the bid process, Palmer released Addendum 8 to the Request for Proposal (RFP). Addendum Number 8 included substantial revisions to the already detailed design and revised dates for the IFC releases. Given the importance of certainty associated with the design assumptions (cost and schedule) underlying its bid, Wanzek sought assurances that it had the final design documents and design schedule. Palmer represented to Wanzek that the "Addendum #8 Dates are the line in the sand for document finalization." Palmer even assured Wanzek that it was operating in "good faith" in setting forth these dates.

33. Under the Contract as clarified by Addendum Number 8, Palmer represented that the design would be finalized and released by November 2021.

34. The Contract provides that the Contract Price consists of four compensation components:

- i. Component 1: Direct Field Labor and Subcontract Cost
- ii. Component 2: Permanent Plant Material and Specialty Subcontractor Cost
- iii. Component 3: Fixed Sum for Indirect Costs
- iv. Component 4: Fixed Fee

35. The Direct Field Labor and Subcontract Costs under Component 1 are primarily based on unit prices. Prior to execution of the Contract, Palmer identified different units of work and set forth the quantities for each such unit. For example, for concrete work, Palmer identified, among other things, the type and size of all anchor bolts, the type and amount of waterproofing and insulation material, and the amount of concrete that would need to be poured. Based on Palmer's estimates, Wanzek provided a unit rate price for each unit of the work. These units of work are also referred to as pay items. Palmer's RFP included 3,631 individual pay items based on the various scopes of work.

36. The initial pricing for Component 1 contained in Wanzek's bid used the proposed unit price for a particular scope of work and multiplied it by the Palmer-furnished quantities derived from the Owner-furnished Issued-for-Bid (IFB) drawings. As Palmer released IFC drawings, the pricing would be updated using the existing unit rates based on adjustments to the quantities of the work for each pay item.

37. The Direct Field Labor and Subcontract Costs under Component 1 are costs tied to the performance of construction work, like demolition, site preparation, erection, and installation.

38. Component 2 refers to the costs for certain materials that would be permanently installed at the Project and certain subcontractors who would be performing specialty work like painting, deep foundations, fabrication of pre-engineered metal buildings, and fire protection as expressly defined in the Contract. Wanzek was paid under Component 2 on a cost plus an additional percentage.

39. Component 3 refers to Wanzek's Indirect costs—a broad category made up of equipment, materials, field staff and indirect support personnel, and other items that are all critical to supporting the construction of the Project. The Indirect costs include all expenses necessary to complete the Project, such as preparation of laydown and storage areas, mobilization of personnel and labor, temporary facilities and equipment, sanitary stations, and small tools and consumable or safety supplies. The Contract provides an Indirect Milestone Payments schedule that provides for payment of Indirect costs to Wanzek on a monthly basis. Wanzek based the pricing for its monthly Indirect costs in large part on Palmer's representations during the RFP phase that it would finish its design by November 2021, and a February 2023 final completion date. Component 4 is a fixed fee for Wanzek to perform the Work and is a factor of the costs under Components one through three.

40. Various provisions of the Contract allow Wanzek to seek additional compensation under each of the four compensation components. *See Contract, Appendix 2.*

41. The Contract also permits Wanzek to seek additional costs and time for delays or disruptions to its Work, and to submit change proposals seeking additional costs and time for Changes to the Work for which Wanzek is not responsible. *See Contract, Arts. 21, 23.*

42. The Contract also grants Wanzek the express right to stop the work or terminate the Contract under certain circumstances. As described in Section 29.4(a) of the Contract, Wanzek may stop the Work if, through no fault of Wanzek:

- (1) the Work is suspended for more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or
- (2) Owner fails for forty-five (45) days after the due date to pay Contractor any undisputed sum finally determined to be due, or
- (3) there is an occurrence of one or more Owner Event of Default which has not been cured within the specified cure periods.

