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6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7  
8 **IN AND FOR THE COUNTY OF YUMA**

9 INTEGRATED WATER SERVICES,  
10 INC., a Colorado corporation,

11 Plaintiff,

12 v.

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

19 Defendants.

CASE NO.

**COMPLAINT**

**(Breach of Contract, Unjust Enrichment,  
Violation of Arizona's Public Prompt  
Payment Act, Breach of the Covenant of  
Good Faith and Fair Dealing)**

20 Plaintiff INTEGRATED WATER SERVICES, INC. ("IWS") by and through  
21 undersigned counsel, for its Complaint against the above-named Defendant, alleges as  
22 follows:

23 **GENERAL ALLEGATIONS**

- 24
- 25 1. Plaintiff IWS is a Colorado corporation authorized to do business in the  
26 State of Arizona and the County of Yuma.
  - 27 2. IWS is duly licensed by the Arizona Registrar of Contractors under a Class  
28 A General Engineering license, License No. 224286, and a Class C-11 Electrical license,



1 License No. 258009.

2 3. Defendant CITY OF SAN LUIS (“SL”) is an incorporated city located  
3 within Yuma County, Arizona, under Title 9, Arizona Revised Statutes.

4 4. On or about December 7, 2018, IWS sent a Notice of Claim to the City of  
5 San Luis pursuant to A.R.S. §12-821.01(A). A copy is attached hereto as Exhibit A and  
6 incorporated herein by reference.

7 5. The Exhibit A Notice of Claim is in compliance with A.R.S. §12-821 and  
8 §12-821.01.

9 6. This Court has jurisdiction over Defendant pursuant to Rule 4.1,  
10 Ariz.R.Civ.P and IWS alleges that the service of the Notice of Claim complies with  
11 A.R.S. §821.01(A), specifically that the person who has a claim against a public entity or  
12 public employee shall file claims with the person or persons authorized to accept service  
13 for the public entity as set forth in the Arizona Rules of Civil Procedure within 180 days  
14 after the cause of action accrues.

15 7. The activity that is the subject of this Complaint took place within the City  
16 of San Luis, Arizona.

17  
18 **COUNT I**  
19 **(Breach of Contract)**

20 8. Plaintiff IWS re-alleges and incorporates by reference the allegations  
21 contained paragraphs 1 through 7 as if fully set forth herein.

22 9. On December 10, 2014, IWS entered into a construction contract for a  
23 stipulated price in the amount of \$1,995,000.00 for the Well Site No.7-Manganese  
24 removal system (the “Project”). A copy of the Contract is attached hereto as Exhibit B  
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28



1 and incorporated herein by reference.

2 10. As set forth in the Exhibit B Contract, the Contract provides for payment of  
3 retention once two years has passed from the Certificate of Substantial Completion. See  
4 Exhibit B, §4.02.

6 11. A Certificate of Substantial Completion was issued for the Project on  
7 November 3, 2015. See Certificate attached hereto as Exhibit C and incorporated herein  
8 by reference.

10 12. IWS billed for the retention on January 25, 2016. See Application for  
11 Payment No. 11, attached hereto as Exhibit D and incorporated herein by reference.

12 13. IWS demanded final payment pursuant to Article 6.03(a) of the Contract on  
13 November 22, 2017. See letter attached hereto as Exhibit E and incorporated herein by  
14 reference.

16 14. Despite due demand, Defendant SL has failed and continues to refuse to pay  
17 Plaintiff IWS the retention amounts due and owing.

18 15. Defendant SL's refusal to pay is a material breach of the Contract.

20 16. As a result of Defendant SL's material breach of the Contract, Plaintiff IWS  
21 has been damaged in the principal amount of \$100,891.27.

22 17. Plaintiff IWS is also entitled to recover its reasonable attorneys' fees and  
23 costs pursuant to the Exhibit B contract, specifically Article 10, ¶ 10.07 as well as A.R.S.  
24 §12-341.01 as this matter arises out of contract.

26 18. Pursuant to Article 7 of the Exhibit B Contract and A.R.S. §34-221(J), IWS  
27 is entitled to interest at the rate of 1% per month.

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19. If this action is determined by Default Judgment, Plaintiff IWS requests attorneys' fees of no less than \$5,000.00, plus after-accruing fees and costs.

