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UNITED STATES COURT FOR THE  
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, and  
STATE OF ALASKA

*Plaintiffs,*

v.  
CITY OF PALMER, ALASKA

*Defendant.*

Civil Action No: 3:16-cv-00204-TMB

**CONSENT DECREE**

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WHEREAS Defendant, the City of Palmer, Alaska (the City), owns and operates a publicly owned treatment works (Facility) currently located at 1802 S. Brooks Road in Palmer, Alaska 99645, that collects, pumps, treats, and disposes of domestic wastewater into the Matanuska River approximately 5 miles northeast of the tidewater at the head of Knik Arm.

WHEREAS Pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, on December 5, 2006, the United States Environmental Protection Agency (EPA) issued the City a National Pollution Discharge Elimination System (NPDES) permit (Permit) for the Facility, Permit Number AK002249-7. The Permit authorizes the City to discharge specified concentrations and amounts of certain pollutants from the Facility and imposes various monitoring and reporting requirements on the City. The Permit expired on December 31, 2011, however the City timely applied for a new Permit thereby administratively extending the Permit in accordance with federal regulations, 40 C.F.R. § 122.6, and state regulations, 18 AAC 83.155(c).

WHEREAS Plaintiff, the United States of America, on behalf of EPA, and the State of Alaska (State), on behalf of the Alaska Department of Environmental Conservation (ADEC), have filed a Complaint in this action alleging that the City violated the terms and conditions of the Permit and is thereby is liable for civil penalties and injunctive relief pursuant to Section 309(b) and (d) of the Federal Water Pollution Control Act of 1972, as amended (Clean Water Act or CWA), 33 U.S.C. § 1319(b)&(d) and AS 46.03.760(e) and AS 46.03.765.

WHEREAS the City does not admit any liability for the violations alleged in the Complaint.

WHEREAS the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties and without adjudication of any issue of fact or law except as expressly provided herein, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395(a), because the City is located in this judicial district. For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree and any such action, and over the City, and the City consents to venue in this judicial district.

2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355, and Title 18, Alaska Administrative Code (AAC) Chapter 83.

### **II. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States, the State, the City, and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Consent Decree are implemented. At least thirty (30) Days prior to any transfer of ownership or operation of the Facility, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed transfer agreement, to the United States and State, in accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

5. The City shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. The City shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, the City shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. OBJECTIVES**

7. It is the goal of the Parties and this Consent Decree for the City to construct and operate various wastewater treatment-related projects that will enable the Facility to comply with its NPDES Permit.

#### IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “ADEC” shall mean the Alaska Department of Environmental Conservation and any components thereof or successor agencies and departments.
- b. “APDES Permit” shall mean an Alaska Pollutant Discharge Elimination System Permit issued or administered by ADEC for the Facility under 18 AAC 83, including any amendments and modifications thereto.
- c. “Clean Water Act” or “CWA” shall mean the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. §§ 1251-1387.
- d. “Complaint” shall mean the complaint filed by the United States and State in this action.
- e. “Compliance Measures” shall mean all of the requirements set forth in Section VI of this Consent Decree.
- f. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto.
- g. “Date of Lodging” shall mean the day that the Consent Decree is lodged with the Court for public comment as provided by Section XIX (Public Participation) of this Consent Decree.
- h. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day

would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

i. “The City” shall mean the City of Palmer, Alaska.

j. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

k. “Effective Date” shall mean the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket.

l. “Facility” shall mean the City’s publicly owned treatment works, currently located at 1802 South Brooks Road in Palmer, Alaska 99645, all associated collection, holding, transporting and treatment and discharge systems, and all appurtenances, additions, improvements or replacements thereto. As of the Date of Lodging, the Facility includes three lagoons, referred to as Lagoon No.1, Lagoon No. 2, and Lagoon No. 3, as is indicated on the diagram attached hereto as Appendix A.

m. “Interest” shall mean the interest rate specified at 28 U.S.C. § 1961 as of the date that Interest begins to accrue.

n. “Moving Bed Biofilm Reactor” or “MBBR” shall mean a biological wastewater treatment system that utilizes small plastic biofilm carriers (media) suspended in an aeration basin to provide a high biomass density.

o. “NPDES Permit” or “Permit” shall mean the National Pollutant Discharge Elimination System Permit issued by EPA for the Facility, Permit Number AK002249-7, on December 5, 2006, including any amendments and modifications thereto.

p. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

q. “Parties” shall mean the United States, the State, and the City.

r. “Performance Period” shall apply to the MBBR installation and operation and is specified in Paragraph 11.b. below to give the City a period of time to ensure that the MBBR system is running properly before liability for stipulated penalties begins.

s. “Plaintiffs” shall mean the United States and the State of Alaska.

t. “Secondary Clarifiers” shall mean basins specifically designed to provide effective gravity separation of settleable and suspended solids in wastewater treated in a biological treatment process such as MBBR.

u. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

v. “State” shall mean the State of Alaska.

w. “Submission” shall mean any plan, notification, report, procedure, protocol, or other deliverable submitted or required to be submitted under this Consent Decree by the City to EPA and/or the State for approval or comment.

x. “Substantial Completion” of a Compliance Measure shall mean that (i) all equipment necessary for successful operation of the Compliance Measure has been constructed or installed, and satisfactorily tested under the range of normal conditions; (ii) personnel have been trained in proper operation of the Compliance Measure; (iii) functional testing is complete and the Compliance Measure is functionally operational; (iv) a complete operations and maintenance manual is available on site; and (v) the City has put the Compliance



Measure into service. With respect to MBBR, putting it into service shall mean that the city has begun active and continuous processing of wastewater through the MBBR system.

y. “United States” shall mean the United States of America, acting on behalf of EPA.

