

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

Ashton Park Trace \*  
Apartments, LLC, \*  
 \*  
Plaintiff, \*  
 \*  
vs. \*  
 \*  
 \*  
City of Decatur, Georgia; Urban \*  
Redevelopment Agency of the City of \*  
Decatur; The Potts Company, LLC; \*  
The Potts Company, Inc.; \*  
Reeves Contracting Company, Inc.; \*  
Silverman Construction Program \*  
Management, Inc.; Kimley-Horn and \*  
Associates, Inc.; and Geo-Hydro \*  
Engineers, Inc., \*  
 \*  
 \*  
Defendants. \*

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

**ANSWER, DEFENSES AND CROSSCLAIM OF  
DEFENDANT THE POTTS COMPANY, INC.**

COMES NOW The Potts Company a/k/a The Potts Company, Inc. and files the following Answer, Defenses and Crossclaim to Plaintiff’s First Amended Complaint. Plaintiff filed its First Amended Complaint before the Answer to the original Complaint was due, and this Answer also serves as a response to the original Complaint. Defendant respectfully shows the Court as follows:

**FIRST DEFENSE**

The First Amended Complaint fails to set forth a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE

For a Second Defense, this Defendant answers the numbered paragraphs of the First Amended Complaint, as follows:

1.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and subsections 1(a) and 1(b) of the First Amended Complaint and, therefore, cannot admit or deny same.

2.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the First Amended Complaint and, therefore, cannot admit or deny same.

3.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the First Amended Complaint and, therefore, cannot admit or deny same.

4.

In response to Paragraph 4 of the First Amended Complaint, this Defendant admits that Mike Potts is a Georgia resident and denies that Mike

Potts is a member of The Potts Company, LLC. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the First Amended Complaint and, therefore, cannot admit or deny same.

5.

Denied as plead. In further response, The Potts Company is a Georgia corporation with its principal place of business in Georgia and is also known as The Potts Company, Inc.

6.

Admitted.

7.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the First Amended Complaint and, therefore, cannot admit or deny same.

8.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the First Amended Complaint and, therefore, cannot admit or deny same.

9.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the First Amended Complaint and, therefore, cannot admit or deny same.

10.

This Defendant admits that Plaintiff and Defendants are citizens of different states. Defendant is without knowledge or information sufficient to form a belief as to the amount in controversy and thus the truth of the remaining allegations contained in Paragraph 10 of the First Amended Complaint and, therefore, cannot admit or deny same

11.

Denied.

12.

Admitted.

13.

This Defendant admits that the Park Trace apartment building is located in Decatur, DeKalb County, Georgia and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 13 of the First Amended Complaint and, therefore, cannot admit or deny same.

14.

Admitted.

15.

Admitted.

16.

Admitted.

17.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the First Amended Complaint and, therefore, cannot admit or deny same.

18.

Admitted.

19.

Admitted.

20.

Admitted.

21.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the First Amended Complaint and, therefore, cannot admit or deny same.

22.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the First Amended Complaint and, therefore, cannot admit or deny same.

23.

Admitted.

24.

Denied as pled , as the term “deep” is undefined.

25.

Admitted.

26.

Denied as pled. In further response, the drawings show the design slope and additional project documents may show more specific measurements.

27.

Denied as pled. In further response, soldier piles were installed and were temporary.

28.

Denied as pled. In further response, Defendant admits that the excavation was approximately 30 feet for the stormwater vault.

29.

Denied.

30.

Denied.

31.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the First Amended Complaint and, therefore, cannot admit or deny same.

32.

Denied to the extent Plaintiff asserts that this Defendant caused any damage.

33.

Denied to the extent Plaintiff asserts that this Defendant caused any damage.

34.

Denied.

35.

Denied as pled. In further response, this Defendant admits that Plaintiff sent written notices regarding its allegations.

36.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the First Amended Complaint and, therefore, cannot admit or deny same.

37.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the First Amended Complaint and, therefore, cannot admit or deny same.

38.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the First Amended Complaint and, therefore, cannot admit or deny same.

39.



This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the First Amended Complaint and, therefore, cannot admit or deny same.

40.

Denied.

**Cause of Action**

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

41.

