

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

Ashton Park Trace Apartments, LLC )

Plaintiff, )

v. )

City of Decatur, Georgia; Urban )  
Redevelopment Agency of the City of )  
Decatur; The Potts Company, LLC; The )  
Potts Company, Inc.; Reeves )  
Contracting Company, Inc.; and )  
Silverman Construction Program )  
Management, Inc.; Kimley-Horn and )  
Associates, Inc.; and Geo-Hydro )  
Engineers, Inc., )

Defendants. )

Reeves Contracting Company, Inc., )

Third-Party Plaintiff, )

v. )

Western Oilfields Supply Company )  
d/b/a Rain for Rent and American )  
Shoring, Inc., )

Third-Party Defendants. )

Civil Action File No.  
1:14-cv-04056-MHC

The Potts Company, Inc. )  
 )  
 Cross-Claimant, )  
 )  
 v. )  
 )  
 Reeves Contracting Company, Inc., )  
 )  
 Cross Defendant. )  
 \_\_\_\_\_ )  
 Kimley-Horn and Associates, Inc., )  
 )  
 Cross Claimant, )  
 )  
 v. )  
 )  
 The Potts Company, LLC, and )  
 The Potts Company, Inc., )  
 )  
 Cross Defendant. )  
 \_\_\_\_\_ )  
 Kimley-Horn and Associates, Inc., )  
 )  
 Counter Claimant, )  
 )  
 v. )  
 )  
 Ashton Park Trace Apartments, LLC, )  
 )  
 Counter Defendant. )

**DEFENDANTS THE CITY OF DECATUR, GEORGIA AND URBAN REDEVELOPMENT AGENCY OF THE CITY OF DECATUR’S ANSWER AND AFFIRMATIVE DEFENSES TO THE FIRST AMENDED COMPLAINT AND CROSSCLAIMS AGAINST THE POTTS COMPANY, LLC, THE POTTS COMPANY, INC., REEVES CONTRACTING COMPANY, INC., KIMLEY-HORN AND ASSOCIATES, INC. AND GEO-HYDRO ENGINEERS, INC.**

COME NOW, Defendants City of Decatur, Georgia and Urban Redevelopment Agency of the City of Decatur (hereinafter the “City Defendants”), by and through their undersigned counsel, and make this answer to Plaintiff Ashton Park Trace Apartments, LLC, as follows:

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff’s Complaint fails to state a claim against the City Defendants upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The claim is barred or reduced to the extent of Plaintiff’s contributory negligence.

**THIRD AFFIRMATIVE DEFENSE**

Recovery for attorney’s’ fees against the City Defendants is barred as, at all times relevant to this action, the City Defendants have acted in good faith and have not been stubbornly litigious.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff’s damages, if any, were caused by persons and/or entities for who the City Defendants are not responsible.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extent that Plaintiff lacks standing or is not the real party in interest.

**SIXTH AFFIRMATIVE DEFENSE**

At all times the City Defendants have acted honestly and in good faith in regard to their dealings with Plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against the City Defendants are barred in whole or in part because the City Defendants are not liable for the acts and/or omissions of independent contractors.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extent that Plaintiff's alleged damages are the result of pre-existing conditions on the property.

**NINTH AFFIRMATIVE DEFENSE**

Awards of punitive damages against governmental entities violate public policy of the State of Georgia and are impermissible as a matter of law. Therefore, Plaintiff's claim for punitive damages as to the City Defendants must be dismissed.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against the City Defendants are barred in whole or in part by the doctrine of sovereign immunity.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part by the doctrines of acceptance, accord and satisfaction, betterment, act of God, force majeure and/or laches.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part by the doctrines of waiver, estoppel, laches, and/or justification.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The City Defendants did not proximately cause any damage to Plaintiff's property.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred in whole or in part because they failed to mitigate their damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

By way of answer to each and every allegation of the First Amended Complaint, the City Defendants state as follows:

**STATEMENT OF THE CASE**

To the extent Plaintiff's unnumbered "Statement of the Case" contains any allegations to which an answer is required, the City Defendants deny such allegations.

1.

In response to Paragraph 1 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

2.

The City Defendants admit the allegations contained in Paragraph 2 of the First Amended Complaint.

3.

The City Defendants admit the allegations contained in Paragraph 3 of the First Amended Complaint.

4.

In response to Paragraph 4 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

5.

In response to Paragraph 5 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

6.

In response to Paragraph 6 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

7.

In response to Paragraph 7 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

8.

In response to Paragraph 8 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

9.

In response to Paragraph 9 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

10.

The City Defendants admit the allegations contained in Paragraph 10 of the First Amended Complaint.

11.

The City Defendants admit only the allegations in Paragraph 11 of the First Amended Complaint as they pertain to the City Defendants. The remainder of the allegations contained in Paragraph 11 of the First Amended Complaint are hereby denied.



12.

The City Defendants admit only the allegations in Paragraph 12 of the Complaint First Amended Complaint as they pertain to the City Defendants. The remainder of the allegations contained in Paragraph 12 of the First Amended Complaint are hereby denied.

13.

In response to Paragraph 13 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

14.

In response to Paragraph 14 of the First Amended Complaint, the City Defendants admit only that the Park Trace apartment building is located in proximity to land owned by the City of Decatur, Georgia or the Urban Redevelopment Agency of the City of Decatur. The remainder of the allegations contained in Paragraph 14 of the First Amended Complaint are hereby denied.

15.

In response to Paragraph 15 of the First Amended Complaint, the City Defendants admit only that the named Project is located in proximity to the Park Trace apartment building. The remainder of the allegations contained in Paragraph 15 of the First Amended Complaint are hereby denied.