**WHEREFORE**, Plaintiff IWS respectfully requests that the Court enter judgment against Defendant SL for its breach of contract count as follows:

- A. For principal damages in the amount of at least \$100,891.27, with applicable pre and post judgment interest at the highest legal rate until paid in full;
- B. For costs and attorneys' fees incurred pursuant to Article 10, ¶ 10.07 of the contract and A.R.S. §12-341.01; and,
- C. For interest at the rate of 1% per month pursuant to the Article 7 of the Contract and A.R.S. §34-221(J);
- D. For such other and further relief as the Court deems just and proper.

**COUNT II**  
**(Unjust Enrichment)**

20. Plaintiff IWS re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 19 as if fully set forth herein.

21. Plaintiff IWS provided benefits to Defendant SL in the form of labor, equipment, and other services for which IWS has not been paid as outlined in the previous allegation.

22. IWS performed the work and anticipated being compensated for the work that benefitted Defendant SL.



1           27. As with all contracts in Arizona, the contract in this case carries an implied  
2 covenant of good faith and fair dealing.

3           28. In this case, that covenant requires that Defendant SL would comply with  
4 the terms set forth in the contract, specifically with regard to the release of retention  
5 pursuant to Article 6, specifically ¶ 6.02, of the Contract.

6           29. Defendant SL has acted in bad faith by refusing to pay Plaintiff IWS for the  
7 retention amount, despite issuing a Certificate of Substantial Completion for the Project  
8 and allowing the required amount of time to pass.

9           30. Defendant SL has refused to pay IWS even after their research into the  
10 pump motor failures for Well No. 11 and 12 concluded that the failure of the pump  
11 motors was due to improper engineering and design of the pump motor controls. More  
12 specifically, the omission of sine wave filters that were required due to the more than  
13 allowable length of the motor conductors between the Variable Frequency Drives  
14 (“VFD”) that are controlling the motors and the motors themselves.

15           31. In addition, the motor that was taken from Well No. 11 in October 2018  
16 was replaced under warranty.

17           32. Further, the City Council approved additional expenditures relating to a  
18 capacitor bank and other equipment all relating to the design and not the construction  
19 performed by IWS.

20           33. IWS did not design the system but was the contractor that performed their  
21 work in a timely and workmanlike manner and has still not been paid the retention for the  
22 work that was identified as substantially complete on November 3, 2015.  
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2 29. Plaintiff IWS re-alleges and incorporates by reference paragraphs the  
3 allegations contained in paragraphs 1 through 28 of its Complaint, as if fully set forth  
4 herein.  
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6 30. Plaintiff IWS had a direct contract with Defendant SL to provide labor and  
7 materials to the project.  
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9 31. Pursuant to A.R.S. §34-226, Defendant SL was required to make prompt  
10 payments of all progress and final payment application within the time period set forth in  
11 the Act.  
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13 32. Plaintiff IWS never received any written statements disputing its final  
14 billing related to the workmanship performed by IWS.  
15

16 33. Defendant SL has no legal or contractual basis to withhold payment from  
17 Plaintiff IWS.  
18

19 34. As a result of Defendant SL's violation of Arizona's Public Prompt  
20 Payment Act, Plaintiff IWS is entitled to pre- and post-judgment interest at the rate of 1  
21 % per month from November 3, 2017.  
22

23 35. Pursuant to A.R.S. §34-226, Plaintiff is also entitled to attorneys' fees and  
24 costs.  
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26 **WHEREFORE**, IWS respectfully requests that this Court enter judgment against  
27 Defendant SL for its fourth count of its Complaint as follows:  
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A. Granting judgment for the principal amount of \$100,891.27, plus  
applicable pre and post judgment interest at the highest legal rate

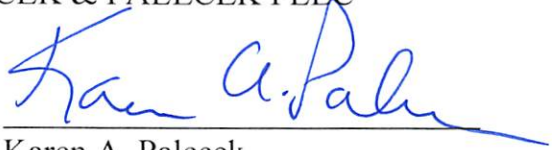
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until paid in full.

- B. Costs and reasonable attorneys' fees;
- C. For interest at 1% per month pursuant to A.R.S. §34-221(J);
- D. For such other and further relief as the Court deems just and proper.

**RESPECTFULLY SUBMITTED** this 2<sup>nd</sup> day of May, 2019.

PALECEK & PALECEK PLLC

By: 

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