## V. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date of this Consent Decree, the City shall pay the sum of \$192,162.00 as a civil penalty, together with Interest accruing from July 22, 2016.

a. The City shall pay \$96,081.00 of the civil penalty plus Interest thereon accruing from July 22, 2016, to the United States at <https://www.pay.gov> by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with written instructions to be provided to the City, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Alaska, Office of the United States Attorney, District of Alaska, 222 West 7th Ave, Rm 253, Anchorage, Alaska 99513. At the time of payment, the City shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. City of Palmer, and shall reference the civil action number and DOJ case number 90-5-1-1-11214, to the United States in accordance with Section XV (Notices) of this Decree by email to [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

b. The City shall pay \$96,081.00 of the civil penalty plus Interest thereon accruing from July 22, 2016, to the State of Alaska by check made payable to the State of Alaska and delivered to:

ADEC Division of Water  
Attn: Mike Solter, Compliance Program Manager  
555 Cordova St  
Anchorage, AK 99501

The same address shall be used for the payment of any stipulated penalties due under this Consent Decree. The State may, by written notice to the other Parties, change its designated recipient or address provided above for payment of any civil penalties or stipulated penalties due hereunder.

## **VI. COMPLIANCE MEASURES**

10. Interim Compliance Measures. The City shall implement the following interim compliance measures:

a. Lagoon Re-circulation System. After January 1, 2016, the City shall maintain and continuously operate a re-circulation system that utilizes two pumps to cause flow to be re-circulated around Lagoon No. 1 and separately around Lagoon No. 2, so as to increase the retention of biomass in each lagoon and thus improve biological ammonia removal. One pump shall be used to recirculate flow around Lagoon No. 1 and the second pump used to recirculate flow around Lagoon No. 2. The pumps used shall be an existing 200 gallons per minute (gpm) capacity pump and a new pump of at least 380 gpm capacity. The City shall continuously operate this re-circulation system until the City installs the MBBR as required by Paragraph 11.b. below.

b. DO Probes and Concentrations.

i. No later than January 1, 2016, the City shall install, calibrate and maintain according to the probe manufacturer's recommendations at least one appropriately located dissolved oxygen (DO) probe in each lagoon. The City shall use these probes to improve and document its maintenance of DO concentrations in Lagoons Nos. 1 and 2 as described below by continuously monitoring and recording DO concentrations at these locations. The City shall use the collected data to determine the range of DO concentrations maintained in each lagoon during each calendar month and shall report that information for each month in its quarterly reports to EPA and ADEC pursuant to Section VIII (Reporting Requirements).

ii. Beginning January 1, 2016, and continuing until installation of the MBBR system as required by Paragraph 11.b below, the City shall maintain a minimum DO concentration of at least 1.0 mg/l in Lagoon No. 1 and of 2.0 mg/l in Lagoon No. 2.

c. Lagoon Dredging.

i. No later than June 1, 2016, the City shall commence dredging of accumulated solids from Lagoon Nos. 1 and 2, and shall complete dredging by September 30, 2016. Solids dredged shall be pumped to the existing sludge storage area in the southwest quarter of the Facility site for drying, lime stabilization, mixing with soil and onsite placement.

ii. Periodic Dredging. During the term of this Consent Decree, the City shall periodically dredge the Facility's lagoons as necessary to maintain sufficient depth for effective settling and compliance with the Permit's Total Suspended Solids (TSS) requirements and any TSS requirements in any subsequent NPDES/APDES permit issued by EPA or ADEC.

d. Alkalinity Feed. No later than July 15, 2016, the City shall monitor pH and alkalinity in Lagoon Nos. 2 and 3 on a weekly basis. If the alkalinity in the Lagoon No. 2

effluent drops below 50 mg/l, the City shall begin manual feeding of alkalinity in Lagoon No. 2 within 24 hours in an attempt to limit its further drop. The manual feeding shall be carried out to prevent exceedance of pH limits in the Permit or subsequent NPDES/APDES permit issued to the City by EPA or ADEC and shall continue until installation and operation of the alkalinity feed system required by Paragraph 11.a below. The City's quarterly reports to EPA and ADEC, submitted pursuant to Section VIII (Reporting Requirements) shall include the results of this pH monitoring; a description of any manual alkalinity feeding undertaken; and the results of manual feeding on alkalinity in Lagoon Nos. 2 and 3.

11. Final Compliance Measures.

a. Alkalinity Feed. No later than June 30, 2018, the City shall install and thereafter continuously operate an alkalinity feed system so as to maintain sufficient alkalinity for nitrification, while maintaining compliance with pH limits in the City's NPDES Permit or subsequent NPDES/APDES permit issued by EPA or ADEC. The City shall conduct continuous pH monitoring and report the range of pH maintained during each calendar month in its quarterly reports to EPA and ADEC pursuant to Section VIII (Reporting Requirements).

b. Moving Bed Biofilm Reactor System (MBBR).

i. MBBR Design and Installation Deadlines. The City shall design, install and operate an MBBR system at the Facility as follows.

(a) By December 5, 2016, the City shall complete the design of an MBBR system for the Facility and submit to EPA and ADEC (pursuant to 18 AAC 72) an engineering plan for the Facility that includes all the Final Compliance Measures under this paragraph (i.e., MBBR system, Solids Handling, and Secondary Clarifiers) for an opportunity to comment pursuant to Section VII below (Review of City Submissions).