16.

In response to Paragraph 16 of the First Amended Complaint, the City Defendants admit only that the City of Decatur entered into a written contract with The Potts Company, Inc., and that the terms of the written contract speak for themselves. The remainder of the allegations contained in Paragraph 16 of the First Amended Complaint are hereby denied.

17.

In response to Paragraph 17 of the First Amended Complaint, the City Defendants admit only that the City of Decatur entered into a written contract with Silverman Construction Program Management, Inc., and that the terms of the written contract speak for themselves. The remainder of the allegations contained in Paragraph 17 of the First Amended Complaint are hereby denied.

18.

In response to Paragraph 18 of the First Amended Complaint, the City Defendants admit only that the City of Decatur consented to The Potts Company, Inc. assigning its contract with the City of Decatur to The Potts Company, LLC, and that the terms of the assignment agreement speak for themselves. The remainder of the allegations contained in Paragraph 18 of the First Amended Complaint are hereby denied.

19.

In response to Paragraph 19 of the First Amended Complaint, the City Defendants admit only that the named Project included an upgrade to the stormwater system and that the facility is known as the Ebster Park Regional Stormwater Management Facility. The remainder of the allegations contained in Paragraph 19 of the First Amended Complaint are hereby denied.

20.

In response to Paragraph 20 of the First Amended Complaint, the City Defendants admit only that the named Project is located in proximity to the Park Trace apartment building. The remainder of the allegations contained in Paragraph 20 of the First Amended Complaint are hereby denied.

21.

In response to Paragraph 21 of the First Amended Complaint, the City Defendants admit only that the City of Decatur entered into a written contract with Kimley-Horn and Associates, Inc., and that the terms of the written contract speak for themselves. The remainder of the allegations contained in Paragraph 21 of the First Amended Complaint are hereby denied.

22.

In response to Paragraph 22 of the First Amended Complaint, the City Defendants admit only that the City of Decatur entered into a written contract with Geo-Hydro Engineers, Inc., and that the terms of the written contract speak for themselves. The remainder of the allegations contained in Paragraph 22 of the First Amended Complaint are hereby denied.

23.

In response to Paragraph 23 of the First Amended Complaint, the City Defendants admit only that named Project is located in proximity to the Park Trace apartment building. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 23 of the First Amended Complaint, and the same are therefore denied.

24.

In response to Paragraph 24 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

25.

In response to Paragraph 25 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

26.

In response to Paragraph 26 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

27

In response to Paragraph 27 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

28.

In response to Paragraph 28 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

29.

In response to Paragraph 29 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

30.

In response to Paragraph 30 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

31.

In response to Paragraph 31 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

32.

In response to Paragraph 32 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

33.

In response to Paragraph 33 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

34.

In response to Paragraph 34 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

35.

In response to Paragraph 35 of the First Amended Complaint, the City Defendants admit only that Plaintiff sent some communication to the City Defendants, and that the contents of those communications speak for themselves. The remainder of the allegations contained in Paragraph 35 of the First Amended Complaint are hereby denied.

36.

In response to Paragraph 36 of the First Amended Complaint, the City Defendants admit only that Plaintiff sent some communication to the City Defendants, and that the contents of those communications speak for themselves. The remainder of the allegations contained in Paragraph 36 of the First Amended Complaint are hereby denied.

37.

In response to Paragraph 37 of the First Amended Complaint, the City Defendants admit only that representatives of the City Defendants have visited the property and observed the conditions of the property. The remainder of the allegations contained in Paragraph 37 of the First Amended Complaint are hereby denied.

38.

The City Defendants deny the allegations contained in Paragraph 38 of the First Amended Complaint.

39.

The City Defendants deny the allegations contained in Paragraph 39 of the First Amended Complaint.



40.

The City Defendants deny the allegations contained in Paragraph 40 of the Complaint.

### **CAUSES OF ACTION**

#### **Count One – Breach of Contract Against the City of Decatur**

41.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 40 as though fully set forth herein.

42.

The City Defendants admit the allegations contained in Paragraph 42 of the First Amended Complaint.

43.

In response to Paragraph 43 of the First Amended Complaint, the City Defendants admit only that the terms of the Agreement speak for themselves. The remainder of the allegations contained in Paragraph 43 of the First Amended Complaint are hereby denied.

44.

In response to Paragraph 44 of the First Amended Complaint, the City Defendants admit only that the terms of the Agreement speak for themselves. The remainder of the allegations contained in Paragraph 44 of the First Amended Complaint are hereby denied.

45.

In response to Paragraph 45 of the First Amended Complaint, the City Defendants admit only that the terms of the Agreement speak for themselves. The remainder of the allegations contained in Paragraph 45 of the First Amended Complaint are hereby denied.

46.

In response to Paragraph 46 of the First Amended Complaint, the City Defendants admit only that the terms of the Agreement speak for themselves. The remainder of the allegations contained in Paragraph 46 of the First Amended Complaint are hereby denied.

47.

In response to Paragraph 47 of the First Amended Complaint, the City Defendants admit only that the terms of the Agreement speak for themselves. The remainder of the allegations contained in Paragraph 47 of the First Amended Complaint are hereby denied.

48.

In response to Paragraph 48 of the First Amended Complaint, the City Defendants admit only that the terms of the Agreement speak for themselves. The remainder of the allegations contained in Paragraph 48 of the First Amended Complaint are hereby denied.

49.

The factual allegations set forth in Paragraph 49 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

50.

In response to Paragraph 50 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

51.

The City Defendants deny the allegations contained in Paragraph 51 of the First Amended Complaint.

52.