This Defendant incorporates by reference its responses to Paragraphs 1 through 40 as if fully set forth herein.

42.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

43.

Denied as pled, and in further response, the document in its entirety speaks for itself.

44.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

45.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

46.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

47.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

48.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

49.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

50.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

51.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

52.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

53.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

54.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

55.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

56.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

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

57.

This Defendant incorporates by reference its responses to Paragraphs 1 through 56 as if fully set forth herein.

58.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

59.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

60.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

61.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

62.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

63.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

64.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

65.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

66.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

67.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

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

68.

This Defendant incorporates by reference its responses to Paragraphs 1 through 67 as if fully set forth herein.

69.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

70.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

71.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

72.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

73.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

74.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

75.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

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

76.

This Defendant incorporates by reference its responses to Paragraphs 1 through 75 as if fully set forth herein.

77.

Denied.

78.

Denied.

79.

Denied.

80.

Denied.

81.

Denied.

82.

Denied.

**Count Five – Nuisance**

**Against the City of Decatur**

83.

This Defendant incorporates by reference its responses to Paragraphs 1 through 82 as if fully set forth herein.

84.

Admitted.

85.

Admitted.

86.

Denied.

87.

Denied.

88.

Denied.

89.

Denied.

90.

Denied.

91.



Denied.

92.

Denied.

93.

Denied.

94.

Denied.

95.

Denied.

96.

Denied.

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

97.

This Defendant incorporates by reference its responses to Paragraphs 1 through 96 as if fully set forth herein.

98.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

99.

Denied to the extent Plaintiff asserts any wrongdoing by this  
Defendant.

100.

Denied.

101.

Denied.

102.

Denied.

103.

Denied.

104.

Denied.

105.

Denied.

106.

Denied.

107.

Denied.

108.

Denied.

109.

Denied.

110.

Denied.

111.

Denied.

112.

Denied.

113.

Denied.

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

114.

This Defendant incorporates by reference its responses to Paragraphs 1 through 113 as if fully set forth herein.

115.

Admitted.

116.

Admitted.

117.

Admitted.

118.

Admitted.

119.

Admitted.

120.

Denied.

121.

Denied.

122.

Denied.

123.

Denied.

124.

Denied.

125.

Denied.

126.

Denied.

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

127.

This Defendant incorporates by reference its responses to Paragraphs 1 through 126 as if fully set forth herein.

128.

Denied as pled, as the term “skilled” is not defined. In further response, this Defendant did not provide project designs, and this Defendant properly performed its services in accordance with the Agreement with the City.

129.

Admitted.

130.

Admitted.

131.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 131 of the First Amended Complaint and, therefore, cannot admit or deny same.

132.

Denied.

133.

Denied.

134.

Denied.

135.

Denied.

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

136.

This Defendant incorporates by reference its responses to Paragraphs 1 through 135 as if fully set forth herein.

137.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 137 of the First Amended Complaint and, therefore, cannot admit or deny same.

138.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 138 of the First Amended Complaint and, therefore, cannot admit or deny same.

139.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 139 of the First Amended Complaint and, therefore, cannot admit or deny same.

140.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 140 of the First Amended Complaint and, therefore, cannot admit or deny same.

141.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 141 of the First Amended Complaint and, therefore, cannot admit or deny same.

142.

Denied.

143.

Denied.

144.

Denied.

145.

Denied.

146.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

147.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

148.

Denied.

149.

Denied.

150.

Denied.

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

151.



This Defendant incorporates by reference its responses to Paragraphs 1 through 150 as if fully set forth herein.

152.

Denied.

153.

Denied.

154.

Denied.

155.

Denied.

156.

Denied.

157.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

158.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

159.

Denied.

160.

Denied.

161.

Denied.

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

162.

This Defendant incorporates by reference its responses to Paragraphs 1 through 161 as if fully set forth herein.

163.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 163 of the First Amended Complaint and, therefore, cannot admit or deny same.

164.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 164 of the First Amended Complaint and, therefore, cannot admit or deny same.

165.

Denied.

166.

Denied.

167.

Denied.

168.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

169.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

170.

Denied.

171.

Denied.

172.

Denied.