(b) By March 1, 2017, the City shall select a contractor to build the MBBR system at the Facility and shall submit the name and credentials of the proposed contractor to EPA.

(c) By July 31, 2018, the City shall achieve Substantial Completion of the MBBR system at the Facility and commence operation of the MBBR system. The Performance Period shall run from July 31, 2018 through April 30, 2019.

ii. MBBR Capacity. The MBBR system at the Facility shall be constructed according to the following requirements:

(a) The MBBR system shall be initially constructed with two MBBR basins sized to support treatment of an average maximum monthly flow of 1.2 million gallons per day (MGD). Initially, the City shall install sufficient media to allow treatment of a maximum monthly flow of 0.65 MGD. The MBBR system shall be configured to allow the future addition of a third basin to support treatment of a future maximum monthly flow of 1.5 MGD.

(b) The MBBR system shall be designed and constructed in accordance with current good industry practice.

(c) After initial MBBR construction, the City shall add additional media as needed to match the City's population growth and wastewater flow up to an average maximum monthly flow of 1.2 MGD. If addition of a third basin is necessary to accommodate further increases in population growth and wastewater flow, as contemplated in Paragraph 11.b.ii(a), the City shall add additional media as needed up to an average maximum monthly flow of 1.5 MGD.

iii. Continuous Operation of MBBR. After July 31, 2018, the City shall continuously operate the MBBR system at the Facility.

c. Solids Removal. The City shall comply with the following solids removal requirements so as to maintain adequate solids removal following startup of the MBBR:

i. The City shall construct the MBBR system to discharge its effluent to Lagoons Nos. 2 and 3 for suspended solids removal until secondary clarifiers are installed in accordance with Paragraph 11.d. below.

ii. No later than July 31, 2018, the City shall construct and achieve Substantial Completion of a post-MBBR polymer feed system with equipment and capability to provide for the addition of at least 3ppm polymer on a flow paced basis prior to Lagoon No. 3. Such equipment shall be designed and constructed in accordance with current good industry practice, and shall include polymer storage, feed equipment, piping, mixing, controls and enclosures as necessary to allow effective use of polymer upon start-up of the MBBR system.

iii. If, after installation and operation of the MBBR system, the City fails to meet any TSS requirement or limit in the Permit, or any TSS requirements in any subsequent NPDES/APDES permit issued by EPA or ADEC, as soon as the City becomes aware of any violation of the TSS requirements, the City shall:

(a) Add polymer as needed at dosage rates determined by jar testing per ASTM Standard D2035-13 (Standard Practice for Coagulation-Flocculation Jar Test of Water) and operational performance to meet then-applicable TSS Permit limits and requirements in the Permit or in any subsequent NPDES/APDES permit issued by EPA or ADEC.

(b) If the addition of polymer under Paragraph 11.c.iii(a) above does not enable the City to meet TSS limits and requirements in the Permit or any subsequent NPDES/APDES permit issued by EPA or ADEC, the City shall, within sixty (60) Days of the first polymer addition, install additional temporary solids removal measures, which may include a lagoon rock filter, a disk filter, or additional chemical feed to meet applicable TSS permit limits and requirements until the Secondary Clarifiers required by Paragraph 11.d below are installed and operational.

d. Secondary Clarifiers.

i. No later than August 31, 2020, the City shall install and thereafter continuously operate two Secondary Clarifiers at the Facility of sufficient treatment and settling capacity to enable the Facility to meet all effluent limits in the Permit or in any subsequent NPDES/APDES permit issued by EPA or ADEC. The Secondary Clarifier system shall be configured to allow the future addition of a third clarifier, if necessary, to support treatment of a future maximum monthly flow of 1.5 MGD. The clarifiers shall be designed and constructed in accordance with current good industry practice.

ii. At least ninety (90) Days prior to constructing the Secondary Clarifiers, the City shall submit to EPA and ADEC (pursuant to 18 AAC 72) any necessary modifications of the engineering plan for the Facility previously submitted under Paragraph 11.b.i(a) above relating to the installation of the Secondary Clarifiers.

12. Permit Compliance. The City shall comply with all terms of the Permit and with all terms of any subsequent NPDES/APDES permit issued by EPA or ADEC.

13. Permits. Where any compliance obligation under this Section requires the City to obtain a federal, state, or local permit or approval, the City shall submit timely and complete

applications and take all other actions necessary to obtain all such permits or approvals. Such approvals and permits include those that may be required under 18 AAC 72.200 and 18 AAC 72.235-240.

14. Pre-Entry Obligations. Obligations of the City under this Consent Decree to undertake Compliance Measures by dates that occur prior to the Effective Date of this Consent Decree, shall be legally enforceable only on and after the Effective Date of this Consent Decree. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by the United States or the State as provided in this Consent Decree, provided that the stipulated penalties that may have accrued from the Day compliance is due through the Effective Date of this Consent Decree may not be collected unless and until this Consent Decree is entered by the Court.

## **VII. REVIEW OF CITY SUBMISSIONS**

15. Except for Submissions under Sections X and XI (Force Majeure and Dispute Resolution respectively) or required by Paragraph 20 below, where any provision of this Consent Decree requires that the City submit any plan, notification, report, procedure, protocol, or other deliverable (Submission) to EPA and/or ADEC for review and the opportunity to comment, or where any provision of this Consent Decree specifically references this Section VII, the Submission shall be subject to the provisions of this Section.

16. The City shall submit one copy of each Submission to EPA and one copy to the State by the means and to the addressee listed in Section XV (Notices) along with all underlying data or supporting documents.