The City Defendants deny the allegations contained in Paragraph 52 of the First Amended Complaint.

53.

The City Defendants deny the allegations contained in Paragraph 53 of the First Amended Complaint.

54.

The City Defendants deny the allegations contained in Paragraph 54 of the First Amended Complaint.

55.

The City Defendants deny the allegations contained in Paragraph 55 of the First Amended Complaint.

56.

The City Defendants deny the allegations contained in Paragraph 56 of the First Amended Complaint.

**Count Two – Violation of O.C.G.A. § 44-9-3 Breach of Contract  
Against the City of Decatur and the URA**

57.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 56 as though fully set forth herein.

58.

The factual allegations set forth in Paragraph 58 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

59.

The City Defendants deny the allegations contained in Paragraph 59 of the First Amended Complaint.

60.

In response to Paragraph 60 of the First Amended Complaint, the City Defendants admit only that the City of Decatur, Georgia conveyed title in the subject property to the Urban Redevelopment Agency of the City of Decatur in May 2013. The City Defendants deny the remaining allegations contained in Paragraph 60 of the First Amended Complaint as stated.

61.

In response to Paragraph 61 of the First Amended Complaint, the City Defendants admit only that the City of Decatur, Georgia conveyed title in the subject property to the Urban Redevelopment Agency of the City of Decatur in May 2013. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 61 of the First Amended Complaint, and the same are therefore denied.

62.

The City Defendants deny the allegations contained in Paragraph 62 of the First Amended Complaint.

63.

The City Defendants deny the allegations contained in Paragraph 63 of the First Amended Complaint.

64.

The City Defendants deny the allegations contained in Paragraph 64 of the First Amended Complaint.

65.

The City Defendants deny the allegations contained in Paragraph 65 of the First Amended Complaint.

66.

The City Defendants deny the allegations contained in Paragraph 66 of the First Amended Complaint.

67.

The City Defendants deny the allegations contained in Paragraph 67 of the First Amended Complaint.

**Count Three – Negligence  
Against the City of Decatur**

68.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 67 as though fully set forth herein.

69.

The factual allegations set forth in Paragraph 69 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

70.

The factual allegations set forth in Paragraph 40 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

71.

The City Defendants deny the allegations contained in Paragraph 71 of the First Amended Complaint.

72.

The City Defendants deny the allegations contained in Paragraph 72 of the First Amended Complaint.

73.

The City Defendants deny the allegations contained in Paragraph 73 of the First Amended Complaint.

74.

The City Defendants deny the allegations contained in Paragraph 74 of the First Amended Complaint.



75.

The City Defendants deny the allegations contained in Paragraph 75 of the First Amended Complaint.

**Count Four – Inverse Condemnation  
Against the City of Decatur**

76.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 75 as though fully set forth herein.

77.

The City Defendants deny the allegations contained in Paragraph 77 of the First Amended Complaint.

78.

The City Defendants deny the allegations contained in Paragraph 78 of the First Amended Complaint.

79.

The City Defendants deny the allegations contained in Paragraph 79 of the First Amended Complaint.

80.

The City Defendants deny the allegations contained in Paragraph 80 of the First Amended Complaint.

81.

The City Defendants deny the allegations contained in Paragraph 81 of the First Amended Complaint.

82.

The City Defendants deny the allegations contained in Paragraph 82 of the First Amended Complaint.

**Count Five – Nuisance  
Against the City of Decatur**

83.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 82 as though fully set forth herein.

84.

The allegations in Paragraph 84 of the First Amended Complaint purport to be a statement of law and thus require no response. To the extent a response is required, City Defendants deny the allegations in Paragraph 84 of the First Amended Complaint.

85.

The allegations in Paragraph 85 of the First Amended Complaint purport to be a statement of law and thus require no response. To the extent a response is required, City Defendants deny the allegations in Paragraph 85 of the First Amended Complaint.

86.

The City Defendants deny the allegations contained in Paragraph 86 of the First Amended Complaint.

87.

The City Defendants deny the allegations contained in Paragraph 87 of the First Amended Complaint.

88.

The City Defendants deny the allegations contained in Paragraph 88 of the First Amended Complaint.

89.

In response to Paragraph 89 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

90.

The City Defendants deny the allegations contained in Paragraph 90 of the First Amended Complaint.

91.

The City Defendants deny the allegations contained in Paragraph 91 of the First Amended Complaint.

92.

The factual allegations set forth in Paragraph 92 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

93.

The City Defendants deny the allegations contained in Paragraph 93 of the First Amended Complaint.

94.

The City Defendants deny the allegations contained in Paragraph 94 of the First Amended Complaint.

95.

The City Defendants deny the allegations contained in Paragraph 95 of the First Amended Complaint.

96.

The City Defendants deny the allegations contained in Paragraph 96 of the First Amended Complaint.

**Count Six – Interfering with Enjoyment of Private Property  
(Violation of O.C.G.A, § 51-9-1)  
Against All Defendants**

97.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 96 as though fully set forth herein.

98.

The allegations in Paragraph 98 of the First Amended Complaint purport to be a statement of law and thus require no response. To the extent a response is required, the City Defendants deny the allegations in Paragraph 98 of the First Amended Complaint.

99.

In response to Paragraph 99 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

100.

The City Defendants deny the allegations contained in Paragraph 100 of the First Amended Complaint.

101.

The City Defendants deny the allegations contained in Paragraph 101 of the First Amended Complaint.

102.

The City Defendants deny the allegations contained in Paragraph 102 of the First Amended Complaint.

103.

The City Defendants deny the allegations contained in Paragraph 103 of the First Amended Complaint.

104.