43. Section 29.4(b) of the Contract further defines an Owner Event of Default.

Notably, an Owner Event of Default includes those situations, among others, where Owner:

(A) voluntarily commences bankruptcy, insolvency, reorganization (other than solvent reorganization), stay, moratorium or similar debtor-relief or business rescue proceedings, or shall have become insolvent or is unable to pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of its creditors; or

[. . .]

(D) is in material breach of any provision of this Agreement (other than those breaches specified in Section 29.4(a)(2) and Sections 29.4(b)(i)(A) to (C) above) and such breach is not cured by Owner within fifteen (15) days after notice thereof from Contractor; provided however that if such breach is not capable of being cured within such 15-day period, such a breach shall not be considered an Owner Event of Default if Owner commences to cure such breach within such 15-day period and thereafter diligently continues to cure such breach.

44. Section 29.4(c) of the Contract grants Wanzek the express right to terminate the Contract if Palmer fails to cure its material breaches.

45. The original Baseline Schedule segmented the Project into different areas (i.e., Rail Mill, Rail Service Center, Weld Plant) and used summary level activities to describe the work necessary to complete the required scope.

46. Wanzek planned to begin on-site Work at the end of June 2021, starting with the most challenging areas and the areas that required the largest foundations or the most complex structures because those areas would take longer to complete. As Work progressed, Wanzek planned to open additional work fronts across the Project site. The planned sequencing would allow Wanzek to scale up its manpower over time and take advantage of the large Project site by methodically working multiple areas concurrently to achieve the required completion dates per the Contract.

47. Under the Baseline Schedule, Palmer's engineering and procurement activities were to be complete before construction activities for a particular scope of Work would commence.

48. Given that all design, engineering, and procurement for the Project needed to be complete before construction could commence, Palmer had to complete its design in sufficient time to allow Wanzek to plan for the execution of the Work and procure any necessary equipment, materials, and labor to perform the Work.

49. Once the design was complete and all necessary equipment and materials were ordered and delivered, Wanzek had a straightforward plan to build the Project.

50. During the RFP process in the spring of 2021, Palmer's RFP stated that Palmer would complete its design and issue all IFCs by November 2021. This would allow Wanzek to begin its procurement activities and plan its work sequences such that it could achieve

the milestone dates set out in the Contract. Wanzek also based its schedule and pricing for the Work on the Owner's representations the design would be complete by November 2021.

51. Moreover, as part of Addendum Number 8, Palmer represented to Wanzek that any additional Changes, if any, would be addressed through the Change Order process.

52. Palmer's representations about its ability to meet the deadlines in Addendum Number 8 were false. Even after the Contract was executed, Palmer repeatedly misrepresented to Wanzek the actual status of the design. By November 2021, Palmer was nowhere near finished with its design and a substantial number of engineering deliverables were outstanding. Wanzek made Palmer executives aware of the urgency of the situation and the need for Palmer to finish its design to allow construction to proceed as scheduled. At that time, Palmer represented to Wanzek that it could complete its design by February 2022. Based on this representation, Wanzek resequenced its Work, adjusted procurement activities, and implemented other realignments to account for Palmer's new date to complete its design.

53. By February 2022, Palmer's design remained incomplete, and it had failed to issue all IFCs and other engineering deliverables. Palmer's design was already four months later than the time when it represented it would be complete during the bid phase. Then, at the very same time that Russia began its invasion of Ukraine and therefore exposed Evraz Plc and its primary shareholders to sanctions, Palmer represented to Wanzek that it could now complete the design by April 2022. Palmer failed to meet even this delayed promise.

54. Palmer has repeatedly misrepresented the status of its design and engineering and its intention to complete its design. Wanzek made Palmer's executive team aware of the urgency to complete the design and the significant impacts and delays the Project faced. Palmer's Project and management teams largely ignored Wanzek's pleas, promised to complete

its design, but in reality, Palmer failed to take sufficient action to finish the design. Instead, Palmer misrepresented the status of its design to induce Wanzek to continue performance to Wanzek's detriment.