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

173.

This Defendant incorporates by reference its responses to Paragraphs 1 through 173 as if fully set forth herein.

174.

Admitted.

175.

Admitted.

176.

Admitted.

177.

Admitted.

178.

Admitted.

179.

Denied.

180.

Denied.

181.

Admitted.

182.

Denied.

183.

Admitted.

184.

Denied.

185.

Denied.

186.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 186 of the First Amended Complaint and, therefore, cannot admit or deny same.

187.

Denied.

188.

Denied.

189.

Denied.

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

190.

This Defendant incorporates by reference its responses to Paragraphs 1 through 189 as if fully set forth herein.

191.

Admitted.

192.

This Defendant admits that Geo-Hydro prepared a Report. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 192 of the First Amended Complaint and, therefore, cannot admit or deny same.

193.

Admitted.

194.

Admitted.

195.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 195 of the First Amended Complaint and, therefore, cannot admit or deny same.

196.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 196 of the First Amended Complaint and, therefore, cannot admit or deny same.

197.

Admitted.

198.

Denied.

199.

Denied.

200.

Denied.

201.

Denied.

202.

Denied.

203.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 203 of the First Amended Complaint and, therefore, cannot admit or deny same.

204.

Denied.

205.

Denied.

206.

Denied.

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

207.

This Defendant incorporates by reference its responses to Paragraphs  
1 through 206 as if fully set forth herein.

208.

Denied.

209.

Denied.

210.

Denied.

211.

Denied.

212.



Denied.

213.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

214.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

215.

Denied.

216.

Denied.

217.

Denied.

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

218.

This Defendant incorporates by reference its responses to Paragraphs 1 through 217 as if fully set forth herein.

219.

Denied.

220.

Denied.

221.

Denied.

222.

Denied.

223.

Denied.

224.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

225.

Denied to the extent Plaintiff asserts any wrongdoing by this Defendant.

226.

Denied.

227.

Denied.

228.

Denied.

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

229.

This Defendant incorporates by reference its responses to Paragraphs  
1 through 228 as if fully set forth herein.

230.

Denied.

231.

Denied.

232.

Denied.

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

233.

This Defendant incorporates by reference its responses to Paragraphs  
1 through 232 as if fully set forth herein.

234.

Denied.

235.

Denied.

236.

Denied.

237.

Defendant denies the allegations and prayers contained in the paragraph beginning “**WHEREFORE**” following paragraph 236 of the First Amended Complaint.

238.

Defendant denies any factual allegations and/or averments contained in the paragraph beginning “**STATEMENT OF CASE**” preceding Paragraph 1 of the First Amended Complaint.

239.

Any allegation of the First Amended Complaint not admitted, denied or otherwise responded to above is hereby denied.

### THIRD DEFENSE

This Defendant is not liable to Plaintiff because Defendant breached no duty owed to Plaintiff in regard to the occurrence giving rise to this action.

### FOURTH DEFENSE

No act or omission on the part of the Defendant caused or contributed to any of the alleged damages claimed, and therefore the Plaintiff is not entitled to recover anything from this Defendant.

FIFTH DEFENSE

Pending further investigation, the sole, direct and proximate cause of any injury or damage which the Plaintiff may have sustained was due to the negligence of some person, persons or entity other than this Defendant and therefore the Plaintiff is not entitled to recover anything from this Defendant.

SIXTH DEFENSE

Pending further investigation, the Complaint should be dismissed for failure to join a necessary and/or indispensable party.

SEVENTH DEFENSE

Defendant cannot be held liable for errors or omissions in any plans, design specifications, and/or inspections for the subject project.

EIGHTH DEFENSE

The Plaintiff's claims are barred by the applicable statute of limitations, waiver, estoppel, and/or the acceptance doctrine.

NINTH DEFENSE

To the extent Plaintiff failed to use ordinary care to prevent or mitigate, in whole or in part, its alleged damages, if any, Plaintiff is not entitled to recover such damages.

#### TENTH DEFENSE

The failure to properly plead items of special damages sought in this action prohibits and/or bars Plaintiff's right to recover and/or recoup any items of special damages in this action, as a matter of law. O.C.G.A. § 9-11-9(g) and Federal Rule of Civil Procedure 9(g).