17. Submissions Subject to EPA and/or ADEC Comment.



a. Unless otherwise provided herein, for Submissions under any provision of this Consent Decree that are subject to EPA and/or ADEC review and opportunity to comment, EPA and/or the State may provide written comments on the Submission, in whole or in part, or may decline to comment. If EPA and/or the State provide written comments within thirty (30) Days of receiving a Submission, the City shall within fifteen (15) Days of receiving such comments either: (i) alter and implement the Submission consistent with such written comments; or (ii) submit the matter for dispute resolution under Section XI (Dispute Resolution) of this Consent Decree.

b. Unless otherwise provided herein, after thirty (30) Days from the date of such Submission, EPA and/or ADEC may nonetheless thereafter provide written comments requiring changes to the Submission which the City shall implement unless implementation of the written comments would be unduly burdensome given the degree to which the City has proceeded with implementing the deliverable, or implementation would otherwise be unreasonable. If the City determines that implementation of the written comments is unduly burdensome or otherwise unreasonable, it shall invoke dispute resolution within sixty (60) Days of receiving EPA and/or the ADEC's comments.

18. Implementation of Plans or Other Measures Pursuant to Submissions Subject to EPA or ADEC Comment. Unless otherwise provided for herein, the City shall implement each Submission in accordance with the requirements and schedule in the Submission by the following deadlines.

a. Where EPA and/or ADEC have not submitted comments on a Submission, thirty (30) Days after the City provided the Submission to EPA and ADEC for comments.

b. Where EPA and/or ADEC have submitted comments on a Submission, fifteen (15) Days after receiving EPA/ADEC comments.

c. Where Defendant has invoked dispute resolution regarding any Submission under Section XI (Dispute Resolution), upon completion of any dispute resolution process.

### **VIII. REPORTING REQUIREMENTS**

19. The City shall submit the following reports to EPA and the State by the means and to the addresses specified in Section XV (Notices):

a. Within thirty (30) Days after the end of each calendar quarter (i.e., by April 30, July 30, October 30, and January 30) after the Effective Date of this Consent Decree, until Termination of this Decree pursuant to Section XVIII, the City shall submit a written report for the preceding calendar quarter that shall describe the following: (i) the status of installation of any Compliance Measures required by Section VI of this Consent Decree (Compliance Measures); (ii) any problems encountered or anticipated, together with the required Compliance Measures; (iii) the status of permit applications or plan submissions; (iv) a summary of operation and maintenance activities related to the Facility; and (v) a copy of all discharge monitoring reports submitted to ADEC during the applicable calendar quarter.

b. If the City violates or has reason to believe that it may violate, any requirement of this Consent Decree, the City shall report such violation and its likely duration to EPA and the State, in writing, within fifteen (15) Days of the Day the City becomes aware of the violation or likely violation. The report also shall describe any violation of the requirements of this Consent Decree and explain the violation's likely cause and the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully

explained at the time the report is due, the City shall so state in the report. The City shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within forty-five (45) Days of the Day the City becomes aware of the cause of the violation. Nothing in this or the following Paragraph relieves the City of its obligation to provide the notice required by Section X (Force Majeure).

20. Whenever any violation of this Consent Decree or any other event affecting the City's performance under this Decree, may pose an immediate threat to public health, welfare, or the environment, the City shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after the City first became aware of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

21. All required notifications and reports shall be submitted to the persons designated in Section XV (Notices).

22. Each report or notification submitted by the City under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

23. The reporting requirements of this Consent Decree do not relieve the City of any reporting obligation in the CWA or its implementing regulations, or in any other federal, state, or local law, regulation, permit, or other requirement.

24. Any information provided pursuant to this Consent Decree may be used by the United States or State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### **IX. STIPULATED PENALTIES**

25. The City shall be liable to the United States and State for stipulated penalties for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure), as a result of Dispute Resolution conducted in accordance with Section XI, or otherwise reduced or waived pursuant to Paragraph 33 herein. A violation includes failing to perform any obligation required by this Consent Decree according to all applicable requirements and within the specified time schedules established by or approved under this Decree.

26. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

27. Failure to Timely Pay a Civil Penalty. If the City fails to pay a civil penalty required to be paid under Section V (Civil Penalty) of this Decree when due, the City shall pay a stipulated penalty of \$1000 per day for each day that a payment is late. This Stipulated Penalty is in addition to the Interest due on the Civil Penalty as required by Paragraph 9.

28. Violations of Requirements Relating to Interim Compliance Measures. The following stipulated penalties shall accrue per violation per Day for each violation of a requirement and/or deadline relating to interim compliance measures set forth in Paragraph 10:

<b>Period of Delay or Non-Compliance</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Days 1-30	\$500
Days 31-60	\$750
61 <sup>st</sup> Day and Beyond	\$1000

29. Violations of Requirements Relating to Final Compliance Measures.

a. MBBR Requirements.

i. **Violation of MBBR Design and Contractor Selection**

**Requirements.** The following stipulated penalties shall accrue per violation per Day for each of the following violations of any requirement and/or deadline set forth in Paragraphs 11.b.i(a) and 11.b.i(b):

<b>Period of Delay or Non-Compliance</b>	<b>Penalty Per Violation Per Day</b>
Days 1-30	\$300
Days 31-60	\$600
61 <sup>st</sup> Day and Beyond	\$1000

ii. **Violation of Alkalinity Feed, Substantial Completion,**

**Commencement of Operation, Initial and Continuing Capacity, and MBBR Operation**

**Requirements.** The following stipulated penalties shall accrue per violation per Day for violation of Paragraphs 11.a., 11.b.i(c), 11.b.ii, and 11.b.iii:

<b>Period of Delay or Non-Compliance</b>	<b>Penalty Per Violation Per Day</b>
Days 1-30	\$1000
Days 31-60	\$1500
61 <sup>st</sup> Day and Beyond	\$2000

b. Violations of Solids Removal Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of a requirement and/or deadline related to solids handling set forth in Paragraph 11.c:

<b>Period of Delay or Non-Compliance</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Days 1-30	\$500
Days 31-60	\$100
61 <sup>st</sup> Day and Beyond	\$1500

c. Violations of Requirements Relating to Secondary Clarifiers Installation and Operation. The following stipulated penalties shall accrue per violation per Day for each violation of a requirements and/or deadline related to the installation and operation of secondary clarifiers set forth in Paragraph 11.d:

<b>Period of Delay or Non-Compliance</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Days 1-30	\$750
Days 31-60	\$1500
61 <sup>st</sup> Day and Beyond	\$2000

30. Permit Violations. The following stipulated penalties shall accrue per violation per Day for each of the following violations of the Permit or of any subsequent NPDES/APDES permit issued by EPA or ADEC.

a. Unauthorized Discharges or Violation of Permit Effluent Limits.

i. Discharge of a pollutant not disclosed in the NPDES permit application submitted by the City to EPA on October 9, 2001 for the current NPDES Permit, or in the application for any subsequent NPDES/APDES permit issued by EPA or ADEC:

<b>Number of Days in Violation</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Days 1-30	\$750
Days 31-60	\$1500
61 <sup>st</sup> Day and Beyond	\$2000

ii. Exceedance of any daily maximum ammonia or TSS limit after conclusion of the Performance Period:

<b>Violations</b>	<b>Number of Days in Violation</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Exceedance of daily maximum limit on ammonia and/or TSS mass (pounds/day);	Days 1-30	\$1000
	Days 31-60	\$2000
	61 <sup>st</sup> Day and Beyond	\$3000
Exceedance of daily maximum limit for ammonia and/or TSS concentration (mg/l);		

iii. Exceedance of any monthly average limit on ammonia and/or TSS mass (pounds/day) and/or exceedance of any monthly average limit on ammonia and/or TSS concentration (milligrams/liter) after conclusion of the Performance Period: \$2000 per violation per month.

iv. Failure to meet the TSS percentage removal requirements after conclusion of the Performance Period: \$2500 per month.

v. Violation of a daily limit for pollutant other than TSS or ammonia:

<b>Period of Delay or Non-compliance</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Days 1-30	\$750
Days 31-60	\$1500
61 <sup>st</sup> Day and Beyond	\$2000

vi. Violation of a monthly average limit for any pollutant listed in the applicable permit other than TSS or ammonia: \$2000 per month.

vii. Violation of a weekly average limit for any pollutant listed in the permit other than TSS or ammonia: \$500 per week.

b. Violation of Sampling Requirements. Violation of any permit sampling requirement:

<b>Period of Delay or Non-compliance</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Days 1-30	\$750
Days 31-60	\$1500
61 <sup>st</sup> Day and Beyond	\$2000

c. Violation of Other Permit Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement in the Permit other than those listed in Paragraphs 30.a and b above:

<b>Period of Delay or Non-compliance</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Days 1-30	\$350
Days 31-60	\$800
61 <sup>st</sup> Day and Beyond	\$1250

31. Other Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of any other requirement of this Consent Decree not specified in Paragraphs 27-30 above.

<b>Period of Delay or Non-compliance</b>	<b>Stipulated Penalty Per Violation Per Day</b>
Days 1-14	\$350
Days 15-30	\$800
31 <sup>st</sup> Day and Beyond	\$1250

32. The City shall pay any stipulated penalty within thirty (30) Days of receiving the United States' or the State's written demand for stipulated penalties. Where both Plaintiffs demand the stipulated penalty, the City shall pay the United States and the State 50% of the total stipulated penalty demanded unless Plaintiffs agree to a different percentage split.

33. The United States or State may, in the unreviewable exercise of their discretion, reduce or waive stipulated penalties otherwise due the United States or State of Alaska respectively under this Consent Decree.

34. Stipulated penalties shall continue to accrue during any period of Dispute Resolution, but need not be paid until the following:



a. If the dispute is resolved by agreement or by an EPA decision that is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, within forty-five (45) Days of the effective date of the agreement or the receipt of EPA's decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, the City shall pay all accrued penalties determined to be owing, together with Interest, within fifteen (15) Days of receiving the final appellate court decision.

35. The City shall pay stipulated penalties owing to the United States and the State by the methods set forth in Paragraph 9 above with confirmation notices to the persons specified in Section XV (Notices) stating that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

36. If the City fails to pay stipulated penalties according to the terms of this Consent Decree, the City shall be liable for Interest on such penalties accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or State from seeking any remedy otherwise provided by law for the City's failure to pay any stipulated penalties.

