

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Ashton Park Trace Apartments, LLC,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	1:14-cv-04056-MHC
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.)	

**DEFENDANT, KIMLEY-HORN AND ASSOCIATES, INC., ANSWER TO
PLAINTIFF’S FIRST AMENDED COMPLAINT, COUNTERCLAIM, AND
CROSS-CLAIM AGAINST DEFENDANTS, THE POTTS COMPANY, INC.
AND THE POTTS COMPANY, LLC**

Defendant, Kimley-Horn and Associates, Inc. (Kimley-Horn), files its answer to Plaintiff’s First Amended Complaint, along with Counterclaim, and its Cross-claim, pursuant to Fed. R. Civ. P. 13(g), against Defendants, The Potts Company, Inc. and The Potts Company, LLC.

FIRST AFFIRMATIVE DEFENSE

One or more of Plaintiff's causes of action against Kimley-Horn fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to attorney's fees in this case as the Plaintiff has brought this action in bad faith against Kimley-Horn, without required investigation or in spite of it, and Kimley-Horn has not acted in bad faith, been stubbornly litigious or caused Plaintiff unnecessary trouble or expense.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim may be barred or limited to the extent that the Plaintiff failed to mitigate its damages or committed economic waste.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused by persons and/or entities for whom Kimley-Horn is not responsible.

SIXTH AFFIRMATIVE DEFENSE

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

Statement of the Case

The Plaintiff's statement of the case does not contain any allegations to which an answer is required. To the extent that the statement of the case contains any allegations to which an answer is required, Kimley-Horn denies them.

Parties

1. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 1 of the Plaintiff's First Amended Complaint.
2. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 2 of the Plaintiff's First Amended Complaint.
3. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 3 of the Plaintiff's First Amended Complaint.

4. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 4 of the Plaintiff's First Amended Complaint.
5. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 5 of the Plaintiff's First Amended Complaint.
6. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 6 of the Plaintiff's First Amended Complaint.
7. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 7 of the Plaintiff's First Amended Complaint.
8. Admitted.
9. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 9 of the Plaintiff's First Amended Complaint.

Jurisdiction and Venue

10. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 10 of the Plaintiff's First Amended Complaint.
11. Kimley-Horn admits that the Court can exercise personal jurisdiction over it because of its involvement in the Beacon Municipal Complex Redevelopment Project. Kimley-Horn denies that its involvement in the Project caused damage to Park Trace's apartment building. The remaining allegations of paragraph 11 do not pertain to Kimley-Horn and Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of those allegations.
12. Admitted.

General Allegations

13. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 13 of the Plaintiff's First Amended Complaint. Kimley-Horn incorporates into all of its subsequent answers its lack of sufficient information regarding the ownership of the apartment building as though expressly set forth therein. No subsequent answer shall be interpreted as admitting that Park Trace

owns the apartment building and so much of subsequent allegations that state or imply that Park Trace owns the building are denied as being beyond Kimley-Horn's knowledge.

14. Admitted that the apartment building is adjacent to land owned by the City or the URA.
15. Admitted that the City has a multi-million dollar construction project on the land referred to in answer to paragraph 14.
16. Admitted.
17. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 17 of the Plaintiff's First Amended Complaint.
18. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 18 of the Plaintiff's First Amended Complaint.
19. Kimley-Horn admits that the Project included an upgrade to the City's stormwater system. Kimley-Horn admits the second sentence of paragraph 19. The remaining allegations and qualifications of paragraph 19 are denied.

20. Kimley-Horn admits that the Stormwater Upgrade portion of the Project included planning, design, construction management, construction, and supervision of a two-acre stormwater management vault under Ebster Field on the City's land described in answer to paragraph 14 above. The remaining allegations and qualifications of paragraph 20 are denied.
21. Admitted that the City retained Kimley-Horn's services to the extent set forth in the agreement between Kimley-Horn and the City of Decatur dated January 4, 2013 as amended. To the extent inconsistent with that agreement, Kimley-Horn denies the allegations of paragraph 21.
22. Admitted.
23. Kimley-Horn admits that the construction of the underground stormwater management vault required excavation, shoring, and dewatering activities on the City's land described in answer to paragraph 14 above. The remaining allegations and qualifications of paragraph 23 are denied.
24. Admitted that the stormwater upgrade required excavation to install the stormwater management vault. The remaining allegations and qualifications of paragraph 24 are denied.
25. Admitted that the City's excavation work for the stormwater management vault was started near the east property line of the land

described in answer to paragraph 14. The remaining allegations and qualifications of paragraph 25 are denied.