In response to Paragraph 104 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

105.

In response to Paragraph 105 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

106.

In response to Paragraph 106 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

107.

In response to Paragraph 107 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

108.

In response to Paragraph 108 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

109.

In response to Paragraph 109 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

110.

In response to Paragraph 110 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

111.

The City Defendants deny the allegations contained in Paragraph 111 of the First Amended Complaint.

112.

The City Defendants deny the allegations contained in Paragraph 112 of the First Amended Complaint.



113.

The City Defendants deny the allegations contained in Paragraph 113 of the First Amended Complaint.

**Count Seven – Negligent Construction  
Against Potts and Reeves**

114.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 113 as though fully set forth herein.

115.

In response to Paragraph 115 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

116.

In response to Paragraph 116 of the First Amended Complaint, the City Defendants admit only that the City of Decatur entered into a written contract with The Potts Company, Inc., and that the terms of the written contract speak for themselves. The remainder of the allegations contained in Paragraph 116 of the First Amended Complaint are hereby denied.

117.

In response to Paragraph 117 of the First Amended Complaint, the City Defendants admit only that, upon information and belief, The Potts Company, Inc. entered into a written subcontract with Reeves Contracting Company, Inc., and that the terms of the written subcontract speak for themselves. The remainder of the allegations contained in Paragraph 117 of the First Amended Complaint are hereby denied.

118.

In response to Paragraph 118 of the First Amended Complaint, the City Defendants admit only that the terms of the written contract between the City of Decatur and The Potts Company, Inc. and the terms of the written subcontract between The Potts Company, Inc. and Reeves Contracting Company, Inc. speak for themselves. The remainder of the allegations contained in Paragraph 118 of the First Amended Complaint are hereby denied.

119.

The factual allegations set forth in Paragraph 119 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that City Defendants neither need to admit nor deny.

120.

In response to Paragraph 120 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

121.

In response to Paragraph 121 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

122.

In response to Paragraph 123 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

123.

In response to Paragraph 123 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

124.

In response to Paragraph 124 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

125.

In response to Paragraph 125 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

126.

In response to Paragraph 126 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

**Count Eight – Negligence  
Against Potts and Silverman**

127.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 126 as though fully set forth herein.

128.

In response to Paragraph 128 of the First Amended Complaint, the City Defendants admit only that The Potts Company, LLC and Silverman Construction Program Management, Inc., performed work on the named Project. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 128 of the First Amended Complaint, and the same are therefore denied.

129.

The factual allegations set forth in Paragraph 129 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

130.

In response to Paragraph 130 of the First Amended Complaint, the City Defendants admit only that The Potts Company, LLC performed work on the named Project. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 130 of the First Amended Complaint, and the same are therefore denied.

131.

In response to Paragraph 131 of the First Amended Complaint, the City Defendants admit only that Silverman Construction Program Management, Inc. performed work on the named Project. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 131 of the First Amended Complaint, and the same are therefore denied.

132.

In response to Paragraph 132 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

133.

In response to Paragraph 133 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

134.

In response to Paragraph 134 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

135.

In response to Paragraph 135 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

**Count Nine – Negligence Per Se  
Against the City of Decatur**

136.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 135 as though fully set forth herein.

137.

The City Defendants deny the allegations contained in Paragraph 137 of the First Amended Complaint.

138.

The allegations in paragraph 138 of the First Amended Complaint purport to be a statement of law and thus require no response. To the extent a response is required, City Defendants deny the allegations in paragraph 138 of the complaint.

139.

The City Defendants deny the allegations contained in Paragraph 139 of the First Amended Complaint.

140.

The factual allegations set forth in Paragraph 140 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

141.

The City Defendants deny the allegations contained in Paragraph 141 of the First Amended Complaint.

142.

The factual allegations set forth in Paragraph 142 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

143.

The City Defendants deny the allegations contained in Paragraph 143 of the First Amended Complaint.



144.

The factual allegations set forth in Paragraph 144 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

145.

The City Defendants deny the allegations contained in Paragraph 145 of the First Amended Complaint.

146.

The allegations in Paragraph 146 of the First Amended Complaint purport to be a statement of law and thus require no response. To the extent a response is required, the City Defendants deny the allegations in Paragraph 146 of the First Amended Complaint.

147.

In response to Paragraph 147 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

148.

The City Defendants deny the allegations contained in Paragraph 148 of the First Amended Complaint.

149.

The City Defendants deny the allegations contained in Paragraph 149 of the First Amended Complaint.

150.

The City Defendants deny the allegations contained in Paragraph 150 of the First Amended Complaint.

**Count Ten – Negligence Per Se  
Against Potts and Reeves**

151.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 150 as though fully set forth herein.

152.

In response to Paragraph 152 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

153.

The factual allegations set forth in Paragraph 153 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

154.

In response to Paragraph 154 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

155.

The factual allegations set forth in Paragraph 155 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

156.

In response to Paragraph 156 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

157.

The allegations in Paragraph 157 of the First Amended Complaint purport to be a statement of law and thus require no response. To the extent a response is required, the City Defendants deny the allegations in Paragraph 157 of the First Amended Complaint.

158.

In response to Paragraph 158 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

159.

In response to Paragraph 159 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

160.

In response to Paragraph 160 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

161.

In response to Paragraph 161 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

**Count Eleven – Negligence Per Se  
Against Silverman**

162.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 161 as though fully set forth herein.

163.

In response to Paragraph 163 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

164.

The factual allegations set forth in Paragraph 164 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

165.

In response to Paragraph 165 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

166.

The factual allegations set forth in Paragraph 166 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

167.

In response to Paragraph 167 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

168.