55. Now, over a year after when Palmer represented its design would be complete, Palmer's design is still incomplete and Wanzek does not have all of the design and engineering documents necessary to allow it to complete its construction activities and the designs that have been issued are constantly changed by Palmer.

56. The Project has suffered due to Owner's inaccurate representations about the status of its design, and other significant issues and impacts that have delayed, disrupted, and interfered with Wanzek's Work as well as caused, and continue to cause, Wanzek to incur significant additional costs. In some instances, Palmer is preventing Wanzek from advancing its construction of the Project because of its various breaches of the Contract and failure to perform its fundamental contractual obligations.

57. These include, but are by no means limited to, the following:

- i. **Engineering Delay and Design Revisions and Errors.** Palmer failed to complete the Project's design by November 2021. Over a year later, the design is still not complete, and Palmer has issued thousands of new and revised drawings after November 2021. Wanzek has been forced to procure new materials and perform duplicative work because Palmer issued revisions after Wanzek already began installation. Wanzek has been forced to hire dozens of additional personnel to organize and identify the volume of changes, address the impacts to the Work, and seek clarifications when new and revised drawings conflict with already installed Work.

Wanzek notified Palmer as early as August 2021 that Palmer's incomplete design was causing delays in planning and progress of the Work. In a January 2022 monthly report, Wanzek stated: "The largest contributing factors [to the delays in construction] have been the delay in Owner's Engineering deliverables [and] revisions of IFC drawings[.]"

ii. **Conversion Packages/Pay Items.** While some design changes were expected, Wanzek could never have anticipated the volume and type of changes. This is particularly true given that the RFP included 3,631 individual pay items based on the various scopes of work and Palmer represented that its design was largely complete and would be finalized by November 2021. Wanzek and Palmer have needed to generate 1,223 new pay items to capture the vast number of changes and additions to the Work for which no pay item existed in the Contract. Palmer issued IFC drawings that Wanzek assumed to be complete, only for Palmer to reissue new IFC drawings with unidentified changes. Palmer's failure to cloud or otherwise identify changes in the drawings further magnifies the level of effort required by Wanzek to understand the changes, or lack thereof, on each drawing, and forced Wanzek to more than double its field engineering staff to understand Palmer's deficient design and engineering deliverables.

iii. **Increased Warehousing Personnel.** As shown on the Site Logistics Map dated April 1, 2021, over a month before the execution of the Contract, Palmer represented that a single lay-down area of 17 acres was sufficient to store and stage materials and equipment. Palmer assured

Wanzek the single laydown area was adequate because Owner-Furnished Equipment would be delivered to the Project site in shipping containers that could be stacked to conserve space. Wanzek based its required personnel and Indirect costs to manage the laydown and storage area on Palmer's representations. In reality, Palmer's equipment arrived in small individual shipments, significantly increasing the number of shipments that must be received, unloaded, unwrapped, visually inspected, and stored. In addition, Wanzek has had to manage, organize, and maintain the material for significantly longer than intended because of Owner-caused delays. As a result, the planned single 17-acre laydown and storage area grew to six different laydown areas totaling over 100 acres. Wanzek has been forced to hire dozens of additional warehouse personnel and increased craft manpower to manage the intake and storage of the equipment, materials, and the additional laydown areas.