#### ELEVENTH DEFENSE

The statutes of the State of Georgia which authorize the imposition of aggravated, exemplary, or punitive damages are contrary, by their express terms and as they may be applied to the Defendant in this case, to the Constitution of the United States and the Georgia Constitution and are, therefore, void inasmuch as said statutes allow for the deprivation of property without due process of law. (U.S. Const. amends V and XIV; Ga. Const. Art. 1, Section 1, Para. 1). Specifically, said statutes fail to define or provide advance notice of the prohibited behavior with reasonable clarity, fail to specify the upper limit of damages to be imposed, fail to set guidelines, standards or criteria for the jury to apply in determining whether

to impose punitive damages and, if so, the amount thereof. These defects in the statutes, inter alia, leave to the unbridled discretion of a random jury whether to impose such damages and the amount thereof, thereby authorizing an award of aggravated, exemplary, or punitive damages which is unpredictable, arbitrary, capricious, and disproportionate.

#### TWELFTH DEFENSE

The statutes of the State of Georgia which authorize the imposition of aggravated, exemplary, or punitive damages are contrary, by their express terms and as they may be applied to the Defendant in this case, to the Constitution of the United States and the Georgia Constitution and are, therefore, void inasmuch as said statutes deny this Defendant equal protection of the laws by providing fewer protections for civil litigants than the criminal laws provide to persons accused of violation of criminal statutes which provide for the imposition of monetary fines. (U.S. Const. amend. XIV; Ga. Const. Art. 1, Section 1, Paragraph 2). Specifically, said statutes, inter alia, fail to define or provide advance notice of the prohibited behavior with reasonable clarity whereas criminal defendants are entitled to such notice; said statutes fail to specify the upper limit of damages to be imposed whereas criminal statutes imposing similar penalties must be limited; said

statutes allow imposition of such damages upon the "preponderance of the evidence" rather than the "beyond a reasonable doubt" standard applied in similar criminal cases; and said statutes contemplate the imposition of such damages against civil litigants who have been compelled to give evidence against themselves under the Georgia Civil Practice Act whereas criminal defendants in similar cases cannot be so compelled.

#### THIRTEENTH DEFENSE

The statutes of the State of Georgia which authorize the imposition of aggravated, exemplary, or punitive damages are contrary, by their express terms and as they may be applied to the Defendant in this case, to the Constitution of the United States and the Georgia Constitution and are, therefore, void inasmuch as said statutes allow for the imposition of an excessive fine. (U.S. Const. amend. VIII and XIV; Ga. Const. Art. 1, Section 1, Paragraph 17).

#### FOURTEENTH DEFENSE

The statutes of the State of Georgia which authorize the imposition of aggravated, exemplary, or punitive damages are contrary, by their express terms and as they may be applied to the Defendant in this case, to the Constitution of the United States and the Georgia Constitution and are,



therefore, void inasmuch as said statutes do not provide fair notice of (1) the severity of the potential punishment in relationship to the alleged degree of reprehensible conduct of the Defendants, (2) the ratio of any punitive damages award to the actual harm inflicted upon the Plaintiff, and (3) a comparison between the award and the civil or criminal penalties that could be imposed for comparable alleged misconduct. See, BMW of North America, Inc. v. Gore, 116 U.S. 415, 133 L.Ed.2d 333, 115 S. Ct. 932 (1966); BMW of North America, Inc. v. Gore, 116 S. Ct. 1589 (1996); Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 113 L.Ed.2d 1, 111 S. Ct. 1032 (1991).

WHEREFORE, this Defendant prays that the Complaint be dismissed with costs of this action cast against the Plaintiff.

**CROSSCLAIM AGAINST**  
**REEVES CONTRACTING COMPANY**

COMES NOW The Potts Company a/k/a The Potts Company, Inc., and files the following Crossclaim against Reeves Contracting Company, and respectfully shows the Court as follows:

1.

Defendant Reeves Contracting Company is a Georgia 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 Complaint and First Amended Complaint.

2.

Defendant Reeves Contracting Company was an independent contractor at all times while performing work for the Beacon Municipal Complex project identified in the Plaintiff's Complaint and First Amended Complaint.