The factual allegations set forth in Paragraph 166 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

169.

In response to Paragraph 169 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

170.

In response to Paragraph 170 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

171.

In response to Paragraph 171 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

172.

In response to Paragraph 172 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

**Count Twelve – Professional Malpractice  
Against Kimley-Horn**

173.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 173 as though fully set forth herein.

174.

In response to Paragraph 174 of the First Amended Complaint, the City Defendants admit only that Kimley-Horn and Associates, Inc. performed certain work on the named Project. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 174 of the First Amended Complaint, and the same are therefore denied.

175.

In response to Paragraph 175 of the First Amended Complaint, the City Defendants admit only that Kimley-Horn and Associates, Inc. performed certain work on the named Project. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 175 of the First Amended Complaint, and the same are therefore denied.



176.

In response to Paragraph 176 of the First Amended Complaint, the City Defendants admit only that Kimley-Horn and Associates, Inc. performed certain work on the named Project. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 176 of the First Amended Complaint, and the same are therefore denied.

177.

In response to Paragraph 177 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

178.

In response to Paragraph 178 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

179.

In response to Paragraph 179 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

180.

In response to Paragraph 180 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

181.

In response to Paragraph 181 of the First Amended Complaint, the City Defendants admit only that the specification speaks for itself. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 181 of the First Amended Complaint, and the same are therefore denied.

182.

In response to Paragraph 182 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

183.

In response to Paragraph 183 of the First Amended Complaint, the City Defendants admit only that the Kimley-Horn design drawing for the stormwater upgrade had provisions for dewatering in the as constructed system. The City Defendants are without knowledge or information sufficient to enable them to form a belief as to the truth of the averments in the remainder of Paragraph 183 of the First Amended Complaint, and the same are therefore denied.

184.

In response to Paragraph 184 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

185.

In response to Paragraph 185 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

186.

In response to Paragraph 186 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

187.

In response to Paragraph 187 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

188.

In response to Paragraph 188 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

189.

In response to Paragraph 189 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

**Count Thirteen – Professional Malpractice  
Against Geo-Hydro**

190.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 189 as though fully set forth herein.

191.

In response to Paragraph 191 of the First Amended Complaint, the City Defendants admit only that Geo-Hydro Engineers, Inc. performed certain work on the named Project. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 191 of the First Amended Complaint, and the same are therefore denied.

192.

In response to Paragraph 192 of the First Amended Complaint, the City Defendants admit only that Geo-Hydro Engineers, Inc. performed work on the named Project. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 192 of the First Amended Complaint, and the same are therefore denied.

193.

In response to Paragraph 193 of the First Amended Complaint, the City Defendants admit only that the report prepared by Geo-Hydro Engineers, Inc. speaks for itself. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 193 of the First Amended Complaint, and the same are therefore denied.

194.

In response to Paragraph 193 of the First Amended Complaint, the City Defendants admit only that the named evaluation speaks for itself. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 194 of the First Amended Complaint, and the same are therefore denied.

195.

In response to Paragraph 195 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

196.

In response to Paragraph 196 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

197.

In response to Paragraph 197 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

198.

In response to Paragraph 198 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

199.

In response to Paragraph 199 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

200.

In response to Paragraph 200 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

201.

In response to Paragraph 201 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

202.

In response to Paragraph 202 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

203.

In response to Paragraph 203 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.



204.

In response to Paragraph 204 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

205.

In response to Paragraph 205 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

206.

In response to Paragraph 206 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

**Count Fourteen – Negligence Per Se  
Against Kimley-Horn**

207.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 206 as though fully set forth herein.

208.

In response to Paragraph 208 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

209.

The factual allegations set forth in Paragraph 209 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

210.

In response to Paragraph 210 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

211.

The factual allegations set forth in Paragraph 211 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

212.

In response to Paragraph 212 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

213.

The allegations in Paragraph 213 of the First Amended Complaint purport to be a statement of law and thus require no response. To the extent a response is required, the City Defendants deny the allegations in Paragraph 213 of the First Amended Complaint.

214.

In response to Paragraph 214 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

215.

In response to Paragraph 215 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

216.

In response to Paragraph 216 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

217.

In response to Paragraph 217 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

**Count Fifteen – Negligence Per Se  
Against Geo-Hydro**

218.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 217 as though fully set forth herein.

219.

In response to Paragraph 219 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

220.

The factual allegations set forth in Paragraph 220 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

221.

In response to Paragraph 221 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

222.

The factual allegations set forth in Paragraph 222 of the First Amended Complaint are denied for lack of knowledge and the remaining allegations are denied as they are legal conclusions that the City Defendants neither need to admit nor deny.

223.

In response to Paragraph 223 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

224.

The allegations in Paragraph 224 of the First Amended Complaint purport to be a statement of law and thus require no response. To the extent a response is required, the City Defendants deny the allegations in Paragraph 224 of the First Amended Complaint

225.

In response to Paragraph 225 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

226.

In response to Paragraph 226 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

227.

In response to Paragraph 227 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

228.

In response to Paragraph 228 of the First Amended Complaint, the City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments therein, and the same are therefore denied.

**Count Sixteen – Attorney’s Fees and Expenses of Litigation  
Against All Defendants under O.C.G.A. § 13-6-11**

229.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 228 as though fully set forth herein.

230.

The City Defendants deny the allegations contained in Paragraph 230 of the First Amended Complaint as they pertain to the City Defendants. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 230 of the First Amended Complaint, and the same are therefore denied.

231.

The City Defendants deny the allegations contained in Paragraph 231 of the First Amended Complaint as they pertain to the City Defendants. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 231 of the First Amended Complaint, and the same are therefore denied.

