

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO. 2015-CA-1413
DIVISION CV-B

LARUE AND LORI ELLIS,
Husband and wife,

Plaintiffs,

v.

THE CITY OF JACKSONVILLE,
et. al.

Defendants.

**DEFENDANT CITY'S UNOPPOSED MOTION FOR LEAVE TO AMEND
ANSWER TO SECOND AMENDED VERIFIED COMPLAINT**

Pursuant to Rule 1.190, Florida Rules of Civil Procedure, Defendant, City of Jacksonville, moves for leave to amend its Answer and Affirmative Defenses to Plaintiffs, Larue and Lori Ellis's Second Amended Verified Complaint, and states:

1. Plaintiffs have sued the City in the above-styled lawsuit alleging three claims: Count I for trespass; Count II for private nuisance; and Count III for public nuisance. See Second Amended Verified Complaint.
2. Plaintiffs allege that by making certain infrastructure improvements to the Sandalwood Canal and Hodges Boulevard ("Sandalwood Canal Project"), the City has diverted excess surface water onto Plaintiffs' residential property causing substantial erosion and damages.
3. Plaintiffs have also sued Defendant, CDM Smith, Inc., the City's engineer of record for the Sandalwood Canal Project, alleging one count of professional negligence in the design of the project.

4. Fla. Stat. § 768.28(6)(a) provides in relevant part: “An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency...within 3 years after such claim accrues and...the appropriate agency denies the claim in writing.”

5. Plaintiffs provided notice to the City of their claims pursuant to section 768.28, Florida Statutes, for the first and only time on March 5, 2015—the same day that they filed this lawsuit.

6. On June 9, 2023, Plaintiffs served their sworn Answers to CDM’s Interrogatories. In answer to Interrogatory No. 1, Plaintiffs testified in relevant part as follows:

1. Please identify and set forth in detail, and with all documents, including but not limited to all photographs, video and all other materials that you assert provide support for the damages claimed against the defendants, individually and collectively, including defendants who are no longer a party to this action, including but not limited to:
 - a. the amount of damages in terms of dollars;
 - b. what month and year each such alleged damage was incurred;
 - c. which defendant you allege caused each such damage(s);
 - d. for CDM specifically, identify the specific cause for the damages you allege against CDM, when it was incurred, and everything you have done, and when, to mitigate the damages.

ANSWER:

- a. as of 4/26/23 **\$5,275,176.24**, see damages spreadsheet and backup (bates numbered Ellis 000001-000072)
- b. See watermarked photographs produced with these answers which are dated and identify the person who took them.

c. City of Jacksonville, Florida and CDM Smith, Inc.

d. Failure to properly design the water management system for the Sandalwood Canal improvements that has caused excessive amounts of water to flow over Plaintiffs' land creating erosion all as outlined in Plaintiffs' Second Amended Complaint and as testified to by Plaintiffs' expert, Devo Seereeram, and other expert and non-expert witnesses. Damages were first noticed while we were on our property and observed a large bush that previously was on the island, but now, as a result of increased water flow creating erosion, fell into the creek along with part of the north side of our island. On that date, Plaintiffs then walked the north side of the creek all the way to the outfall of the Sandalwood Canal and noticed extensive and newly eroded trees and shoreline. **The date we first noticed the erosion is unknown, but it was at some time during the construction of the water management system and continuing through the date of these answers. In addition, either prior to this event, or after, Plaintiffs were notified by FDEP that there were claims from downstream owners that Plaintiffs' construction on their land was illegally filling the creek. FDEP determined that no soil from Plaintiffs' land was entering the creek. This information, coupled with the obvious erosion seen on Plaintiffs' island, led them to believe that there were upstream issues with the construction of the water management system.** Plaintiffs filed a lawsuit in that any mitigation is out of Plaintiffs' control.

See Composite Exhibit A, CDM's Interrogatories to Plaintiffs and Plaintiffs' Response (with attached damages spreadsheet) (bolded emphasis added).

7. In their June 23, 2023 depositions, Plaintiffs confirmed that their sworn Answers to CDM's Interrogatories were true and correct.

8. The record evidence shows that the Sandalwood Canal Project was constructed from 2007 through 2010.

9. The record evidence also shows that FDEP notified Plaintiffs that there were claims from downstream owners that Plaintiffs' construction on their land was illegally filling the creek in April 2011.

10. Based on the record evidence developed during discovery, it has become apparent that Plaintiffs failed to provide timely notice of their claims to the City pursuant to section 768.28 as such alleged claims accrued at the latest in April 2011—almost four years before Plaintiffs presented their March 5, 2015 notice letter to the City.

11. In addition, Plaintiffs have now provided their damages summary in answer to CDM's Interrogatory No. 1, showing that Plaintiffs are seeking over \$5 million in damages against the City and CDM for a residential property which is only improved with a concrete slab and partial concrete walls.