iv. **Embedded Conduit:** During the RFP phase, Palmer represented that there would be minimal embedded conduit on this Project. Palmer made a last-minute design change to reroute much of the electrical work from cordial trays above ground to placing electrical wiring in conduit deep underground. In Addendum 8, issued shortly before Contract execution, Palmer added 58,400 LF of embedded conduit to the bid package. After execution of the Contract, the amount of embedded conduit on the Project increased from 58,400 LF to over 340,000 LF. Wanzek first advised Owner of the severity of this design change in the November 2021 Monthly Report,

where Wanzek stated: “The largest contributing factor [to construction being behind the overall planned percent complete] is the growth in embedded conduit. Embedded conduit quantities have increased over 450% from the estimated quantities provided by Owner’s Engineer.” The addition of over 280,000 LF of embedded conduit was a significant Change to the Work and had a major impact to the Project, including sequencing; civil works; concrete works; surveying; and ingress and egress to the site to avoid potentially damaging the conduit.

v. **Failure to provide timely site access.** The Baseline Schedule identified “Contractor Mobilization Start” on June 1, 2021, and a planned start of construction activities on June 28, 2021, Wanzek was not approved to mobilize to the site until July 19, 2021.

vi. **Failure to perform necessary prerequisite activities.** Palmer was required to turn over the site to Wanzek at the grade profiles identified in the drawings. Palmer’s site preparation contractor did not grade many areas to the correct elevation. To correct this issue, Wanzek needed its own civil subcontractor to perform over 70,000 cubic yards of Palmer’s grading work, before Wanzek could commence its own planned construction activities.

vii. **Unforeseen Subsurface Conditions.** Shortly after Wanzek began its construction activities, it encountered unforeseen groundwater and other obstructions that prevented Wanzek from performing its excavation and piling work. Wanzek was forced to change its planned execution for the

piling work while it waited for Palmer to develop solutions for the unforeseen subsurface conditions in a particular area.

viii. **Engineering Delay at the ECR 2:** Wanzek discovered inaccuracies in Palmer's design for embedded conduit stub-ups that resulted in conduit being installed more than seven feet from the intended location. To fix this issue requires significant rework on Wanzek's part, and a new design from Palmer. Palmer still has not revised its design or issued new engineering drawings.

ix. **Anchor Bolt Design Issues:** Palmer failed to identify in its foundation drawings all locations that require anchor bolt embedments and sleeves. Wanzek discovered this deficiency only when it attempted to pour certain concrete with embedded anchor bolts. Palmer has not issued revised drawings, forcing Wanzek to guess the locations where embedded anchor bolts are required, or to skip the embedments and pour concrete to keep the Project moving while risking that Palmer will later require embedded anchor bolts in already poured concrete.

x. **Electrical Equipment List:** Palmer's various iterations of the electrical equipment list, which provides all of the electrical equipment for the Project, have contained errors and inaccuracies, or lack necessary information, forcing Wanzek to guess what theoretical equipment is required by Palmer's design. An inaccurate electrical equipment list jeopardizes timely start-up and commissioning because Wanzek and Palmer cannot know if the system is complete.

xi. **Cable and Termination Schedules:** Cable and termination schedules are standard engineering deliverables that illustrate all of the power and control cable required to operate the Project, and the locations at which cables must be landed in all panels for power and controls and to facilitate Project turnover. Palmer continues to revise its cable schedule and has not issued a termination schedule. Wanzek cannot complete this critical electrical work without complete cable and termination schedules.

xii. **Loop Drawings:** Loop drawings contain all circuit information from the instrument to the very last terminal of the control panel and explain graphically the geography and architecture of the loop. A typical loop diagram contains terminal numbers, wire colors, power supplies, energy sources (pneumatic vs. electrical), isolation points, safety settings, instrument range, interlocks, and locations of every terminal, instrument, and device. The loop diagram is an essential tool for construction, checkout, start-up, and maintenance of electrical/instrumentation systems. Palmer has refused to provide loop drawings, preventing Wanzek from finishing this critical electrical work.

xiii. **Piping Line List:** A piping line list provides information for all of the piping to be installed on the Project. Palmer's piping line list is missing industry standard information, including: operating temperatures, design pressures, required test pressures, testing media requirements, and connection points. This information is required for hydro-testing, system walkdowns, and turnover to the start-up and commissioning team. Palmer

has not provided this information or advised when Palmer plans to do so. Wanzek cannot perform the piping Work for the Project until Palmer provides all necessary design and engineering information.