37. The payment of stipulated penalties as set forth above shall not alter in any way the City's obligation to complete the performance of all activities required under this Consent Decree. The stipulated penalties provided for in this Consent Decree shall be in addition to any

other rights, remedies, or sanctions available to the United States or State for the City's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA, the City shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

#### **X. FORCE MAJEURE**

38. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the City, any entity controlled by the City, or the City's contractors that delays or prevents the timely performance of any obligation under this Consent Decree despite the City's best efforts to fulfill the obligation. The requirement that the City exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event: i) as it is occurring, and ii) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the City's financial inability to perform any obligation under this Consent Decree or any delay in performance due to the City's failure to obtain, or delay in obtaining, any state or local permits. However, Force Majeure shall include any delay in the performance of any obligation resulting from the City's failure to obtain, or a delay in obtaining, any federal or State permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

39. If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the City shall provide notice orally or by electronic or facsimile transmission to EPA and the State within 72 hours of when the City first became aware that the event might cause a delay or non-

compliance, with a copy sent by overnight mail or by certified or registered mail, return receipt requested. Within seven (7) days thereafter, the City shall provide in writing to EPA and the State: an explanation and description of the reasons for the delay or non-compliance; the anticipated duration of the delay or non-compliance; all actions taken or to be taken to prevent or minimize the delay or non-compliance; a schedule for implementing any measures to be taken to prevent or mitigate the delay or the effect of the delay or non-compliance; the City's rationale for attributing such delay or non-compliance to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The City shall include with any notice all available documentation supporting the claim that the delay or non-compliance was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude the City from asserting a Force Majeure claim for that particular event. The City shall be deemed to have knowledge of any circumstances that the City, any entity controlled by the City, or the City's contractors knew or should have anticipated.

40. If EPA, after consultation with the State, agrees that the delay or non-compliance or anticipated delay or non-compliance is attributable to a Force Majeure event, the time for performing the affected Consent Decree obligations will be extended by EPA for such time as is necessary to complete those obligations and no stipulated penalties shall be due for the extension period. Such an extension shall not, of itself, extend the time for performing any other obligation. EPA will notify the City in writing of the length of the extension, if any.

41. If EPA, after consultation with the State, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify the City in writing of its decision.

42. If the City elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so by sending the United States and the State a written Notice of Dispute no later than fifteen (15) days after receipt of EPA's notice sent pursuant to Paragraphs 40-41 above. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the non-compliance, delay or anticipated delay or non-compliance has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 38-39 above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation(s) of this Consent Decree.

## **XI. DISPUTE RESOLUTION**

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism for the City to resolve disputes arising under or with respect to this Consent Decree. The City's failure to seek dispute resolution under this Section shall preclude the City from raising any disputed issue as a defense to an action by the United States or State to enforce this Consent Decree.

44. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the City sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement of the City and United States. If the City and the United

States cannot resolve a dispute by informal negotiations, then the position advanced by the United States (or the State if the United States is not a party to the dispute) shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, the City invokes the formal dispute resolution procedures set forth below.

45. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures within the time period provided in the preceding Paragraph by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any supporting factual data, analysis, opinion, or documentation relied upon by the City.

46. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of the City's Statement of Position. The United States' (or, if applicable State's) Statement of Position shall include, but need not be limited to, any supporting factual data, analysis, opinion, or documentation relied upon by the United States. The United States' (or, if applicable State's) Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

47. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and State, a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall include a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

48. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The City may file a reply memorandum, to the extent permitted by the Local Rules.

49. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section XI that pertains to: (i) the adequacy or appropriateness of Submissions, plans, procedures to implement plans, schedules, or any other items requiring approval or comment by EPA or the State under this Consent Decree; (ii) the adequacy of the City's compliance with the requirements set forth in Section VI of this Consent Decree (Compliance Measures), and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the City shall have the burden of demonstrating, based on the administrative record, that the position of the United States (or, if applicable State) is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section XI (Dispute Resolution), the City shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objective of the Consent Decree.

50. The invocation of dispute resolution procedures under this Section XI shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of non-compliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 34. If the

City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## **XII. INFORMATION COLLECTION AND RETENTION**

51. The United States, the State and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of obligations required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree or Permit or any subsequent NPDES or APDES permit issued by EPA or ADEC;
- c. obtain samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess the City's compliance with this Consent Decree and Permit or any subsequent NPDES/APDES permit issued by EPA or ADEC.

52. Upon request, the City shall provide EPA, the State or their authorized representatives splits of any samples taken by the City provided such samples are available at the time of the request.

53. Until three (3) years after Termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, that relate in any manner to the City's

performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. At the conclusion of the information-retention period provided in this Paragraph, the City shall notify EPA and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of this Paragraph and, upon request by EPA or State, the City shall deliver any such documents, records, or other information to EPA or the State. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal or state law, as applicable. If the City asserts such a privilege, it shall provide the following: i) the title of the document, record, or information; ii) the date of the document, record, or information; iii) the name and title of each author of the document, record, or information; iv) the name and title of each addressee and recipient of the document, record, or information; v) a description of the subject of the document, record, or information; and vi) the privilege asserted by the City. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

54. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI, the City shall follow the procedures set forth in 40 C.F.R. Part 2.



55. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of the City to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

### **XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

56. This Consent Decree resolves the civil claims of the United States and State for the violations alleged in the Complaint filed in this action through the Date of Lodging.

57. The United States and State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 56. This Consent Decree shall not be construed to limit the rights of the United States or State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly stated in Paragraph 56. The United States and State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

58. This Consent Decree does not limit or affect the rights of the City or of the United States or the State against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree against the City, except as otherwise provided by law and Paragraph 56 herein.

59. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to the

Facility, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 56 of this Section.

60. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, 33 U.S.C. §1251, et seq., or with any other provisions of federal, state, or local laws, regulations, or permits.

61. The City hereby acknowledges that a future NPDES or APDES permit issued for the Facility may impose requirements and limits with which the Facility cannot comply even after installation and operation of the Compliance Measures required herein. If this occurs, the City may be required by applicable federal and state law to dismantle, replace some or all of the Compliance Measures implemented under this Consent Decree. This Consent Decree provides no basis, evidence, or defense regarding the determination of the appropriate treatment methods and effluent limitations that may be imposed by future NPDES or APDES permits.

