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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF YUMA**

11 INTEGRATED WATER SERVICES, INC., a
12 Colorado corporation,

13 Plaintiff,

14 v.

15 CITY OF SAN LUIS, a political subdivision
16 of the State of Arizona; JOHN DOES 1-100;
17 JANE DOES 1-100, BLACK
18 CORPORATIONS 1-100, and WHITE
19 PARTNERSHIPS 1-100,

20 Defendants.

CASE NO. S1400CV201900321

DEFENDANT'S ANSWER

- AND -

COUNTER-CLAIM

(Assigned to the Honorable
Larry Kenworthy)

21 Defendant City of San Luis (hereinafter "Defendant") answers Plaintiff's
22 Complaint as follows:

23 Defendant denies each and every allegation that is not specifically admitted to
24 herein.

25 **GENERAL ALLEGATIONS**

26 1. Upon information and belief, Defendant admits the allegations contained
in Paragraph 1 of the Complaint.

2. Upon information and belief, Defendant admits the allegations contained
in Paragraph 2 of the Complaint.

1 Defendant affirmatively alleges that Plaintiff has never achieved Final Completion of
2 the Project, as defined in the Contract, and as a result the retainage is not due.

3 15. Defendant denies the allegations contained in Paragraph 15 of the
4 Complaint.

5 16. Defendant denies that it is in breach of the Contract, and denies that the
6 Plaintiff has been damaged in the amount of \$100,891.27, or any other amount.

7 17. Defendant admits that the Contract provides for recovery of reasonable
8 costs and reasonable attorney's fees incurred by the prevailing party, but denies any
9 remaining allegations in Paragraph 17 of the Complaint.

10 18. Defendant denies the allegations contained in Paragraph 18 of the
11 Complaint.

12 19. Defendant is unable to either admit or deny the allegations in Paragraph
13 19 of the Complaint.

14 **COUNT II**

15 **(Unjust Enrichment)**

16 20. Defendant incorporates by reference the allegations contained in
17 Paragraphs 1 through 19, above, as though fully set forth at this point.

18 21. Defendant admits that Plaintiff furnished labor, equipment and other
19 services to Defendant, some of which has not been paid, but denies any remaining
20 allegations in Paragraph 21 of the Complaint.

21 22. Defendant admits that Plaintiff performed some work, but denies any
22 remaining allegations in Paragraph 22 of the Complaint.

23 23. Defendant lacks sufficient information to form a belief as to the truth of
24 the allegations contained in Paragraph 23, and therefore denies same. Defendant
25 affirmatively alleges that Plaintiff's right to payment is set forth in and to be determined
26 in accordance with the provisions contained in the parties' Contract.
27

- 1 A. That Plaintiff's Complaint be dismissed and that Plaintiff take nothing
2 thereby;
- 3 B. For costs incurred in the defense of this action;
- 4 C. For an award of reasonable attorneys' fees incurred in the defense of this
5 action, pursuant to contract and/or A.R.S. § 12-341.01; and
- 6 D. For such other and further relief as the Court deems just and proper.
7

8 **COUNTERCLAIM**

9 As and for its Counterclaim, the City of San Luis ("City") alleges as follows:

10 **ALLEGATIONS COMMON TO ALL COUNTS**

11 1) Counter-claimant City is an Arizona municipal corporation and is the
12 owner of a construction project located in San Luis, Yuma County, Arizona and known
13 as the Well Site No. 7 - Manganese Removal System (the "Project").

14 2) Counter-defendant Integrated Water Services, Inc. ("IWS") is a Colorado
15 corporation and is a licensed contractor, authorized to do business in Yuma County,
16 Arizona.

17 3) The subject matter of this Counterclaim is a contract which was negotiated
18 and executed in Yuma County, Arizona, and was to be performed in Yuma County,
19 Arizona.

20 4) On or about December 10, 2014, City and IWS entered into a contract for
21 the installation of the Project (the "Contract"), portions of which are attached as Exhibit
22 B to the Complaint filed by IWS. The stipulated price for the work pursuant to the
23 Contract was \$1,995,000.00.

24 5) Pursuant to the Contract, IWS agreed to provide and assume full
25 responsibility for all services, materials, equipment, labor, transportation, construction
26 equipment and machinery, tools, appliances, and all other facilities and incidentals
27 necessary for the performance, testing, start-up, and completion of the Work required

1 for the Project.

2 6) IWS expressly and impliedly warranted that the Work would be
3 completed in accordance with the requirements of the Contract Documents, that the
4 materials and equipment furnished thereunder would be of good quality, and that the
5 Work would be free from defects.