58. Wanzek repeatedly raised its concerns and the resultant impacts to the Project with Palmer in numerous written notices and during countless meetings between Wanzek and Palmer.

59. Despite Wanzek's constant efforts to illustrate for Palmer the issues facing Palmer, Wanzek, and the Project, Palmer has failed to take any responsibility for its incomplete design and other breaches of the Contract and instead has attempted to deflect responsibility by wrongly blaming Wanzek for the Project delays and escalating costs.

60. On October 31, 2022, Wanzek submitted to Palmer a document titled "Summary of the Status of the Project and Additional Request for Compensation and Time" (the "October 31 Request").

61. In the October 31 Request, Wanzek (i) detailed its estimated costs to complete the Project under the current conditions; (ii) provided an estimated date by when Wanzek could achieve Final Mechanical Completion under the current conditions; and (iii) summarized for Palmer the significant impacts to the Work that have resulted from Palmer's delays, disruptions, and design changes.

62. Wanzek advised Palmer that given the Owner-caused delays, disruptions, and Changes to the Work, Wanzek estimated that under current conditions it would cost over \$600 million, which is \$300 million more than the Contract Price, to complete the Project. Wanzek also estimated that it would achieve Final Mechanical Completion by February 15, 2024, a year later than the Contract specified.

63. Wanzek also expressed concern as to whether Palmer can pay for the Work it is requiring Wanzek to perform. Palmer has failed to pay amounts due under the Contract and has refused to pay Wanzek for the additional costs incurred due to its incomplete design and other breaches of the Contract.

64. The Work is being performed at a steel mill affiliated with Palmer's parent company and Guarantor Evraz NA. Evraz NA is a wholly owned subsidiary of Evraz Plc, a Russian company traded on the London Stock Exchange. The Russia-Ukraine conflict has led many governments, including those of the United Kingdom and Canada, to impose significant sanctions on Owner's affiliates, including Evraz Plc and its primary shareholders.

65. The sanctions and overall business climate for Russian-owned entities at this time has caused Evraz Plc to publicly announce its intention to sell its North American assets, including the steel mill at which the Project is located mid-construction.

66. Palmer and its Guarantor Evraz NA are private companies and do not appear to release financial data to any regulatory agency or organization. There is no telling the financial position that either entity is in or the financial wherewithal of Palmer.

67. Given these concerns, Wanzek requested Palmer provide Wanzek with adequate financial assurances that Palmer has the financial health to pay for the remaining work Wanzek must perform to complete the Project.

68. In response, Palmer merely stated that it had the ability to pay amounts properly due under the Contract and provided no actual evidence of the ability to pay.

69. On November 17, 2022, Wanzek submitted two Change Proposals in which it sought payment of its additional Indirect costs, and an extension of the Baseline Schedule.

70. In Change Proposal 0033, Wanzek sought payment of its additional Indirect costs that it had incurred through October 2022. Wanzek incurred these additional Indirect costs in large part because of the significant Project impacts that Wanzek described in its October 31 Request. Wanzek illustrated the reasons why it had incurred additional Indirect costs, including, but not limited to:

- i. Mobilization of additional personnel, including field engineers, warehouse staff, and project management.
- ii. Purchase and retention of additional temporary equipment to perform the additional Work.
- iii. Purchase of additional temporary materials and supplies, and costs incurred to provide more services to account for the additional personnel and Work, like temporary electrical and sanitary services.

71. In Change Proposal 0034, Wanzek requested an extension to the Baseline Schedule, which would have adjusted the Mechanical Completion Date from February 10, 2023, to February 15, 2024. In support of Wanzek's request, Wanzek provided Palmer with a critical path schedule analysis that demonstrates that there have been 370 calendar days of delay, for which Palmer is responsible for at least 323 calendar days of delay due to, among other things, the incomplete status of Palmer's design and engineering deliverables.