232.

The City Defendants deny the allegations contained in Paragraph 232 of the First Amended Complaint as they pertain to the City Defendants. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 232 of the First Amended Complaint, and the same are therefore denied.

**Count Seventeen – Punitive Damages  
Against All Defendants under O.C.G.A. § 51-12-5.1**

233.

The City Defendants incorporate by reference the responses to Paragraphs 1 through 232 as though fully set forth herein.



234.

The City Defendants deny the allegations contained in Paragraph 234 of the First Amended Complaint as they pertain to the City Defendants. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 234 of the First Amended Complaint, and the same are therefore denied.

235.

The City Defendants deny the allegations contained in Paragraph 235 of the First Amended Complaint as they pertain to the City Defendants. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 235 of the First Amended Complaint, and the same are therefore denied.

236.

The City Defendants deny the allegations contained in Paragraph 236 of the First Amended Complaint as they pertain to the City Defendants. The City Defendants are without knowledge or information sufficient to enable them to form a belief of the truth of the averments in the remainder of Paragraph 236 of the First Amended Complaint, and the same are therefore denied.

237.

The City Defendants deny the allegations contained in the “WHEREFORE” paragraph of the First Amended Complaint as they pertain to the City Defendants.

238.

All remaining allegations in the First Amended Complaint not expressly admitted are hereby denied.

WHEREFORE, the City Defendants pray and demand that Plaintiff’s First Amended Complaint against the City Defendants be dismissed with prejudice, that Plaintiff recover nothing from the City Defendants, that all costs of this action be charged to Plaintiff, and that the Court afford Defendants all other and further relief at law or at equity as deemed necessary or appropriate in the interest of justice.

**CROSSCLAIM OF THE CITY DEFENDANTS AGAINST  
THE POTTS COMPANIES**

The City Defendants, pursuant to Fed. R. Civ. P. 13, file this Crossclaim against Defendants The Potts Company, LLC and The Potts Company, Inc. (collectively the “Potts Companies”), alleging as follows:

1.

The City Defendants incorporate by reference the defenses and responses to the allegations of Plaintiff's First Amended Complaint Paragraphs 1 through 236 above as though fully set forth herein.

2.

The Potts Company, LLC is a Georgia corporation with its principal place of business in Georgia and is subject to personal jurisdiction and venue in this Court, as set forth in Plaintiff's First Amended Complaint.

3.

The Potts Company, Inc. is a Georgia corporation with its principal place of business in Georgia and is subject to personal jurisdiction and venue in this Court, as set forth in Plaintiff's First Amended Complaint.

4.

The Potts Companies are Defendants in this action brought by Plaintiff.

### **Count 1 – Contractual Indemnity**

5.

The City Defendants incorporate by reference the allegations in Paragraphs 1 through 4 above.

6.

In this action, Plaintiff claims property damages from the City Defendants as a result of the construction of the stormwater upgrade portion of the Beacon School Municipal Complex Project.

7.

The Potts Companies were responsible for construction of the stormwater upgrade under a written Agreement with the City of Decatur dated September 26, 2012.

8.

Plaintiff seeks damages to its property from the City Defendant as a result of the alleged negligent construction of the stormwater upgrade.

9.

The City Defendants are without fault as concerns the damages claimed by Plaintiff in this action.

10.

Under the terms of the Agreement between the City of Decatur and the Potts Companies, the Potts Companies agreed to “indemnify and save harmless [the City Defendants] from all suits, actions or claims of any character brought for or on account of any injuries to or death of or damages received by any person, persons or property resulting from the operations of [the Potts Companies] or any of its subcontractors, in prosecution the work” on the stormwater upgrade. The Agreement also provided:

§ 3.18 To the fullest extent permitted by law the Contractor [the Potts Companies] shall indemnify, defend, and hold harmless the Owner, the Owner’s Consultants, Project Manager, the Architect, the Architect’s consultants, and agents and employees of any of them from and against claims, damages, fines, penalties, punitive damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, except that Contractor shall not be required to indemnify any party from and against any claim, damage, loss or expense caused solely due to the negligent acts or omissions of such party.

11.

While denying their liability to Plaintiff, in the event that the City Defendants are found to be liable to Plaintiff, the Potts Companies must indemnify them from such liability. Further, the Potts Companies are liable to the City Defendants under the Agreement for their costs of defense, including reasonable attorney’s fees, irrespective of the outcome.

**Count Two – Common Law Indemnity**

12.

The City Defendants incorporate by reference the allegations in Paragraphs 1 through 11 above.

13.

The Potts Companies were responsible for construction of the stormwater upgrade for the Beacon School Municipal Complex Project under an Agreement with the City of Decatur dated September 26, 2012.

14.

Plaintiff seeks damages to its property from City Defendants as a result of the alleged negligent construction of the stormwater upgrade.

15.

The City Defendants are without fault as it relates to the damages claimed by Plaintiff in this action.

16.

While denying any fault on their part, the City Defendants show that if they are found to be negligent in regard to the incident, said negligence is passive, and the acts or omissions of the Potts Companies were active and would be the direct, active, and primary proximate cause of any damages that may be proven by Plaintiff. Accordingly, under the principles of common law indemnity, the Potts Companies owe a duty to indemnify the City Defendants from Plaintiff's claims.

17.

If the City Defendants are compelled to pay damages because of negligence imputed to them as a result of a tort committed by the Potts Companies, the City Defendants are entitled to indemnity from the Potts Companies under the principals of common law indemnity.

**Count Three – Breach of Contract**  
**Failure to Name the City Defendants as Additional Insureds**

18.