12. Accordingly, the City respectfully requests leave to amend their Answer and Affirmative Defenses to Plaintiffs' Second Amended Verified Complaint as follows:

- To deny Plaintiffs' allegation that they properly complied with section 768.28, Florida Statutes, and section 112.201, of the City of Jacksonville's Ordinance Code (paragraph 22);
- To deny Plaintiffs' general allegation that they have complied with all conditions precedent (paragraph 23);
- To amend the City's sovereign immunity affirmative defense (which will be re-numbered 10) in order to be pled with more specificity;
- To delete the affirmative defenses currently numbered 7 and 8 (that were originally raised when Plaintiffs' asserted an inverse condemnation claim against the City); and
- To add unjust enrichment (new affirmative defense number 19) and economic waste doctrine (new affirmative defense number 20).

13. Attached hereto as Exhibit B is the City's proposed Amended Answer and Affirmative Defenses to Plaintiffs' Second Amended Verified Complaint.

14. Rule 1.190 provides that "...a party may amend a pleading only by leave of court or by written consent of the adverse party. If a party files a motion to amend a pleading, the party shall attach the proposed amended pleading to the motion. Leave of court shall be given freely

when justice so requires.” Fla. R. Civ. P. 1.190(a).

15. In accordance with the Court’s Order Setting Case for Jury Trial entered on March 28, 2023, this Motion is timely brought before the August 6, 2023 deadline (60 days prior to the October 5, 2023 pre-trial conference).

WHEREFORE, Defendant, City of Jacksonville, respectfully requests leave to amend its Answer and Affirmative Defenses to Plaintiffs’ Second Amended Verified Complaint as set forth in the attached proposed Amended Answer and Affirmative Defenses (Exhibit B).

CERTIFICATION OF GOOD FAITH CONFERENCE

In accordance with Division CV-B’s policies and procedures, the undersigned certifies that she has conferred with Plaintiffs’ counsel and Plaintiffs’ counsel has advised that while he does not agree with the City’s legal position regarding the notice issue and the added affirmative defenses, Plaintiffs do not oppose the City’s request for leave to amend.

DATED: JUNE 29, 2023

**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE**

/s/ Tiffiny Douglas Pinkstaff
Tiffiny Douglas Pinkstaff
Assistant General Counsel
Florida Bar No. 682101
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
904.255.5100 | tpinkstaff@coj.net

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2023, this document was filed using the Florida Courts E-Filing Portal thus serving all remaining counsel of record electronically, pursuant to and in compliance with Fla. R. Jud. Admin. 2.516.

/s/ Tiffiny Douglas Pinkstaff
Attorney

COMPOSITE EXHIBIT A

IN THE CIRCUIT COURT FOURTH
JUDICIAL CIRCUIT IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO. 2015-CA-1413

Division: CV-B

LARUE AND LORI ELLIS,

Plaintiffs,

v.

THE CITY OF JACKSONVILLE,
et al.,

Defendants.

_____ /

**DEFENDANT CDM SMITH INC.'S
NOTICE OF SERVING INTERROGATORIES TO PLAINTIFFS**

Defendant, CDM SMITH INC. (hereinafter "CDM"), pursuant to Fla. R. Civ. P. 1.340 hereby gives notice that it has propounded Interrogatories to Plaintiffs, LARUE AND LORI ELLIS, to be fully answered in writing, under oath, within thirty (30) days after the date of service hereof.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 5, 2023, a true and correct copy of the foregoing was filed and served with the Clerk via the Court's E-Portal Filing System, which will send notification of such filing by electronic mail on the attached Service List.

Respectfully submitted,

**WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC**

/s/ Cindy Duque Bonilla

ROSS D. GINSBERG (PHV 62708)

CINDY DUQUE BONILLA (FBN 0576697)

Florida Bar Number 63986
255 South Orange Avenue, Suite 1260
Orlando, FL 32801
Telephone: 407-734-7000
Facsimile: 407-930-9180
E-mail: cbonilla@wwhgd.com
rginsberg@wwhgd.com
*Counsel for CDM Smith Inc. & Thomas
Nichols*

SERVICE LIST

Counsel for Plaintiffs:

Kevin A. Schoepfel, Esq.
DURANT, SCHOEPPEL, DECUNTO &
RATCHFORD, P.A.
6550 St. Augustine Rd., Suite 105
Jacksonville, FL 32217
Primary E-mail: kschoepfel@ds-law.net
Secondary E-mail: mnorman@ds-law.net
Telephone: 904-652-2600

Counsel for City of Jacksonville, FL:

Trisha D. Bowles, Esq.
Office of General Counsel
117 W. Duval Street, Suite 480
Jacksonville, FL 32202-5721
Email: tbowles@coj.net
aseegobin@coj.net
Telephone: 904-255-5100

Counsel for St. Johns River Water Management District

Thomas I. Mayton, Jr., Esq.
Steven J. Kahn, Esq.
St. Johns River Water Mgt District
4049 Reid Street
Palatka, FL 32177
Email: tmayton@sjrwmd.com
skahn@sjrwmd.com
kdrigger@sjrwmd.com
Telephone: 386-329-4108

VIA U.S. MAIL:

Pitman-Hartenstein & Assoc., Inc., Engineers
c/o E.H. Pitman, Jr. as Registered Agent
4911 River Point Road
Jacksonville, FL 32207

Sheldon E. Gibbs, PE
7400 Baymeadows Way, Suite 215
Jacksonville, FL 32256

IN THE CIRCUIT COURT FOURTH
JUDICIAL CIRCUIT IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO. 2015-CA-1413
Division: CV-B

LARUE AND LORI ELLIS,

Plaintiffs,

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THE CITY OF JACKSONVILLE,
et al.,

Defendants.