72. Palmer rejected Wanzek's Change Proposals in their entirety and again refused to take any responsibility for its failure to perform its fundamental contractual obligations.

73. Also on November 17, 2022, Wanzek provided Palmer with a renewed request for adequate assurances of payment.

74. Palmer has not provided any adequate assurances, such as contemporaneous financial or accounting documentation, that shows it has the financial wherewithal to pay Wanzek over \$600 million to complete this Project or even the \$424 million in the original Contract Price as adjusted by approved changed orders and submitted change orders.

75. Given Palmer's on-going material breaches of the Contract, on November 29, 2022, Wanzek issued a notice to Palmer demanding that it cure its material breaches of the Contract ("Cure Notice").

76. Palmer was required to provide Wanzek with timely site access and Palmer was required to complete all necessary Work before Wanzek mobilized to the site. Palmer was also required to provide a completed design and all engineering deliverables by November 2021. Finally, Palmer is required to pay for the Work. Palmer's failure to perform its fundamental contractual obligations and pay Wanzek for the additional Work that it is directing Wanzek to perform constitute material breaches of the Contract.

77. Palmer provided no response to Wanzek's Cure Notice. Palmer has not shown any willingness to rectify its failures to comply with its contractual obligations and cure its material breaches of the Contract.

78. Palmer has also failed to adequately assure Wanzek that it can pay Wanzek over \$600 million that Wanzek currently estimates it will take to complete the Project due to Palmer-caused delays, disruptions, and Changes to the Work.

79. On December 21, 2022, Palmer issued a Notice of Default to Wanzek and demanded that Wanzek cure the alleged events of default within ten days. Wanzek will respond to Owner's Notice of Default within the time required under the Contract and will continue to comply with its contractual obligations. Palmer's retaliatory Notice of Default was issued twenty-

two days after Wanzek issued its Cure Notice, and without ever responding to Wanzek's Cure Notice or curing its own material breaches identified in the Cure Notice.

80. Despite the mandated ten-day cure period in the Contract, also on December 21, 2022, Palmer filed the instant Complaint against Wanzek. Palmer alleged that Wanzek failed and refused to cure its breaches of the Contract despite that Palmer filed its Complaint just hours after Palmer provided the Notice of Default to Wanzek.

81. On December 21, 2022, the same day that Palmer issued a Default Notice, Palmer personnel met with Wanzek personnel to discuss the financial consequences associated with Palmer's changing and late design. It is now apparent that the meeting was a façade. At the same time Palmer was meeting with Wanzek personnel, Palmer filed its Complaint in this Court.

82. As detailed above, Wanzek issued a Cure Notice to which it received no response. All conditions precedent to commencing this Action have been satisfied.

83. In addition to the following Counterclaims for Relief, Wanzek is pursuing its Lien claims under Colorado law. At the appropriate time, Wanzek will be pursuing in the appropriate court its foreclosure actions to perfect its lien rights.

IV. COUNTERCLAIMS FOR RELIEF

FIRST COUNTERCLAIM FOR RELIEF **(Declaratory Judgment)**

84. Wanzek hereby incorporates by reference the averments in Paragraphs 1 through 83 as if fully set forth herein.

85. The Contract set forth Palmer's fundamental contractual obligations upon which Wanzek and Palmer executed the Contract.

86. Palmer has failed to complete its design and provide Wanzek with all Owner-Furnished Drawings by November 2021 and committed other material breaches of the Contract.

87. Wanzek cannot perform its construction Work and cannot complete this Project due to Owner's failure to provide a completed design and other material breaches of the Contract.