26. Admitted.

27. Admitted.

28. Admitted that the excavation depth was approximately 30 feet. The remaining allegations and qualifications of paragraph 28 are denied.

29. Admitted that a dewatering system consisting of continuous (24/7) pumping of groundwater located along the edge of the planned edge of the stormwater management vault was used. The remaining allegations and qualifications of paragraph 29 are denied.

30. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 30 of the Plaintiff's First Amended Complaint.

31. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 31 of the Plaintiff's First Amended Complaint.

32. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 32 of the Plaintiff's First Amended Complaint.

33. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 33 of the Plaintiff's First Amended Complaint.
34. To the extent that this allegation applies to Kimley-Horn, it is denied. To the extent the allegation pertains to services or work required of or performed by others, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 34 of the Plaintiff's First Amended Complaint.
35. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 35 of the Plaintiff's First Amended Complaint.
36. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 36 of the Plaintiff's First Amended Complaint.
37. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 37 of the Plaintiff's First Amended Complaint.

38. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 38 of the Plaintiff's First Amended Complaint.

39. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 39 of the Plaintiff's First Amended Complaint.

40. To the extent that this allegation applies to Kimley-Horn, it is denied. To the extent the allegation pertains to services or work required of or performed by others, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 40 of the Plaintiff's First Amended Complaint.

CAUSES of ACTION

Count One – Breach of Contract Against the City of Decatur

41. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 40 as if fully set forth herein.

42. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth

of the allegations contained in paragraph 42 of the Plaintiff's First Amended Complaint.

43. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 43 of the Plaintiff's First Amended Complaint and states that the agreement speaks for itself.
44. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 44 of the Plaintiff's First Amended Complaint and states that the agreement speaks for itself.
45. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 45 of the Plaintiff's First Amended Complaint and states that the agreement speaks for itself.
46. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn

lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 46 of the Plaintiff's First Amended Complaint and states that the agreement speaks for itself.

47. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 47 of the Plaintiff's First Amended Complaint and states that the agreement speaks for itself.

48. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 48 of the Plaintiff's First Amended Complaint and states that the agreement speak for itself.

49. The allegations of this paragraph pertain to defendants other than Kimley-Horn. Paragraph 49 contains a legal conclusion for which no answer is required. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 49 of the Plaintiff's First Amended Complaint.

50. The allegations of this paragraph pertain to parties other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 50 of the Plaintiff's First Amended Complaint.
51. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 51 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.
52. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 52 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.
53. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn

lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 53 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

54. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 54 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

55. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 55 of the Plaintiff's First Amended Complaint.

56. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth

of the allegations contained in paragraph 56 of the Plaintiff's First Amended Complaint.

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

57. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 56 as if fully set forth herein.
58. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 58 of the Plaintiff's First Amended Complaint.
59. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 59 of the Plaintiff's First Amended Complaint.
60. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth

of the allegations contained in paragraph 60 of the Plaintiff's First Amended Complaint.

61. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 61 of the Plaintiff's First Amended Complaint.
62. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 62 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.
63. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 63 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

64. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 64 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

65. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 65 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

66. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 66 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

67. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 67 of the Plaintiff's First Amended Complaint.

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

68. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 67 as if fully set forth herein.

69. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 69 of the Plaintiff's First Amended Complaint.

70. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 70 of the Plaintiff's First Amended Complaint.

71. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 71 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

72. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 72 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

73. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 73 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

74. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 74 of the Plaintiff's First Amended Complaint.

75. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 75 of the Plaintiff's First Amended Complaint.

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

76. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 75 as if fully set forth herein.

77. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 77 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

78. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 78 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

79. Admitted.

80. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 80 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

81. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 81 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

82. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 82 of the Plaintiff's First Amended Complaint.

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

83. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 82 as if fully set forth herein.

84. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 84 of the Plaintiff's First Amended Complaint.

85. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 85 of the Plaintiff's First Amended Complaint.

86. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 86 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

87. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 87 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

88. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 88 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

89. Admitted.

90. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 90 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

91. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 91 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

92. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 92 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

93. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 93 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

94. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 94 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

95. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 95 of the Plaintiff's First Amended Complaint.

96. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn

lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 96 of the Plaintiff's First Amended Complaint.

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

97. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 96 as if fully set forth herein.
98. Paragraph 98 contains a legal conclusion for which no answer is required. To the extent that an answer is required, Kimley-Horn states that the statute speaks for itself.
99. Paragraph 99 contains a legal conclusion for which no answer is required.
100. To the extent the allegations of paragraph 100 apply to Kimley-Horn, Kimley Horn denies them. To the extent that the allegations of paragraph 100 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 100 of the Plaintiff's First Amended Complaint.
101. To the extent the allegations of paragraph 101 apply to Kimley-Horn, Kimley Horn denies them. To the extent that the allegations of

paragraph 101 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 101 of the Plaintiff's First Amended Complaint.

102. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 102 of the Plaintiff's First Amended Complaint.

103. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 103 of the Plaintiff's First Amended Complaint.

104. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 104 of the Plaintiff's First Amended Complaint.

105. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 105 of the Plaintiff's First Amended Complaint.
106. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 106 of the Plaintiff's First Amended Complaint.
107. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 107 of the Plaintiff's First Amended Complaint.
108. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the

truth of the allegations contained in paragraph 108 of the Plaintiff's First Amended Complaint.

109. Denied.

110. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 110 of the Plaintiff's First Amended Complaint.

111. To the extent the allegations of paragraph 111 apply to Kimley-Horn, Kimley Horn denies them. To the extent that the allegations of paragraph 111 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 111 of the Plaintiff's First Amended Complaint.

112. To the extent the allegations of paragraph 112 apply to Kimley-Horn, Kimley Horn denies them. To the extent that the allegations of paragraph 112 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of

the allegations contained in paragraph 112 of the Plaintiff's First Amended Complaint.

113. Denied. The law pertaining to commencing actions in federal courts requires the Plaintiff to have made a good faith investigation and to ensure the existence of a good faith basis for filing suit prior to initiating this action against Kimley-Horn. Based on the contracts for the project, the plans and specifications and geotechnical reports, all of which were available to the Plaintiff, it is apparent that, either the Plaintiff did not make a good faith investigation or deliberately brings this action against Kimley-Horn in bad faith.

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

114. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 113 as if fully set forth herein.
115. Admitted.
116. Admitted.
117. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 117 of the Plaintiff's First Amended Complaint.
118. Admitted.

119. Admitted.
120. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 120 of the Plaintiff's First Amended Complaint.
121. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 121 of the Plaintiff's First Amended Complaint.
122. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 122 of the Plaintiff's First Amended Complaint.
123. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the

truth of the allegations contained in paragraph 123 of the Plaintiff's First Amended Complaint.

124. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 124 of the Plaintiff's First Amended Complaint.
125. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 125 of the Plaintiff's First Amended Complaint.
126. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 126 of the Plaintiff's First Amended Complaint.

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

127. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 126 as if fully set forth herein.
128. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 128 of the Plaintiff's First Amended Complaint.
129. Admitted.
130. Admitted.
131. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 131 of the Plaintiff's First Amended Complaint.
132. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the

truth of the allegations contained in paragraph 132 of the Plaintiff's First Amended Complaint.

133. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 133 of the Plaintiff's First Amended Complaint.
134. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 134 of the Plaintiff's First Amended Complaint.
135. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 135 of the Plaintiff's First Amended Complaint.

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

136. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 135 as if fully set forth herein.
137. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 137 of the Plaintiff's First Amended Complaint.
138. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 138 of the Plaintiff's First Amended Complaint.
139. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 139 of the Plaintiff's First Amended Complaint.

140. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 140 of the Plaintiff's First Amended Complaint.
141. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 141 of the Plaintiff's First Amended Complaint.
142. Denied.
143. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 143 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.
144. Denied.

145. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 145 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.
146. Denied.
147. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 147 of the Plaintiff's First Amended Complaint.
148. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 148 of the Plaintiff's First Amended Complaint. To the extent that the allegations of this paragraph apply to Kimley-Horn, they are denied.

149. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 149 of the Plaintiff's First Amended Complaint.
150. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 150 of the Plaintiff's First Amended Complaint.