**DEFENDANT CDM SMITH INC.'S
INTERROGATORIES TO PLAINTIFFS**

Defendant, CDM SMITH INC. (hereinafter "CDM"), by and through undersigned counsel, pursuant to Rules 1.280 and 1.340, Fla. R. Civ. P., requests that the following interrogatories be answered by the Plaintiffs within thirty (30) days from the date of service of this request or such shorter time as ordered by the Court. CDM also requests that Plaintiffs serve a written response pursuant to Rule 1.340, Florida Rules of Civil Procedure.

DEFINITIONS

1. As used herein, the term "Document" shall include, without limitation, each and every permanent and semi-permanent, physical or tangible embodiment of information or communications in your possession, custody or control, including, without limitation, any written or graphic matter or other means of preserving thought or expression, and all tangible things from which information can be processed or transcribed, including the originals, drafts, or exact copies thereof, however produced or reproduced, of any kind or

descriptions, and any and all copies thereof which are different in any way from the original, whether different from the original by reason of any notation made on such copy of otherwise, or in any way different from the original, including without limitation, any paper, correspondence, telegram, telex, teletype, telefax bulletins, messages, facsimile, contract, note, memoranda, report, receipt, technical study report, test result, diary, voice recording tape, or other communications, inter-office and intra-office telephone calls, microfilm or microfiche, photograph, data processing card or disc, video recording tape, calendar, book ledger, list, graph, chart, book account, survey, computer printout, invoice, record, tape, transcript, letter, electronic mail (“e-mail”) transmission, agreement, inventory, chronological data, minutes, worksheets, prospectuses, financial statements, canceled checks, statistics, magazine or newspaper articles, releases (and any and all drafts, alterations or modifications, changes or amendments of any of the foregoing), recordings, motion pictures and electronic, mechanical or electric records or representations of any kind (including without limitation, tapes, cassettes, discs and recordings), and including the file and file cover, which you have or have had access to, or which you have had knowledge. Without limitation of the term “control” as used in the preceding sentence, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity, including but not limited to, attorneys, accountants, consultants, and agents having physical possession thereof.

2. As used herein, the terms “and” and “or” shall be construed either conjunctively or disjunctively to bring within the scope of these requests any information which might otherwise be construed to be outside their scope.

3. “Concerning” shall include without limitation referring, relating, constituting, comprising, containing, setting forth, summarizing, reflecting, stating, describing, recording, noting, embodying, showing, mentioning, studying, analyzing, discussing, or evaluating, directly or indirectly.
4. The term “you” or “your” refers to the Plaintiffs, Larue Ellis or Lori Ellis.
5. “Person” means any proprietorship, partnership, corporation, limited liability company, limited liability partnership, association, organization, joint venture, firm, other business enterprise, governmental body, group of natural persons or other entity.
6. “Identify” when used in reference to an individual person, means to state his or her full name, address or last known address, telephone number, if known, and his or her present employment position or business affiliation. When used in reference to a person other than an individual, the term “identify” means to state whether such person is a corporation, partnership or other organization and its name, present or last known address, principal place of business, and the names and addresses of the officers, directors and registered agent for service of process. Once any person has been identified properly, it will be sufficient thereafter when identifying the same person to state their name only.
7. “Identify” when used in reference to a document or documents, means to state the date of its execution, or, if not dated, the day it was prepared, the author (and if different, the signor or signatories), the addressee, the type of document, or any other means of identifying it with sufficient particularity to meet the requirements for inclusion and request for production of documents pursuant to Florida Rules of Civil Procedure 1.350. If any such

document was, but is no longer in your possession or subject to your control, state what disposition was made of it and the reason for its disposition.

8. The word “evidence” or “evidencing” as used herein shall mean reflecting, exhibiting, indicating, revealing, or showing the matter in question.
9. The words “each” and “every” as used herein shall be construed simultaneously, as shall the words “any” or “all”.
10. The words “all documents” shall mean every document, whether an original or a copy, known to you and every such document or writing which you can locate or discover by reasonably diligent efforts.
11. The word “Complaint” shall mean that any Complaint, Amended Complaint, and Responsive pleading filed by the Plaintiffs.
12. The word “Property” shall mean the property commonly identified by street address 2194 San Pablo Road South or 2194 South San Pablo Road or identified by Duval County Real Estate Parcel number 167132-0150.

INSTRUCTIONS

1. In answering these interrogatories, you are required to furnish all information that is presently available to you or that can be obtained through reasonable inquiry, including information in the possession of your attorneys, accountants, advisors or other persons directly or indirectly employed at, or connected with, you or your attorneys, and anyone else otherwise subject to your control.