3.

Plaintiff alleges, among other things, that certain construction work performed by Reeves Contracting Company caused an unreasonable drop in the groundwater table and a loss of soil support, which allegedly resulted in property damage to the Plaintiff's apartment building, and that Reeves Contracting Company failed to act with ordinary care and was thus negligent in causing the Plaintiff's claimed damages.

4.

In the event that this Defendant is found liable to Plaintiff for any sum whatsoever, and to the extent that such liability arises out of or is related to

work performed and/or within the scope of work of Reeves Contracting Company and/or Reeves Contracting Company's employee(s) or subcontractor(s), then this Defendant is entitled to contractual indemnity from Reeves Contracting Company for any such loss plus attorney's fees and expenses.

5.

In the event that this Defendant is found liable to Plaintiff for any sum whatsoever, and to the extent that such liability arises out of or is related to work performed and/or within the scope of work of Reeves Contracting Company and/or Reeves Contracting Company's employee(s) or subcontractor(s), then this Defendant is entitled to common law indemnity and/or an apportionment of damages from Reeves Contracting Company for any such loss.

WHEREFORE, having fully answered and asserted its crossclaim, this Defendant as follows:

- 1) That the Complaint and First Amended Complaint be dismissed with costs of this action cast against the Plaintiff;
- 2) In the event this Defendant is found liable to Plaintiff for any sum whatsoever, then this Defendant be awarded contractual indemnity

from Reeves Contracting Company for any such loss plus attorney's fees and expenses;

- 3) In the event this Defendant is found liable to Plaintiff for any sum whatsoever, then this Defendant be awarded common law indemnity from and/or an apportionment of damages against Reeves Contracting Company for any such loss;
- 4) That this Defendant be awarded its Attorney's Fees and Expenses of Litigation; and
- 5) That the Court grants such other, further and different relief as the Court deems appropriate to effectuate the relief sought by this Defendant herein.

#### CERTIFICATION OF COUNSEL

The undersigned pursuant to the Court's Local Rules hereby certifies that this document has been prepared with Times New Roman 14 point.

This 30<sup>th</sup> day of January, 2015.

MABRY & McCLELLAND, LLP

/s/ Richard H. Hill, Jr.  
Richard H. Hill, Jr., Esq.  
Georgia Bar No. 354422  
Dawn N. Pettigrew, Esq.  
Georgia Bar No. 409509

Attorneys for Defendant  
The Potts Company, Inc.

(404) 325-4800 - telephone  
(404) 325-0596 – facsimile

**DEFENDANT DEMANDS  
TRIAL BY JURY OF TWELVE**

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that I have electronically filed the ANSWER, DEFENSES AND CROSSCLAIM OF DEFENDANT THE POTTS COMPANY, INC. with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

**ATTORNEYS FOR PLAINTIFF**

John M. Mastin, Jr.  
Joseph J. Dinardo  
Smith, Currie & Hancock, LLP  
2700 Marquis One Tower  
245 Peachtree Center Avenue, NE  
Atlanta, Georgia 30303-1227

**ATTORNEY FOR DEFENDANTS CITY OF DECATUR  
AND URBAN REDEVELOPMENT AGENCY**

T. Bart Gary, Esq.  
Freeman Mathis & Gary, LLP  
100 Galleria Parkway, Suite 1600  
Atlanta, Georgia 30339

**ATTORNEY FOR THE POTTS COMPANY, LLC AND  
REEVES CONTRACTING COMPANY**

Brad Christopher Parrott, Esq.  
Hudson Parrott Walker, LLC  
Fifteen Piedmont Center  
3575 Piedmont Rd., Suite L100  
Atlanta, Georgia 30305

This 30<sup>th</sup> day of January, 2015.

MABRY & McCLELLAND, LLP

/s/ Richard H. Hill, Jr.

Richard H. Hill, Jr., Esq.

Georgia Bar No. 354422

Dawn N. Pettigrew, Esq.

Georgia Bar No. 409509

Attorneys for Defendant

The Potts Company, Inc.

(404) 325-4800 - telephone

(404) 325-0596 - facsimile