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

151. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 150 as if fully set forth herein.
152. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 152 of the Plaintiff's First Amended Complaint.
153. Denied.

154. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 154 of the Plaintiff's First Amended Complaint.
155. Denied.
156. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 156 of the Plaintiff's First Amended Complaint.
157. Denied.
158. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 158 of the Plaintiff's First Amended Complaint.
159. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn

lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 159 of the Plaintiff's First Amended Complaint.

160. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 160 of the Plaintiff's First Amended Complaint.

161. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 161 of the Plaintiff's First Amended Complaint.

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

162. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 161 as if fully set forth herein.

163. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the

truth of the allegations contained in paragraph 163 of the Plaintiff's First Amended Complaint.

164. Denied.

165. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 165 of the Plaintiff's First Amended Complaint.

166. Denied.

167. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 167 of the Plaintiff's First Amended Complaint.

168. Denied.

169. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the

truth of the allegations contained in paragraph 169 of the Plaintiff's First Amended Complaint.

170. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 170 of the Plaintiff's First Amended Complaint.
171. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 171 of the Plaintiff's First Amended Complaint.
172. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 172 of the Plaintiff's First Amended Complaint.

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

173. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 172 as if fully set forth herein.
174. Admitted that Kimley-Horn was retained to provide services in connection with the design of the Stormwater Upgrade as set forth in the agreement between Kimley-Horn and the City of Decatur dated January 4, 2013 as amended. The remaining allegations and qualifications of paragraph 174 are denied.
175. Admitted.
176. Admitted.
177. With respect to only the services specifically described in Kimley-Horn's January 4, 2013 Agreement with the City of Decatur, as amended, Kimley-Horn admits that it had a duty to the City to perform the services with the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the same time the services are provided. Kimley-Horn denies the remaining allegations and qualifications of paragraph 177. By way of further answer, Kimley-Horn states that it satisfied said duty.

178. Denied.
179. Denied.
180. Denied.
181. Denied.
182. Denied.
183. Admitted that the feature on the drawings designated “permanent dewatering” was designed by Kimley-Horn.
184. Denied.
185. Denied.
186. Denied.
187. Denied.
188. Denied.
189. Denied. The law pertaining to commencing actions in federal courts requires the Plaintiff to have made a good faith investigation and to ensure the existence of a good faith basis for filing suit prior to initiating this action against Kimley-Horn. Based on the contracts for the project, the plans and specifications and geotechnical reports, all of which were available to the Plaintiff, it is apparent that, either the

Plaintiff did not make a good faith investigation or deliberately brings this action against Kimley-Horn in bad faith.

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

190. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 189 as if fully set forth herein.
191. Admitted.
192. Admitted.
193. Admitted.
194. Admitted.
195. Admitted that the Geo-Hydro reports contain recommendations that speak for themselves.
196. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 196 of the Plaintiff's First Amended Complaint.
197. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the

truth of the allegations contained in paragraph 197 of the Plaintiff's First Amended Complaint.

198. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 198 of the Plaintiff's First Amended Complaint.
199. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 199 of the Plaintiff's First Amended Complaint.
200. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 200 of the Plaintiff's First Amended Complaint.
201. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn

lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 201 of the Plaintiff's First Amended Complaint.

202. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 202 of the Plaintiff's First Amended Complaint.

203. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 203 of the Plaintiff's First Amended Complaint.

204. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 204 of the Plaintiff's First Amended Complaint.

205. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 205 of the Plaintiff's First Amended Complaint.

206. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 206 of the Plaintiff's First Amended Complaint.

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

207. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 206 as if fully set forth herein.

208. Denied.

209. Denied.

210. Denied.

211. Denied.

212. Denied.

213. Denied.

214. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 214 of the Plaintiff's First Amended Complaint.
215. Denied.
216. Denied.
217. Denied. The law pertaining to commencing actions in federal courts requires the Plaintiff to have made a good faith investigation and to ensure the existence of a good faith basis for filing suit prior to initiating this action against Kimley-Horn. Based on the contracts for the project, the plans and specifications and geotechnical reports, all of which were available to the Plaintiff, it is apparent that, either the Plaintiff did not make a good faith investigation or deliberately brings this action against Kimley-Horn in bad faith.