2. Each interrogatory should be answered in full in the space immediately below each respective interrogatory. If additional space is required to answer the interrogatory in full, additional pages to these interrogatories may be attached with the complete answer along with an explicit reference to the interrogatory to which each such attached additional page relates.
3. You may, in lieu of identifying any document, attach a true copy of such document or communication as an Exhibit to the answers to these interrogatories along with an explicit reference to the interrogatory to which each such attached document or communication relates.
4. These interrogatory requests are continuing in nature and subject to the requirement that any answer be supplemented in the event that new or additional information is discovered or obtained after service of these interrogatories.

INTERROGATORIES

1. Please identify and set forth in detail, and with all documents, including but not limited to all photographs, video and all other materials that you assert provide support for the damages claimed against the defendants, individually and collectively, including defendants who are no longer a party to this action, including but not limited to:
 - a. the amount of damages in terms of dollars;
 - b. what month and year each such alleged damage was incurred;
 - c. which defendant you allege caused each such damage(s)
 - d. for CDM specifically, identify the specific cause for the damages you allege against CDM, when it was incurred, and everything you have done, and when, to mitigate the damages.

2. Please identify each witness to the damages you allege, and for each such witness, please set forth in detail what each such witness observed or heard, and when, with regard to such damages claimed.

3. If you or anyone on your behalf have taken photographs or video or created a demonstrative exhibit of any damages alleged by you, for each such photograph, video or demonstrative exhibit, please identify:

- a. the person who took or created it; and,
- b. the date such photograph, video or demonstrative exhibit was taken or made.

4. If you or anyone on your behalf has spoken with any upstream property owner about or concerning in any way the alleged damages, please state:
 - a. his/her/their name in full;
 - b. the date of each such communication; and,
 - c. provide a copy of any letters, notes, recordings, statements or any other materials that captured, summarized or otherwise recorded each such the communication.

VERIFICATION

THESE INTERROGATORIES were answered this ___ day of ____, 2023.

BY:

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this ___ day of _____,
2023 by _____, [] who is personally known to me or []who has
produced _____ as identification and who did take an oath.

(Signature of NOTARY PUBLIC)

(Printed name of Notary Public)
State of Florida at Large.

My commission expires:

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 2015-CA-1413
DIVISION: CV-B

LARUE AND LORI ELLIS,

Plaintiffs,

v.

THE CITY OF JACKSONVILLE, FLORIDA,

Defendants.

**PLAINTIFFS' NOTICE OF SERVICE OF ANSWERS TO
CDM SMITH, INC.'S INTERROGATORIES TO PLAINTIFF**

Plaintiffs, Larue and Lori Ellis, hereby give notice of serving their answers to CDM Smith, Inc.'s Interrogatories to Plaintiffs numbered 1-4 propounded on May 5, 2023.

DURANT, SCHOEPPEL,
DECUNTO & RATCHFORD, P.A.

/s/ Kevin A. Schoepfel
KEVIN A. SCHOEPPEL
Florida Bar Number: 973793
Primary Email: kschoepfel@ds-law.net
Secondary Email: mnorman@ds-law.net
6550 St. Augustine Road, Suite 105
Jacksonville, Florida 32217
(904) 652-2600 (voice)
(904) 652-2610 (facsimile)
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2023, I electronically filed the foregoing with the Clerk of the Court which will send an electronic copy to all counsel of record.

/s/ Kevin A. Schoepfel
Attorney

INTERROGATORIES

1. Please identify and set forth in detail, and with all documents, including but not limited to all photographs, video and all other materials that you assert provide support for the damages claimed against the defendants, individually and collectively, including defendants who are no longer a party to this action, including but not limited to:
 - a. the amount of damages in terms of dollars;
 - b. what month and year each such alleged damage was incurred;
 - c. which defendant you allege caused each such damage(s);
 - d. for CDM specifically, identify the specific cause for the damages you allege against CDM, when it was incurred, and everything you have done, and when, to mitigate the damages.

ANSWER:

- a. as of 4/26/23 \$5,275,176.24, see damages spreadsheet and backup (bates numbered Ellis 000001-000072)
- b. See watermarked photographs produced with these answers which are dated and identify the person who took them.
- c. City of Jacksonville, Florida and CDM Smith Inc.
- d. Failure to properly design the water management system for the Sandalwood Canal improvements that has caused excessive amounts of water to flow over Plaintiffs' land creating erosion all as outlined in Plaintiffs' Second Amended Complaint and as testified to by Plaintiffs' expert, Devo Seereeram, and other expert and non-expert witnesses. Damages were first noticed while we were on our property and observed a large bush that previously was on the island but now, as a result of increased water flow creating erosion, fell into the creek along with part of the north side of our island. On that date, Plaintiffs then walked the north side of the creek all the way to the outfall of the Sandalwood Canal and noticed extensive and newly eroded trees and shoreline. The date we first noticed the erosion is unknown, but it was at some time during the construction of the water management system and continuing through the date of these answers. In addition, either prior to this event or after, Plaintiffs were notified by FDEP that there were claims from downstream owners that Plaintiffs' construction on their land was illegally filling the creek. FDEP determined that no soil from Plaintiffs' land was entering the creek. This information, coupled with the obvious erosion seen on Plaintiffs' island, led them to believe that there were

upstream issues with the construction of the water management system. Plaintiffs filed a lawsuit in that any mitigation is out of Plaintiffs' control.