62. This Consent Decree is not a waiver or limitation of any right of the City to contest any provision of any future NPDES or APDES permit issued for the Facility. The City reserves all rights under applicable state and federal law to contest or appeal any provision of any future NPDES or APDES permit for the Facility.

63. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

64. The Complaint and this Consent Decree shall constitute and establish diligent prosecution by the United States as set forth in Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B), and any other applicable federal or state law, of all matters alleged in the Complaint.

#### **XIV. COSTS**

65. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by the City.

#### **XV. NOTICES**

66. Notifications, communications and Submissions shall be sent to the addressees listed below by electronic, by U.S. Mail, postage pre-paid, or private courier service, except for notices under Section X (Force Majeure) and Section XI (Dispute Resolution), which shall be sent both electronically and by overnight mail or by certified or registered mail, return receipt requested. If the date on which a notification or other communication is due falls on a Saturday, Sunday or federal holiday, the deadline for such Submission shall be the next business day. Where this Consent Decree requires that notices and Submissions be sent to the United States,

they shall be sent to the United States Department of Justice and EPA offices designated below.

Where this Consent Decree requires that notices and Submissions be sent to EPA, they need only be sent to the EPA offices designated below. Where this Consent Decree requires that notices and Submissions shall be sent to ADEC or the State, they shall be sent to the following persons set forth below.

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DOJ No. 90-5-1-1-09888

Director, Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, OCE-164  
Seattle, WA 98101

U.S. EPA Alaska Field Office  
Attn: Tara Martich  
222 W. 7th Ave #19,  
Anchorage, AK 99513  
martich.tara@epa.gov

**To the State:**

Alaska Department of Environmental Conservation, Division of Water  
Attn: Mike Solter, Compliance Program Manager  
555 Cordova St  
Anchorage, AK 99501  
Mike.solter@alaska.gov

With a copy to:

Alaska Department of Law – Environmental Section  
Attn: Steven G. Ross, Assistant Attorney General  
1031 W. 4<sup>th</sup> Avenue, Suite 200  
Anchorage, AK 99501-1994  
steven.ross@alaska.gov

**To the City:**

Nathan E. Wallace  
City Manager  
231 W. Evergreen Avenue  
Palmer, AK 99645  
Nwallace@palmerak.org

With a copy to:

Michael Gatti  
Jermain, Dunnagan & Owens, P.C.  
3000 A Street, Suite 300  
Anchorage, AK 99508  
[mgatti@jdolaw.com](mailto:mgatti@jdolaw.com)

J. Ryan Moyer  
HDR, Inc.  
2525 C Street, Suite 500  
Anchorage, AK 99503  
[Ryan.Moyers@hdrinc.com](mailto:Ryan.Moyers@hdrinc.com)

67. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

68. Notices submitted pursuant to this Section shall be deemed submitted upon the day they are postmarked and sent by first class mail, overnight mail or courier, or certified mail return receipt requested, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

**XVI. RETENTION OF JURISDICTION**

69. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI and XVII, or effectuating or enforcing compliance with the terms of this Decree.

**XVII. MODIFICATION**

70. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court. Extension of any deadlines set forth herein that are less than 120 Days shall not be considered to be a material modification.

71. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XI (Dispute Resolution); provided, however, that instead of the burden of proof provided by Paragraph 49, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with the grounds for relief specified in Federal Rule of Civil Procedure 60(b).

#### **XVIII. TERMINATION**

72. This Consent Decree may be terminated after the City has:

- a. Paid the civil penalties and Interest required by Section V;
- b. Substantially complied with all provisions of this Consent Decree and the NPDES Permit, or any subsequent NPDES/APDES permit issued by EPA or ADEC for five (5) years from the Substantial Completion of MBBR as required by Paragraph 11.b; and
- c. Has paid any stipulated penalties and Interest owed pursuant to Section IX (Stipulated Penalties).

73. After the City has satisfied the conditions for termination set forth in Paragraph 72 above, it may serve a Request for Termination upon the United States and State. The Request for Termination shall include all necessary supporting documentation, stating that the City has satisfied the requirements set forth in Paragraph 72 above.

74. Following receipt by the United States and the State of the City's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the City has complied with the requirements for termination of this Consent Decree set forth in Paragraph 72 above. If the United States, after consultation with the State, agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

75. If the United States, after consultation with the State, does not agree that the Consent Decree may be terminated, the City may invoke Dispute Resolution under Section XI. However, the City shall not seek Dispute Resolution of any dispute regarding termination until sixty (60) days after service of its Request for Termination.

#### **XIX. PUBLIC PARTICIPATION**

76. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The City consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the City in writing that it no longer supports entry of the Decree.

#### **XX. SIGNATORIES/SERVICE**

77. Each undersigned representative of the City, the State, and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and legally bind the Party he or she represents to this document.

78. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

79. The City agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

80. The Parties agree that the City need not file an answer or otherwise respond to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### **XXI. INTEGRATION**

81. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### **XXII. APPENDICES**

82. The following appendices are attached to and are part of this Consent Decree:

Appendix A: Diagram of Palmer Wastewater Treatment Facility.

#### **XXIII. FINAL JUDGMENT**

83. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and the City.



Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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UNITED STATES DISTRICT JUDGE

District of Alaska

**FOR PLAINTIFF THE UNITED STATES OF AMERICA:**

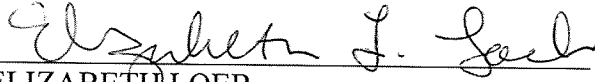
/s/ John Cruden

JOHN CRUDEN

Assistant Attorney General

Environment and Natural Resources Division

United States Department of Justice



ELIZABETH LOEB

Senior Counsel

Environmental Enforcement Section

United States Department of Justice

P.O. Box 7611

Washington, D.C. 20044-7611

(202) 616-8916

Elizabeth.loeb@usdoj.gov

KAREN L. LOEFFLER

United States Attorney

District of Alaska

/s/ Richard Pomeroy

RICHARD POMEROY

Civil Chief

Office of the United States Attorney

District of Alaska

222 West 7th Ave, Rm 253,

Anchorage, Alaska 99513

(907) 271-5071



ALLYN STERN  
Regional Counsel  
U.S. Environmental Protection Agency, Region 10



KIM OWENS  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
Office of Regional Counsel  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98109  
206-553-4194

**FOR THE STATE OF ALASKA:**

JAHNA LINDEMUTH  
ATTORNEY GENERAL

By: 

Steven G. Ross  
Assistant Attorney General  
Alaska Department of Law  
1031 W. 4<sup>th</sup> Avenue, Suite 200  
Anchorage, Alaska 99501  
steven.ross@alaska.gov

**FOR DEFENDANT THE CITY OF PALMER, ALASKA**

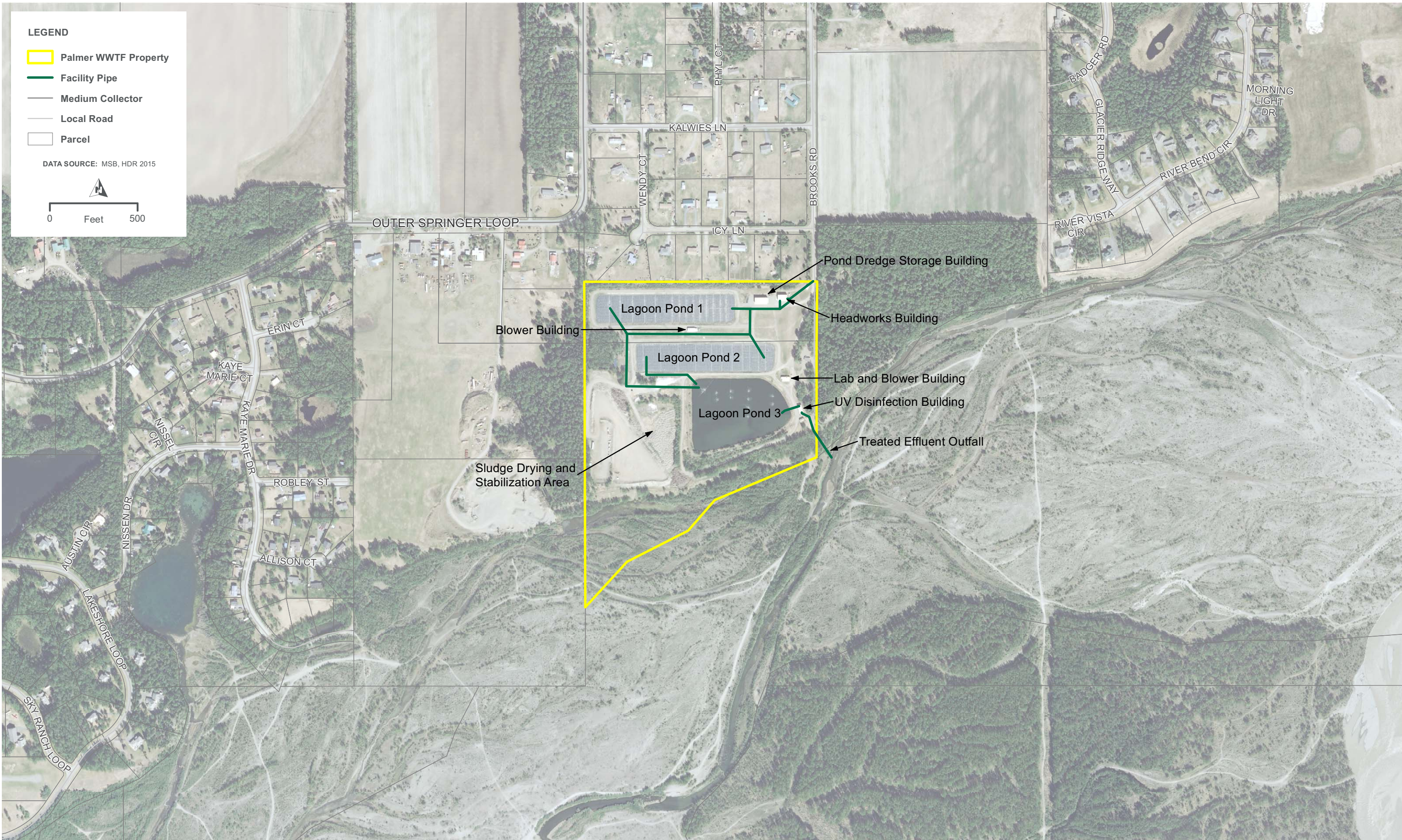


22 July 16

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NATHAN E. WALLACE  
City Manager  
City of Palmer  
231 W. Evergreen Avenue  
Palmer, AK 99645  
[Nwallace@palmerak.org](mailto:Nwallace@palmerak.org)

# Appendix A



**LEGEND**

- Palmer WWTF Property
- Facility Pipe
- Medium Collector
- Local Road
- Parcel

DATA SOURCE: MSB, HDR 2015



**WASTEWATER TREATMENT FACILITY OVERVIEW**

CITY OF PALMER, ALASKA

FIGURE #10