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

218. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 217 as if fully set forth herein.
219. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the

truth of the allegations contained in paragraph 219 of the Plaintiff's First Amended Complaint.

220. Denied.

221. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 221 of the Plaintiffs First Amended Complaint.

222. Denied.

223. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 223 of the Plaintiff's First Amended Complaint.

224. Denied.

225. Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 225 of the Plaintiff's First Amended Complaint.

226. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 226 of the Plaintiff's First Amended Complaint.
227. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 227 of the Plaintiff's First Amended Complaint.
228. The allegations of this paragraph pertain to defendants other than Kimley-Horn. To the extent that an answer is required, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 228 of the Plaintiff's First Amended Complaint.

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

229. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 228 as if fully set forth herein.

230. To the extent the allegations of paragraph 230 apply to Kimley-Horn, Kimley Horn denies them. To the extent that the allegations of paragraph 230 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 230 of the Plaintiff's First Amended Complaint.
231. To the extent the allegations of paragraph 231 apply to Kimley-Horn, Kimley Horn denies them. To the extent that the allegations of paragraph 231 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 231 of the Plaintiff's First Amended Complaint.
232. To the extent the allegations of paragraph 232 apply to Kimley-Horn, Kimley Horn denies them. The law pertaining to commencing actions in federal courts requires the Plaintiff to have made a good faith investigation and to ensure the existence of a good faith basis for filing suit prior to initiating this action against Kimley-Horn. Based on the contracts for the project, the plans and specifications and geotechnical reports, all of which were available to the Plaintiff, it is

apparent that, either the Plaintiff did not make a good faith investigation or deliberately brings this action against Kimley-Horn in bad faith. To the extent that the allegations of paragraph 232 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 232 of the Plaintiff's First Amended Complaint.

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

233. Kimley-Horn incorporates by reference the answers in paragraphs 1 through 232 as if fully set forth herein.
234. To the extent the allegations of paragraph 234 apply to Kimley-Horn, Kimley Horn denies them. To the extent that the allegations of paragraph 234 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 234 of the Plaintiff's First Amended Complaint.
235. To the extent the allegations of paragraph 235 apply to Kimley-Horn, Kimley Horn denies them. To the extent that the allegations of paragraph 235 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of

the allegations contained in paragraph 235 of the Plaintiff's First Amended Complaint.

236. To the extent the allegations of paragraph 236 apply to Kimley-Horn, Kimley Horn denies them. Denied. The law pertaining to commencing actions in federal courts requires the Plaintiff to have made a good faith investigation and to ensure the existence of a good faith basis for filing suit prior to initiating this action against Kimley-Horn. Based on the contracts for the project, the plans and specifications and geotechnical reports, all of which were available to the Plaintiff, it is apparent that, either the Plaintiff did not make a good faith investigation or deliberately brings this action against Kimley-Horn in bad faith. To the extent that the allegations of paragraph 236 apply to other defendants, Kimley-Horn lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 236 of the Plaintiff's First Amended Complaint.

**COUNTERCLAIM AGAINST THE PLAINTIFF ASHTON PARK
TRACE APARTMENTS LLC**

The Defendant, Kimley-Horn, pursuant to Fed. R. Civ. P. 13, files this Counterclaim against the Plaintiff, Ashton Park Trace Apartments LLC (Park Trace) alleging as follows:

General Allegations

1. Prior to commencing this action, Park Trace and/or its attorneys had access to the Agreement between the City of Decatur and Kimley-Horn dated January 4, 2013 and the amendments thereto.
2. Prior to commencing this action, Park Trace and/or its attorneys had access to the plans and specifications for the Stormwater Management vault project.
3. Prior to commencing this action, Park Trace and/or its attorneys had access to Geo-Hydro's report entitled "Evaluation of Potential Impact of Large-Scale Dewatering Ebster Park Regional Stormwater Detention Facility" dated June 13, 2013.
4. Prior to commencing this action, Park Trace and/or its attorneys had access to the Standard Form of Agreement Between Owner and Construction Manager as Constructor entered into between the City of Decatur and Potts Construction.