2. Please identify each witness to the damages you allege, and for each such witness, please set forth in detail what each such witness observed or heard, and when, with regard to such damages claimed.

ANSWER:

LaRue Ellis: witnessed all damages as alleged in the Second Amended Complaint and visible in all of the photographs taken by any and all parties showing damage. Although Mr. Ellis observed the first damage at some time during the construction, the dates on photographs show the date Mr. Ellis specifically observed that damage and for all photographs from other sources, Mr. Ellis observed the damage on or about the date he took or received the photographs.

Lori Ellis: witnessed all damages as alleged in the Second Amended Complaint and visible in all of the photographs taken by any and all parties showing damage. Although Mrs. Ellis observed the first damage at some time during the construction, the dates on photographs show the date Mrs. Ellis specifically observed that damage and for all photographs from other sources, Mrs. Ellis observed the damage on or about the date she took or received the photographs.

Henry Vorpe, P.E.: witnessed all damage generally in the area downstream from the end of the canal continuing under the San Pablo bridge. Mr. Vorpe viewed many photographs and documents that were provided to him by Plaintiffs and photographs received through production. Mr. Vorpe continued to monitor the downstream damage from the date he was retained through the present.

Stuart A. Gregory: witnessed the deteriorated damage of the structure on the property.

Early Piety: witnessed the damage to and loss of trees on the property.

Devo Seereeram, Ph.D., P.E.: witnessed all damage generally in all areas within the scope of the project and downstream from the end of the canal continuing under the San Pablo bridge. Mr. Seereeram viewed many photographs and other documents that were provided to him by Plaintiffs and photographs and documents received through production and investigation. Mr. Seereeram continues to monitor the above-stated damage from the date he was retained through the present.

Brian Hall: witnessed the damage to Plaintiffs' property through review of photographs through time that reflect the condition of the property on the date the photographs were taken.

***All employees/representatives/associates of the City of Jacksonville, Florida both known and unknown who have viewed the property.
John P. Pappas, P.E., COJ Dept. of Public Works
Steve Long, COJ Dept. of Public Works
William B. Killingsworth, COJ Director of Planning and Development
All employees/representatives/associates of St. Johns River Water Management District both known and unknown who have viewed the property.
All employees/representatives/associates of CDM Smith Inc. both known and unknown who have viewed the property.
All employees/representatives/associates of Pitman-Hartenstein & Associates, Inc. Engineers both known and unknown who have viewed the property.
All employees/representatives/associates of HNTB Corporation both known and unknown who have viewed the property.
Chantal Bowen and all employees/representatives/associates of Bowen Civil Engineer Inc. both known and unknown who have viewed the property.
Sheldon Gibbs and all employees/representatives/associates of The Gibbs Group PLLC both known and unknown who have viewed the property.
Robert Alderman
Thomas Nichols
Everett Frye, P.E.
All employees/representatives/associates of the Jacksonville Transit Authority both known and unknown who have viewed the property.
All employees/representatives/associates of the Florida Dept. of Environmental Protection both known and unknown who have viewed the property.
Property owners east of San Pablo Road on Hogpen Creek who claimed Plaintiffs were filling in the creek.**

***It is unknown at this time the extent of the knowledge of the damage or the date any of the above became aware of the damage to Plaintiffs' property. Discovery is ongoing.**

3. If you or anyone on your behalf have taken photographs or video or created a demonstrative exhibit of any damages alleged by you, for each such photograph, video or demonstrative exhibit, please identify:
 - a. the person who took or created it; and,
 - b. the date such photograph, video or demonstrative exhibit was taken or made.

ANSWER:

See watermarked photographs produced with these answers which are dated and identify the person who took them.

4. If you or anyone on your behalf has spoken with any upstream property owner about or concerning in any way the alleged damages, please state:
 - a. his/her/their name in full;
 - b. the date of each such communication; and,
 - c. provide a copy of any letters, notes, recordings, statements or any other materials that captured, summarized or otherwise recorded each such the communication.

ANSWER:

- a. Van Kirk, 2197 Avian Place, Jacksonville, FL 32224
- b. Date of communication unknown at this time.
- c. Although there are no known documents, any contact between Plaintiffs' counsel and the above constitutes work product.

VERIFICATION

THESE INTERROGATORIES were answered this 9th day of June, 2023.

By: LaRue Ellis

LaRue Ellis Lori Ellis

By: Lori Ellis

STATE OF FLORIDA
COUNTY OF DUVAL

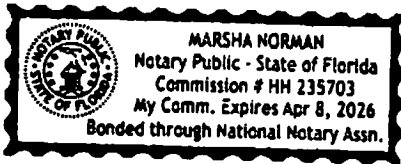
The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 9th day of June, 2023 by LaRue Ellis and Lori Ellis, who is personally known to me or who has produced _____ as identification and who did take an oath.