88. Pursuant to Sections 15, 21, and 23, and Appendix 2 of the Contract, Palmer is obligated to grant Wanzek additional compensation and adjustments to the schedule if Wanzek's cost of or time for performance of its Work was impacted for reasons beyond Wanzek's control. Palmer's payment to Wanzek for work performed and of its debts as they become due are fundamental obligations of the parties' Contract.

89. Palmer has failed to approve Wanzek's Change Proposals and pay Wanzek additional monies that Wanzek has incurred due to Owner-caused delays, disruptions, interferences, and Changes to the Work.

90. Palmer has also failed to provide Wanzek with any contemporaneous financial or accounting information to reasonably assure Wanzek that Palmer can pay Wanzek over \$600 million that Wanzek currently estimates it will take to complete the Project under the current conditions.

91. The Contract permits Wanzek to suspend the Work and terminate the Contract if, among other things, Palmer cannot pay its debts as they become due, or if Palmer is in material breach of any provision of the Contract.

92. An actual controversy exists regarding whether Palmer is in material breach of the Contract and whether Wanzek may immediately suspend the Work and, if necessary, terminate the Contract.

93. Wanzek has a direct, substantial, and present interest in the parties' respective obligations under the Contract.

94. The declarations sought will terminate some or all of the disputes and controversies giving rise to this proceeding.

95. As a result, a declaratory judgment is both necessary and proper to set forth the rights and obligations that exist between the parties.

96. As described above, the dire situation in which Wanzek has been placed necessitates a speedy hearing to determine the parties' obligations under the Contract.

WHEREFORE, Wanzek respectfully requests that the Court enter judgment as follows:

- a. Declaring that Palmer has materially breached the Contract;
- b. Declaring that, under the Contract, Wanzek is entitled to exercise its contractual right to stop the work and, if necessary, terminate the Contract immediately;
- c. Awarding Wanzek such other relief as the Court deems equitable and just under the circumstances.

SECOND COUNTERCLAIM FOR RELIEF
(Breach of Contract)

97. Wanzek hereby incorporates by reference the averments in Paragraphs 1 through 96 as if fully set forth herein.

98. The Contract is valid and enforceable.

99. Pursuant to the Contract, Palmer is obligated to, among other things, timely provide Wanzek with site access, perform all required prerequisite work before site turnover, provide Wanzek with a complete design and provide all Owner-Furnished Drawings in accordance with the timing set out in the Contract, compensate Wanzek in accordance with the Compensation Components set forth in the Contract, act in good faith and not make false representations, and to grant Wanzek additional compensation and adjustments to the schedule if Wanzek's cost of or time for performance of its Work was impacted for reasons beyond Wanzek's control.

100. Palmer breached the Contract because it did not timely provide access to the site or complete all necessary pre-work before site turnover to Wanzek.

101. Palmer breached the Contract because it did not complete its design or issue all Owner-Furnished Drawings by November 2021, and its design remains incomplete.

102. Palmer breached the Contract because it has failed to pay Wanzek amounts due and owing under the Compensation Components in accordance with the Contract.

103. Palmer breached the Contract because it has failed to grant Wanzek adjustments to the Contract Price and the Baseline Schedule to account for the increases in Wanzek's cost of and time for performance of its Work caused by Palmer's delays, disruptions, interferences, and Changes to the Work.

104. As a result of Palmer's breaches of the Contract, Wanzek has suffered damages in excess of \$75,000.

WHEREFORE, Counterclaimant Wanzek Construction, Inc. respectfully requests judgment in its favor and against Plaintiff-Counterclaim Defendant Palmer North America, LLC in an amount in excess of \$75,000, as well as interest, attorneys' fees pursuant to Section 31.3 of

the Contract, and costs as permitted by the Contract, and other such relief as the Court deems just and proper under the circumstances.

Dated: December 23, 2022

Respectfully submitted,

s/Bret Gunnell

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CERTIFICATE OF SERVICE

I certify that on December 23, 2022, I caused to be served a copy of the foregoing to the following by ECF Electronic Service:

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