5. Prior to commencing this action, Park Trace and/or its attorneys had access to the General Conditions of the Contract for Construction for the Beacon Municipal Complex project.
6. Park Trace alleges, in part, that temporary dewatering design and construction activities contributed to its damages.
7. By reference to the foregoing documents, Park Trace and/or its attorneys knew or should have known that Kimley-Horn was not responsible for temporary dewatering design as “Design of Dewatering Systems” was expressly designated in its Agreement with the City of Decatur as a service not included within Kimley-Horn’s scope.
8. Park Trace and/or its attorneys knew or should have known that the dewatering specifications, section 31 2319, at subsection 1.04.A.3 specifically require the contractor to provide shop drawings for dewatering signed and sealed by a qualified engineer responsible for their preparation.
9. Park Trace and/or its attorneys knew or should have known that the contractor did submit shop drawings for the dewatering system signed and sealed by an engineer other than Kimley-Horn.

10. Park Trace alleges, in part, that excavation support design and construction activities also contributed to its damages.
11. By reference to the foregoing documents, Park Trace and/or its attorneys knew or should have known that Kimley-Horn was not responsible for excavation support design and construction activities as “Shoring Design or Excavation Bracing Design” and “Design of Falsework” were expressly designated in Kimley-Horn’s agreement with the City of Decatur as services not included within Kimley-Horn’s scope.
12. Park Trace and/or its attorneys knew or should have known that the Excavation Support and Protection Specifications, section 31 5000, at subsection 1.03.A.1 specifically require the contractor to provide shop drawings for excavation support and protection signed and sealed by a qualified professional engineer responsible for their preparation.
13. Park Trace and/or its attorneys knew or should have known that the contractor did submit shop drawings for the excavation support and protection signed and sealed by an engineer other than Kimley-Horn.
14. Park Trace also alleges, in part, that the so-called “permanent dewatering” designed by Kimley-Horn contributed to its damages.

15. Park Trace and/or its attorneys knew or should have known that Kimley-Horn was not responsible for geotechnical engineering as Kimley-Horn's agreement explicitly lists geotechnical investigations as a service that was not included.
16. Park Trace and/or its attorneys knew or should have known the Geo-Hydro was responsible for geotechnical engineering for the Project.
17. Park Trace and/or its attorneys knew or should have known that Kimley-Horn's agreement with the City expressly requires the City to make available to Kimley-Horn "Geotechnical Investigation Report including foundation recommendations and groundwater levels."
18. Park Trace and/or its attorneys knew or should have known that Kimley-Horn's agreement with the City provided that Kimley-Horn "will rely upon the accuracy and completeness of all documents, surveys, reports, plans, and specifications provided by the Client. The Client acknowledges that updating such items is not part of [Kimley-Horn's] scope of services."
19. Park Trace and/or its attorneys knew or should have known that Geo-Hydro's report entitled "Evaluation of Potential Impact of Large-Scale Dewatering Ebster Park Regional Stormwater Detention Facility" dated

June 13, 2013 stated that “To evaluate the effects of large-scale dewatering associated with the new stormwater detention vault, we estimated that in the long-term, the groundwater level immediately adjacent to the vault will stabilize at an elevation of approximately 968, which is the approximate bottom-of-vault elevation for the detention vault. The groundwater drawdown profile extending away from the vault structure will rise gradually until the groundwater level is unaffected.”

20. Park Trace and/or its attorneys knew or should have known that the invert elevation of the so-called permanent dewatering system was elevation 977, 9 feet above the post-construction expected level of groundwater such that, based on the Geo-Hydro Report, the system should never have been activated and, in accordance with paragraph 21 below, would not draw down groundwater below the level Geo-Hydro expected and deemed safe.

21. Park Trace and/or its attorneys knew or should have known that Geo-Hydro’s report entitled “Evaluation of Potential Impact of Large-Scale Dewatering Ebster Park Regional Stormwater Detention Facility” dated June 13, 2013 stated that “We do not expect that existing neighboring

buildings will experience noticeable settlement as a result of dewatering associated with the vault project.”

22. Park Trace and/or its attorneys knew or should have known that Kimley-Horn was not responsible for the contractor’s means or methods and any temporary works.