Marsha Norman

(Signature of NOTARY PUBLIC)

(Printed name of Notary Public)
State of Florida at Large.

My commission expires:



Ellis v. The City of Jacksonville, Florida, et al.

Expert Vendor			
Expert	Invoice Date	Invoice #	Amount
Ava Engineers, Inc.	2/27/15	15-031	\$1,600.00
Ava Engineers, Inc.	3/30/15	15-047	\$900.00
Ava Engineers, Inc.	4/30/15	15-075	\$200.00
Ava Engineers, Inc.	10/30/15	15-218	\$2,075.00
Ava Engineers, Inc.	2/29/16	16-056	\$2,500.00
Ava Engineers, Inc.	3/30/16	16-082	\$3,700.00
Ava Engineers, Inc.	5/26/16	16-116	\$900.00
Ava Engineers, Inc.	8/31/16	16-191	\$400.00
Ava Engineers, Inc.	10/28/16	16-239	\$665.00
Ava Engineers, Inc.	12/27/16	16-291	\$610.00
Ava Engineers, Inc.	1/31/17	17-003	\$300.00
Ava Engineers, Inc.	4/28/17	17-107	\$400.00
Ava Engineers, Inc.	6/30/17	17-151	\$100.00
Ava Engineers, Inc.	4/28/20	20-248	\$300.00
Devo Engineering	6/4/14		\$7,500.00
Devo Engineering	9/29/14		\$9,735.00
Devo Engineering	8/28/15		\$2,500.00
Devo Engineering	9/3/15		\$2,000.00
Devo Engineering	3/18/16		\$16,122.50
Devo Engineering	9/22/16		\$11,907.50
Devo Engineering	8/20/21		\$3,000.00
Charles Bassett & Associates	3/1/11	23222	\$350.00
Environmental Resources Solutions, Inc.	1/26/10	28355	\$500.00
Environmental Resources Solutions, Inc.	3/23/10	28497	\$700.00
Environmental Resources Solutions, Inc.	5/13/10	28622	\$800.00
Environmental Resources Solutions, Inc.	6/28/10	28676	\$400.00
Environmental Resources Solutions, Inc.	7/22/10	28734	\$250.00
Environmental Resources Solutions, Inc.	8/20/10	28789	\$230.00
O.C. Reedy Associates, Inc.	3/17/10	1631.101	\$281.25
Richard A. Miller & Associates, Inc.	9/21/10	2009-329-12	\$275.00
S. Johnson Consultants, Inc.	3/3/10	10-001-01	\$380.00
S. Johnson Consultants, Inc.	5/10/10	10-001-02	\$2,855.00
Early Piety		12943	\$1,000.00
Southeast Building Envelope Consulting	4/25/23	2023-2036	\$2,500.00
Chris Reed			\$2,500.00
SUBTOTAL			\$80,436.25

Remediation Costs			
Vendor	Invoice Date	Invoice #	Amount
Docks, Decks & More, Inc.	5/18/11		\$44,377.50
Southern Lumber and Treating Co., Inc.	3/3/11	75955	\$2,898.63
SUBTOTAL			\$47,276.13

Repair Estimates			
Vendor	Invoice Date	Invoice #	Amount
Hal Jones (Sheet Piling)	2/9/23		\$3,640,500.00
Southeast Paving (Fill & Grade Behind Bulkhead) (Old Pricing on 1/4/2022 was \$160,000.00)	2/3/23		\$328,000.00
SUBTOTAL			\$3,968,500.00

Other Damages			
Vendor	Invoice Date	Invoice #	Amount
Remobilization to Continue Building House			\$7,500.00
Demolition as a Result of Deteriorating Conditions			\$20,000.00
*Delta Construction Cost Per Sqft (FN 1)			\$263,580.00
Delta Cost of Landscaping and Irrigation (FN 2)			\$20,000.00
Delta Driveway Construction (FN 3)			\$30,300.00
Delta Value of Island			\$150,000.00
Cost to Remove Retaining Wall			\$15,000.00
Trees Lost (FN 4)			\$142,650.00

Other Damages			
Vendor	Invoice Date	Invoice #	Amount
Cost to Remove Dead Trees (FN 5)			\$5,800.00
Lost Rent on Homestead (FN 6)			\$325,000.00
SUBTOTAL			\$979,830.00