6 7) IWS expressly warranted that the mechanical equipment and electrical
7 equipment installed on the Project would be “fit and sufficient for the purposes
8 intended” and gave an express warranty against manufacturing and/or design
9 inadequacies.

10 8) The intent of the Contract was for the City to have a “turn-key” system
11 that “will be a complete and fully functioning filtration system.”

12 9) IWS was required under the Contract to achieve substantial completion of
13 the Project within 270 days of the Contract Start Time, and achieve final completion
14 within 300 days of the Contract Start Time. Pursuant to the Contract documents, final
15 acceptance of all material, equipment and work would not occur until it was determined
16 by the City “that there has been full and complete performance of the contract without
17 claim of deficiency or breach.”

18 10) The Contract required that IWS promptly correct or replace defective
19 Work and pay all costs, losses, and damages, including costs of engineering services,
20 attorneys' fees, and court costs, arising out of the correction of defective Work.

21 11) IWS performed the substantial portions of the original installation of the
22 Project between January 2015 and November 2015. Within a few months, the City
23 began experiencing failures in the pump motors and motor controls, which problems
24 have never been fully resolved. Consequently, the City has never had a complete and
25 fully functioning filtration system, and has never determined that there has been full and
26 complete performance of the Contract without claim of deficiency or breach.

27 12) The City gave written notice to IWS of deficiencies in the design,

1 equipment, installation and performance of the Project on or before August 15, 2016.

2 13) The Contract provides that after Substantial Completion, IWS shall pay
3 the City liquidated damages in the sum of \$1,000 for each day after the time allowed for
4 final completion, until the Work is completed and ready for final payment.

5 14) Despite demands by the City, IWS has failed and refused to take
6 appropriate steps to correct the failures and deficiencies in the Project and systems, such
7 that the City has had to undertake its own efforts to make the Project a complete and
8 fully functioning filtration system.

9 **COUNT ONE**

10 **(Breach of Contract)**

11 15) The City incorporates by reference the allegations contained in Paragraphs
12 1 through 14, above, as though fully set forth at this point.

13 16) The City timely performed all of its obligations under the Contract
14 documents. IWS did not perform its obligations under the Contract, in that it failed to
15 perform the Work in a manner that met the specifications and warranties set forth in the
16 Contract documents and otherwise failed to perform its functions as expressly and
17 impliedly warranted .

18 17) The City has been damaged by IWS's breach of the Contract in an amount
19 in excess of \$150,000, including but not limited to additional engineering costs, staff
20 costs, equipment costs, and other costs allowed under the Contract documents in the
21 event of defective Work by IWS.

22 18) The City has been further damaged by IWS's breach of the Contract in the
23 amount of the liquidated damages required in the Contract from the date specified for
24 final payment (30 days after Substantial Completion) until such time as it is determined
25 that the City has a turn-key, fully functional and operational filtration system.

26 19) This dispute arises from contract, such that the City is entitled to recover
27 its attorneys' fees pursuant to the terms of the Contract and/or A.R.S. § 12-341.01.

1 **COUNT TWO**

2 **(Breach of the Covenant of Good Faith and Fair Dealing)**

3 20) The City incorporates by reference the allegations contained in Paragraphs
4 1 through 19, above, as though fully set forth at this point.

5 21) The Contract includes an implied covenant of good faith and fair dealing.

6 22) By its actions as alleged above, including without limitation the
7 allegations in Paragraph 12, IWS breached the covenant of good faith and fair dealing
8 by denying the City the of, and preventing the City from enjoying, the benefits due the
9 City under the Contract.

10 23) As a natural and foreseeable consequence of IWS's breach of the covenant
11 of good faith and fair dealing, the City has been damaged in an amount to be established
12 by proof at the time of trial.

13 WHEREFORE, Counterclaimant CITY OF SAN LUIS prays for judgment as
14 follows:

- 15 A. For compensatory damages in an amount to be determined at trial,
16 according to proof;
- 17 B. For costs incurred in the defense of this action;
- 18 C. For attorneys' fees incurred in the defense of this action; and
- 19 D. For such other and further relief as the Court deems just and
20 proper.

21 DATED this 13th day of June 2019.

22 **GUST ROSENFELD P.L.C.**

23
24 By: /s/ Michael Woodlock
25 Michael Woodlock
26 *Attorneys for Defendant City of San*
27 *Luis*

1 ORIGINAL E-filed via Turbocourt and
2 COPY E-served this 13th
3 day of June, 2019, to:

4 Karen A. Palecek
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9 *Attorneys for Plaintiff*

10 By Jackie Clark

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