The City Defendants incorporate by reference the allegations in Paragraphs 1 through 16 above.

19.

Under the Agreement, the Potts Companies agreed to include the City Defendants as additional insureds on insurance coverages required by the Agreement, including the comprehensive or commercial general liability insurance coverage and umbrella coverage.

20.

Despite representations to the City Defendants that they were included as additional insureds on the Potts Companies liability insurance policies for the Project, the Potts Companies breached the Agreement by failing to include or name them as additional insureds on such insurance policies.

21.

The City Defendants have been damaged by the failure of the Potts Companies to obtain the insurance coverage in the amount of their liability, if any, to Plaintiff, or the amount of the insurance coverages that the Potts Companies should have, but failed, to obtain.

WHEREFORE, the City Defendants crossclaim against the Potts Companies for any damages awarded to Plaintiff and against the City Defendants and for their attorney's fees and other expenses of this action.



**CROSSCLAIM OF THE CITY DEFENDANTS AGAINST  
REEVES CONTRACTING COMPANY, INC.**

The City Defendants, pursuant to Fed. R. Civ. P. 13, file this Crossclaim against Defendant Reeves Contracting Company, Inc. (“Reeves”), alleging as follows:

1.

The City Defendants incorporate by reference the defenses and responses to the allegations of Plaintiff’s First Amended Complaint Paragraphs 1 through 236 above as though fully set forth herein.

2.

Defendant Reeves is a Georgia corporation with its principal place of business in Georgia and is subject to personal jurisdiction and venue in this Court, as set forth in Plaintiff’s First Amended Complaint.

3.

Plaintiff alleges, among other things, that certain work performed by Reeves was negligent and caused Plaintiff’s claimed damages.

4.

The City of Decatur entered into a written agreement with The Potts Company, Inc. on or about September 26, 2012, for construction of the stormwater upgrade portion of the Beacon School Municipal Complex Project.

5.

On or about April 26, 2013, The Potts Company, Inc. subcontracted with Reeves for excavation and construction of the stormwater upgrade.

6.

Plaintiff alleges that Reeves's work, including dewatering and excavation and shoring for the stormwater upgrade, damaged Plaintiff's property.

7.

Plaintiff seeks damages to its property from the City Defendants as a result of the alleged negligent construction of the stormwater upgrade.

8.

The City Defendants are without fault as concerns the damages claimed by the Plaintiff.

9.

While denying any fault on their part, the City Defendants show that if they are found to be negligent in regard to the incident, said negligence is passive, and the acts or omissions of Reeves were active and would be the direct, active, and primary proximate cause of any damages that may be proven by Plaintiff. Accordingly, under the principles of common law indemnity, Reeves owes a duty to indemnify the City Defendants from Plaintiff's claims.

10.

If the City Defendants are compelled to pay damages because of negligence imputed to them as a result of a tort committed by Reeves, the City Defendants are entitled to indemnity from Reeves under the principals of common law indemnity.

WHEREFORE, the City Defendants crossclaim against Reeves for any damages awarded to Plaintiff and against the City Defendants and for their attorney's fees and other expenses of this action.

**CROSSCLAIM OF THE CITY DEFENDANTS AGAINST  
KIMLEY-HORN AND ASSOCIATES, INC.**

The City Defendants, pursuant to Fed. R. Civ. P. 13, file this Crossclaim against Defendant Kimley-Horn and Associates, Inc. ("Kimley-Horn"), alleging as follows:

1.

The City Defendants incorporate by reference the defenses and responses to the allegations of Plaintiff's First Amended Complaint Paragraphs 1 through 236 above as though fully set forth herein.

2.

Defendant Kimley-Horn is a North Carolina corporation authorized to do business in Georgia and is subject to the personal jurisdiction and venue in this Court, as set forth in the Plaintiff's First Amended Complaint.

3.

Plaintiff alleges, among other things, that certain professional work performed by Kimley-Horn was negligent and caused Plaintiff's claimed damages.

4.

The City of Decatur entered into a written agreement with Kimley-Horn on or about January 8, 2013, for the design of the stormwater upgrade portion of the Beacon School Municipal Complex Project and construction administrative services for the stormwater upgrade work.

5.

Plaintiff alleges that excavation shoring and dewatering activities for the stormwater upgrade damaged its property.

6.

Plaintiff seeks damages to its property from the City Defendants as a result of the alleged negligent design and construction of the stormwater upgrade.

7.

The City Defendants are without fault as concerns the damages claimed by Plaintiff.

8.

While denying any fault on their part, the City Defendants show that if they are found to be negligent in regard to the incident, said negligence is passive, and the acts or omissions of Kimley-Horn were active and would be the direct, active, and primary proximate cause of any damages that may be proven by Plaintiff. Accordingly, under the principles of common law indemnity, Kimley-Horn owes a duty to indemnify the City Defendants from Plaintiff's claims.

9.

If the City Defendants are compelled to pay damages because of negligence imputed to them as a result of a tort committed by Kimley-Horn, the City Defendants are entitled to indemnity from Kimley-Horn under the principals of common law indemnity.

WHEREFORE, the City Defendants crossclaim against Kimley-Horn for any damages awarded to Plaintiff and against the City Defendants and for their attorney's fees and other expenses of this action.

**CROSSCLAIM OF THE CITY DEFENDANTS AGAINST  
GEO-HYDRO ENGINEERS, INC.**

The City Defendants, pursuant to Fed. R. Civ. P. 13, file this Crossclaim against Defendant Geo-Hydro Engineers, Inc. ("Geo-Hydro"), alleging as follows:

1.