Count One – Bad Faith Litigation

23. Kimley-Horn incorporates by reference the allegations in paragraphs 1 through 22 of the counterclaim as if fully set forth herein.
24. Park Trace and/or its attorneys knew or should have known that there is no reasonable basis for asserting a claim against Kimley-Horn.
25. Park Trace refused to recognize Kimley-Horn’s clear legal rights and the action against Kimley-Horn should have been unnecessary and was compelled by Park Trace’s unreasonable, obdurate obstinacy.
26. Park Trace has acted in extreme bad faith in bringing and maintaining this lawsuit against Kimley-Horn.
27. As a result of the foregoing, this litigation has been unreasonably and vexatiously multiplied in claims and parties, as it pertains to Kimley-Horn.

28. Kimley-Horn has been damaged thereby in an amount to be proved at trial for expenses of litigation.

**CROSS CLAIM AGAINST THE POTTS COMPANY, INC. AND THE
POTTS COMPANY LLC**

The Defendant, Kimley-Horn, pursuant to Fed. R. Civ. P. 13(g), hereby files this cross-claim against co-defendants, The Potts Company, Inc. and The Potts Company LLC, alleging as follows:

1. The Defendant, The Potts Company, Inc. dba Potts Construction and the City of Decatur entered into a Standard Form of Agreement Between Owner and Construction Manager as a Constructor relating to the Beacon Municipal Complex project.
2. Pursuant to Section 1.3 of the Standard Form of Agreement Between Owner and Construction Manager as Constructor entered between the City of Decatur and Potts, “for the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007 as amended, which document is incorporated herein by reference. The term ‘Contractor’ as used in A201-2007 shall mean the Construction Manager [i.e., Potts].”

3. Upon information and belief, the Potts Company, Inc. assigned the Standard Form of Agreement Between Owner and Construction Manager as a Constructor to The Potts Company LLC.

4. Section 3.18.1 of the A201-2007, General Conditions of the Contract for Construction provides:

To the fullest extent permitted by law the Contractor shall indemnify, defend, and hold harmless the Owner, the Owner's consultants, Project Manager, the Architect, 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 the 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. The Contractor's indemnity obligations shall include work required for compliance with all applicable environmental laws, ordinances and regulations in effect during the term of this Agreement. The Contractor's obligation pursuant to this section shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

5. The General Conditions identify Kimley-Horn as the Architect for the Stormwater Infrastructure.

Count One – Defense and Indemnification

6. Kimley-Horn incorporates the allegations in paragraphs 1 through 5 of the cross-complaint as if fully set forth herein.
7. The allegations of the Plaintiff's First Amended Complaint arise out of or result from the performance of the work.
8. Accordingly, The Potts Company, Inc. and The Potts Company, LLC are obligated to indemnify, defend and hold harmless Kimley-Horn as set forth in paragraph 3.18.1 of the General Conditions.
9. The Potts Company, Inc. and the Potts Company, LLC have refused Kimley-Horn's demand for defense and indemnity.
10. Kimley-Horn has been damaged thereby.

WHEREFORE, the defendant, Kimley-Horn and Associates, Inc. prays as follows:

1. That the Plaintiff's claims against it be dismissed with prejudice;
2. That an award in favor of Kimley-Horn be made against the Plaintiff or Plaintiff's counsel under this Court's inherent powers and/or under 28 U.S.C. § 1927 or any other applicable rule or power in such amount as has been made to appear at trial or in a subsequent proceeding to assess damages;

3. That the Court declare that The Potts Company, Inc. and The Potts Company LLC are obligated to defend Kimley-Horn in this action;
4. That, if the Plaintiff recovers against Kimley-Horn, Judgment enter in favor of Kimley-Horn and against The Potts Company, Inc. and the Potts Company LLC, jointly and severally, on the cross-claim in such amount as has been made to appear at trial or in a subsequent proceeding to assess damages;
5. That the Court orders such other relief as it deems just and proper.

Respectfully submitted, this 3rd day of February, 2015.

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

/s/ David I. Matthews

Ross D. Ginsberg

Georgia Bar No. 705121

David I. Matthews

Georgia Bar No. 477510

*Attorneys for Defendant, Kimley-Horn and
Associates, Inc.*

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1D of the United States District Court of the Northern District of Georgia, the undersigned certifies that the foregoing submission to the Court was computer-processed, double-spaced between lines, and used Times New Roman font of 14 point size.

/s/ David I. Matthews

David I. Matthews

Georgia Bar No. 477510

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing upon opposing counsel via
CM/ECF addressed as follows:

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This 3rd day of February, 2015.

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

/s/ David I. Matthews

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