Other Costs			
Vendor	Invoice Date	Invoice #	Amount
Bledsoe, Jacobson, Schmidt, Wright & Sussman, P.A.	3/18/16	N/A	\$562.00
Bledsoe, Jacobson, Schmidt, Wright & Sussman, P.A.	5/6/16	N/A	\$450.00
Copy Right	3/1/17	39240	\$144.48
Omni Video	3/4/15	7307	\$2,000.00
Professional Legal Support Services	10/16/15	JEA-2015002211	\$60.00
Courtesy Process Servers	12/1/16	N/A	\$35.00
Duval Circuit Civil - Summons to be Issued	12/9/15	14418687	\$10.30
Duval Circuit Civil - Summons to be Issued	10/7/15	13972381	\$10.30
Duval Circuit Civil - Summons to be Issued	10/8/15	13974770	\$103.00
Florida Secretary of State	12/17/15	N/A	\$8.75
KD Process	12/28/15	KDY-2015033178	\$25.00
Professional Legal Support Services	12/18/16	JEA-2016002539	\$30.00
City of Jacksonville - Document Copies	2/24/17	N/A	\$59.26
Duval Circuit Civil - Filing Fee	3/5/15	N/A	\$428.48
Andrews Agency	11/16/15	2020037211	\$70.00
Professional Legal Support Services	11/16/15	JEA-2015002294	\$50.00
Professional Legal Support Services	11/16/15	JEA-2015002290	\$40.00
Professional Legal Support Services	11/16/15	JEA-2015002291	\$40.00
Jim Overton Tax Collector	4/11/23	460-24-00280569	\$67.50
DSD Cost Thru 4/26/2023			\$1,901.29
DSD Atty Fees Thru 4/26/2023			\$193,038.50
SUBTOTAL			\$199,133.86

TOTAL OF COSTS INCURRED

\$5,275,176.24

*Subject to final determination

FN 1:

(2009) 4393 sq ft x \$150 = \$658,950.00
(2024) 4393 sq ft x \$210 = \$922,530.00
Delta = \$263,580.00

FN 2:

(2009) \$50,000.00
(2024) \$70,000.00
Delta = \$20,000.00

FN 3:

(2009) \$12,000.00 + \$20,000.00 (\$4.00 sqft) = \$32,000.00
(2024) \$16,800.00 + \$37,500.00 (\$7.50 sqft) + \$8,000 (Curb) = \$62,300.00
Delta = \$30,300.00

FN 4:

(Trees Near Road) 12 x 12 x \$150 = \$21,600.00
(All Other Trees) 807" Caliber Lost x \$150 = \$121,050.00
Total: \$21,600.00 + \$121,050.00 = \$142,650.00

FN 5:

58 (Number of Dead/Fallen Trees) X \$100.00 = \$5,800.00

FN 6:

July of 2012 (Date of Approximate Completion)
thru April of 2023 at \$2,500.00 monthly rental
loss (130 x \$2,500.00) = \$325,000.00

EXHIBIT B

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO. 2015-CA-1413
DIVISION CV-B

LARUE AND LORI ELLIS,
Husband and wife,

Plaintiffs,

v.

THE CITY OF JACKSONVILLE,
et al.,

Defendants.

**CITY OF JACKSONVILLE'S AMENDED ANSWER AND
AFFIRMATIVE DEFENSES TO SECOND AMENDED VERIFIED COMPLAINT**

Defendant, City of Jacksonville, answers Plaintiffs' Second Amended Verified Complaint
and alleges:

GENERAL ALLEGATIONS

The Parties

1. Admitted for jurisdictional purposes only; admitted that Exhibit A to the Amended Complaint is a legal description and address, which speak for themselves.
2. Admitted that the City is a municipal corporation established under the Laws of Florida. The remainder is denied.
3. Without knowledge.
4. Without knowledge.
5. Admitted as to venue only.

The Property

- 6. Without knowledge.
- 7. Without knowledge.
- 8. Without knowledge.

The Improvements

- 9. Admitted that the Sandalwood Canal is a stormwater conveyance used by the City.

The remainder is denied.

- 10. Admitted that the Sandalwood Canal is a stormwater conveyance used by the City.

The remainder is denied.

- 11. Denied.

12. Admitted that the City improved Sandalwood Canal and Hodges Boulevard. The remainder is denied.

- 13. Without knowledge.

14. Admitted that City retained CDM as the professional consultant. The City denies all remaining allegations of Paragraph 14 to the extent such allegations are inconsistent therewith.

- 15. Denied.

16. Admitted that stormwater is being discharged into the Sandalwood Canal. The remainder is denied.

- 17. Without knowledge.

- 18. Denied.

- 19. Denied.

- 20. Without knowledge.

- 21. Without knowledge.

22. Denied.

23. Denied as Plaintiffs did not timely provide notice of their claims to the City pursuant to section 768.28, Florida Statutes.

COUNT I
(Trespass by the City)

24. The City realleges its responses to paragraphs 1-23, as if fully set forth therein.

25. Without knowledge as to Plaintiff's possessory status. The remainder is denied.

26. Denied.

27. Without knowledge.

28. Denied.

29. Denied.

30. Denied.

31. Without knowledge.

32. Denied.

COUNT II
(Private Nuisance Against the City)

33. The City realleges its responses to paragraphs 1-23, as if fully set forth therein.

34. Denied.

35. Denied.

36. Without knowledge.

37. Denied.

38. Denied.

39. Denied.

40. Without knowledge.

- 41. Without knowledge.
- 42. Without knowledge.
- 43. Denied.
- 44. Denied.
- 45. Denied.
- 46. Denied.