The City Defendants incorporate by reference the defenses and responses to the allegations of Plaintiff's First Amended Complaint Paragraphs 1 through 236 above as though fully set forth herein.

2.

Defendant Geo-Hydro is a Georgia corporation authorized to do business in Georgia and is subject to personal jurisdiction and venue in this Court, as set forth in the Plaintiff's First Amended Complaint.

3.

Plaintiff alleges, among other things, that certain professional work performed by Geo-Hydro was negligent and caused Plaintiff's claimed damages.

4.

The City of Decatur entered into one or more written agreements with Geo-Hydro, including an agreement dated January 18, 2013, in which Geo-Hydro agreed to install ground water monitoring wells to evaluate the potential impact, including those on nearby properties, from dewatering of the stormwater upgrade site.

5.

Between January and June of 2013, Geo-Hydro bored four (4) monitoring wells, around the site, including one on Plaintiff's property. On or about June 13, 2013, Geo-Hydro delivered its written report of the results of its evaluation of the impact of large-scale dewatering for the construction of the stormwater upgrade (or "Vault"). In the report, Geo-Hydro concluded:

. . . we estimate that dewatering-induced ground subsidence in the immediate area around the vault will be as much as about 3 to 5 inches. . . . Outside the project limits, the effects of ground subsidence associated with the vault project will likely involve minor pavement and curb cracking along Electric Avenue and Robin Street, and possibly some pavement cracking in the asphalt drive and parking stalls east of the Park Terrace apartment building. . . . We do not expect that existing neighboring buildings will experience noticeable settlement as a result of dewatering associated with the vault project. . . .

6.

Plaintiff alleges that the dewatering activities for the stormwater upgrade damaged its property.

7.

Plaintiff seeks damages to its property from the City Defendants as a result of the alleged negligent construction of the stormwater upgrade.

8.

The City Defendants are without fault as concerns the damages claimed by Plaintiff.

9.

While denying any fault on their part to Plaintiff, the City Defendants show that they reasonably relied upon Geo-Hydro's representation that the dewatering activities would not damage the building on Plaintiff's property.

10.

In the event that there is a determination to the contrary and the City Defendants are found liable for Plaintiff's damages, then the City Defendants will be entitled to recover over from Geo-Hydro based upon Geo-Hydro's breach of contract and negligent misrepresentation concerning the effects of the dewatering on the site.



11.

While denying any fault on their part, the City Defendants show that if they are found to be negligent in regard to the incident, said negligence is passive, and the acts or omissions of Geo-Hydro were active and would be the direct, active, and primary proximate cause of any damages that may be proven by Plaintiff. Accordingly, under the principles of common law indemnity, Geo-Hydro owes a duty to indemnify the City Defendants from Plaintiff's claims.

12.

If the City Defendants are compelled to pay damages because of negligence imputed to them as a result of a tort committed by Geo-Hydro, the City Defendants are entitled to indemnity from Geo-Hydro under the principals of common law indemnity.

WHEREFORE, the City Defendants crossclaim against Geo-Hydro for any damages awarded to Plaintiff and against the City Defendants and for their attorney's fees and other expenses of this action.

This the 18th day of February 2015.

Respectfully submitted,

**FREEMAN MATHIS & GARY, LLP**

*/s/ T. Bart Gary*

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T. Bart Gary

Georgia Bar No. 287430

Katherine L. Holley

Georgia Bar No. 978015

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

Ashton Park Trace Apartments, LLC )

Plaintiff, )

v. )

City of Decatur, Georgia; Urban )  
Redevelopment Agency of the City of )  
Decatur; The Potts Company, LLC; The )  
Potts Company, Inc.; Reeves )  
Contracting Company, Inc.; and )  
Silverman Construction Program )  
Management, Inc.; Kimley-Horn and )  
Associates, Inc.; and Geo-Hydro )  
Engineers, Inc., )

Defendants. )

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Reeves Contracting Company, Inc., )

Third-Party Plaintiff, )

v. )

Western Oilfields Supply Company )  
d/b/a Rain for Rent and American )  
Shoring, Inc., )

Third-Party Defendants. )

Civil Action File No.  
1:14-cv-04056-MHC

The Potts Company, Inc. )  
 )  
 Cross-Claimant, )  
 )  
 v. )  
 )  
 Reeves Contracting Company, Inc., )  
 )  
 Cross Defendant. )  
 \_\_\_\_\_ )  
 Kimley-Horn and Associates, Inc., )  
 )  
 Cross Claimant, )  
 )  
 v. )  
 )  
 The Potts Company, LLC, and )  
 The Potts Company, Inc., )  
 )  
 Cross Defendant. )  
 \_\_\_\_\_ )  
 Kimley-Horn and Associates, Inc., )  
 )  
 Counter Claimant, )  
 )  
 v. )  
 )  
 Ashton Park Trace Apartments, LLC, )  
 )  
 Counter Defendant. )

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically filed the foregoing  
**DEFENDANTS THE CITY OF DECATUR, GEORGIA AND URBAN  
REDEVELOPMENT AGENCY OF THE CITY OF DECATUR’S ANSWER**

**AND AFFIRMATIVE DEFENSES TO THE FIRST AMENDED COMPLAINT AND CROSSCLAIMS AGAINST THE POTTS COMPANY, LLC, THE POTTS COMPANY, INC., REEVES CONTRACTING COMPANY, INC., KIMLEY-HORN AND ASSOCIATES, INC., AND GEO-HYDRO ENGINEERS, INC.** with the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to all counsel of record as follows:

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This 18<sup>th</sup> day of February 2015.

*/s/ T. Bart Gary*

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*Counsel for Defendants City of Decatur,  
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