COUNT III
(Public Nuisance against the City and SJRWMD)

- 47. Admitted for jurisdictional purposes only.
- 48. The City realleges its responses to paragraphs 1-23, as if fully set forth therein.
- 49. Without knowledge.
- 50. The City expressly refers to the Statute cited in Paragraph 50 for its terms and denies all allegations of Paragraph 50 to the extent such allegations are inconsistent therewith.
- 51. The City expressly refers to the Statute cited in Paragraph 51 for its terms and denies all allegations of Paragraph 51 to the extent such allegations are inconsistent therewith.
- 52. The City expressly refers to the Statute cited in Paragraph 52 for its terms and denies all allegations of Paragraph 52 to the extent such allegations are inconsistent therewith.
- 53. The City expressly refers to the Statute cited in Paragraph 53 for its terms and denies all allegations of Paragraph 53 to the extent such allegations are inconsistent therewith.
- 54. Denied.
- 55. Denied.
- 56. The City expressly refers to the Statute cited in Paragraph 56 for its terms and denies all allegations of Paragraph 56 to the extent such allegations are inconsistent therewith.
- 57. Denied.

58. Denied.

COUNT IV
(Professional Negligence in the Design of the Improvements against CDM)

59. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

60. The City realleges its responses to paragraphs 1-23, as if fully set forth therein.

61. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

62. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

63. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

64. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

65. This paragraph relates to actions of parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

66. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

67. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

68. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

69. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

GENERAL DENIAL

The City denies any and all allegations contained in Plaintiffs' Second Amended Complaint that were not directed toward the City and all allegations that were not specifically admitted herein.

AFFIRMATIVE, SPECIAL AND/OR ALTERNATIVE DEFENSES

1. The City alleges that Plaintiffs' Second Amended Complaint and each cause of action therein fails to state a cause of action against the City upon which relief can be granted.

2. If any liability exists on the part of the City to Plaintiff, such liability is to be completely indemnified by CDM Smith, Inc. f/k/a Camp Dresser & McKee, Inc. ("CDM") or the other Engineering Defendants.

3. Plaintiffs' claims, or parts thereof, are barred due to fact that there is no causation between the improvements made and the damages sought in the Second Amended Verified Complaint. Instead, the alleged damage, if any, to Plaintiffs' property was caused by other factors.

4. At all times material, Plaintiffs were aware of and acquiesced to the stormwater system which, at all times, was situated on and traversed across their property. The stormwater system does not constitute a governmental encroachment on Plaintiffs' property.

5. The City neither caused the property damage or intrusion alleged in the complaint, nor did it undertake any physical activity or occupation on Plaintiffs' property.

6. The stormwater system alleged in the Second Amended Complaint did not destroy the value of Plaintiffs' property.

7. The City acquired title to the area occupied by the stormwater system by adverse possession and by prescriptive easement. Plaintiffs knew or should have known about such occupation because it was and always has been open, notorious and visible. What's more, public

records have historically documented that the stormwater system is located within a floodway.

8. Plaintiffs' claims are barred by the doctrine of laches.

9. Plaintiffs' claims are barred by their failure to exhaust administrative remedies due to their failure to contest the SJRWMD permit.

10. The City is immune from tort liability except to the extent it is waived in Section 768.28, Florida Statutes, and immunity was not waived for the causes of action alleged by Plaintiffs; therefore this action is barred. Plaintiffs did not comply with the notice requirements of Fla. Stat. § 768.28.

11. Plaintiffs' claims are barred or reduced in value for failure to mitigate.

12. Plaintiffs' claims are barred to the extent the damage to or occupation of their property was caused by Plaintiffs or a third party unassociated with the City.

13. Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

14. Plaintiffs' claims are barred by the applicable statute of limitations and/or statute of repose, including Section 768.28, Florida Statutes.

15. The incident and damages alleged in this action were caused or contributed to by the negligence of third parties, to-wit: unknown contractor, unknown installer, unknown manufacturer, and unknown engineer, for which this defendant is not legally responsible, and this Defendant is therefore entitled to an apportionment of fault pursuant to Florida Statutes, section 768.81.

16. Plaintiffs' damages, if any, should be apportioned in relation to the responsibility of the parties or other persons, contractors, subcontractors, employees, agencies pursuant to the Supreme Court's decision in Fabre v. Marin, 623 So. 2d 1182 (Fla. 1993). City will identify all entities, agencies or individuals responsible, in whole or in part, for the damages alleged by

Plaintiffs as they are revealed through discovery and prior to the trial of this case.

17. Plaintiffs' damages were caused by their own negligent or improper acts.

18. Plaintiffs' have failed to name indispensable parties that are responsible for the claims or underlying actions arising to the claims against the City, to wit: unknown parties involved in the engineering, design, and construction of the bulkhead, including the manufacturer of the materials used in the bulkhead construction.

19. Plaintiffs are barred from seeking relief that places them in a better position than they would have been had the alleged damages not occurred. Allowing such damages would result in Plaintiffs being unjustly enriched.

20. Plaintiffs claims for damages are barred under the doctrine of unreasonable economic waste.