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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Court Judge

Appellate Case No. 2026-001292
Case No.: 2024-CP-40-07265

Eagle House Mitigation Bank, LLC, Respondent,

v.

WSP USA, Inc., Appellant,

AND

WSP USA, Inc., Third-Party Plaintiff,

v.

H2O Mitigation Services, LLC and Pond & Company, Inc., Third-Party Defendants.

RETURN ON MOTION TO DISMISS

I. Introduction

Respondent Eagle House Mitigation Bank, LLC's ("Eagle House") Motion to Dismiss rests on a mistaken premise - that WSP USA, Inc. ("WSP") seeks appellate review of a routine order denying summary judgment. That is not what occurred.

The December 2, 2025 Order (the "Order") does considerably more than deny WSP's Motion. Rather than concluding that disputed issues of fact precluded summary judgment, the lower court resolved a pure question of law by definitively interpreting the parties' Professional

Services Agreement (“PSA”). Specifically, the court held that the PSA’s limitation-of-liability provision applies only to negligence causes of action and does not apply to Eagle House’s breach of contract and warranty claims. In doing so, the court conclusively rejected WSP’s Eleventh Affirmative Defense and eliminated WSP’s contractual limitation on damages.

Accordingly, WSP does not appeal the denial of summary judgment itself. It appeals the lower court’s final legal determination construing the parties’ contract and adjudicating a substantial affirmative defense. Because the Order determines the merits of a significant contractual issue and affects WSP’s substantial rights, it is immediately appealable under S.C. Code § 14-3-330.

II. Relevant Background

Eagle House filed this action against WSP asserting causes of action for breach of contract and breach of express and implied warranties arising from services performed pursuant to the PSA. See **Ex. 1** Complaint. The PSA was originally entered into between Eagle House and Wood Environment & Infrastructure Solutions, Inc. (“Wood”). WSP is the successor-in-interest to Wood.

The PSA contains an express limitation-of-liability provision stating, in pertinent part:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CLIENT AGREES THAT THE LIABILITY OF WOOD TO CLIENT FOR ANY AND ALL CAUSES OF ACTION ... ARISING OUT OF OR RELATED TO THE NEGLIGENT ACT(S), ERROR(S), OR OMISSION(S) OF WOOD IN PERFORMING SERVICES SHALL BE LIMITED TO FIFTY THOUSAND DOLLARS (\$50,000.00) OR THE TOTAL FEES ACTUALLY PAID TO WOOD BY CLIENT UNDER THIS AGREEMENT WITHIN THE PRIOR ONE (1) YEAR PERIOD, WHICHEVER IS LESS (“LIMITATION”). CLIENT HEREBY WAIVES AND RELEASES (I) ALL PRESENT AND FUTURE CLAIMS AGAINST WOOD OTHER THAN THOSE DESCRIBED IN THE PRECEDING SENTENCE, AND (II) ANY LIABILITY OF WOOD IN EXCESS OF THE LIMITATION.

Ex. 1 at Ex. A § 10. Consistent with that provision, WSP asserted as its Eleventh Affirmative Defense that any recovery by Eagle House is contractually limited to \$50,000. **Ex. 2** WSP Answer and Affirmative Defenses.

WSP subsequently moved for partial summary judgment requesting that the court enforce the contractual limitation of liability and determine that Eagle House's recoverable damages could not exceed the contractual cap. *See Ex. 3* WSP Motion for Summary Judgment.

Eagle House opposed the motion, arguing that the limitation applies only to negligence claims and therefore does not apply to the causes of action asserted in its Complaint.

The lower court adopted Eagle House's interpretation. The Order states:

“WSP urges a broad interpretation of this clause that would require damages for even breach of contract to be limited to \$50,000. At this point, the Court believes that only causes of action arising out of negligence are subject to the limitation such that it declines to extend the damages limitation to Plaintiff's breach of contract action.”

See Ex. A to Eagle House's Motion to Dismiss.

The significance of that ruling extends far beyond the denial of WSP's motion. The lower court definitively construed the PSA and held, as a matter of law, that the contractual limitation does not apply to Eagle House's claims. That ruling necessarily rejects WSP's Eleventh Affirmative Defense and removes that defense from further litigation.

III. Argument

A. The Order Finally Determines the Meaning of the Parties' Contract.

The dispositive issue presented by WSP's motion was one of contract interpretation. The parties did not ask the court to resolve disputed facts. Rather, they asked the court to determine the legal effect of the PSA's limitation-of-liability provision.

The lower court answered that question. It held that the limitation applies only to negligence claims and does not limit Eagle House's breach of contract claims. Nothing in the Order suggests that this legal determination remains open for reconsideration at trial. To the contrary, the court definitively construed the contract as a matter of law.

Accordingly, this appeal does not challenge a discretionary denial of summary judgment based upon unresolved factual disputes. It challenges a final legal determination interpreting the parties' contract.

B. The Order Finally Adjudicates WSP's Eleventh Affirmative Defense.

The practical effect of the Order is equally significant.

WSP's Eleventh Affirmative Defense alleges that Eagle House's damages are contractually limited by the PSA. See **Ex 2**, Answer and Affirmative Defenses. By holding that the limitation provision does not apply to Eagle House's claims, the lower court necessarily rejected that defense.

Nothing remains for the court to decide regarding the scope or applicability of the contractual limitation. Unless reversed on appeal, WSP will be precluded from relying upon its contractual limitation-of-liability defense at trial.

Accordingly, the Order does not merely deny affirmative relief to WSP. It conclusively adjudicates one of WSP's principal defenses.

C. The Order Involves the Merits Under Section 14-3-330.

Section 14-3-330 authorizes an immediate appeal from an interlocutory order that "involves the merits" or "affects a substantial right."

An order involves the merits when it finally determines a substantial issue forming part of a claim or defense. In *Nauful v. Milligan*, 258 S.C. 139 (1972), the Supreme Court recognized that

an interlocutory order determining that defenses asserted by a defendant were without merit and that he is liable to the plaintiff involved the merits and was immediately appealable.

The same principle applies here. The Order conclusively determines that WSP's contractual limitation-of-liability defense does not apply to Eagle House's claims. That ruling finally resolves a substantial legal issue forming an essential component of WSP's defense and therefore involves the merits within the meaning of Section 14-3-330.

D. The Order Affects a Substantial Right.

The Order likewise affects a substantial right.

The South Carolina Supreme Court has instructed that appealability depends upon the practical effect of an interlocutory order rather than the label attached to it. See *Thornton v. South Carolina Electric & Gas Corp.*, 391 S.C. 297 (2011).

Here, the practical effect of the Order is unmistakable. The Order eliminates WSP's contractual limitation on damages and exposes WSP to liability well beyond the amount the parties expressly agreed would constitute WSP's maximum exposure. The Order removes a material defense from the case and prevents WSP from litigating that defense at trial.

Because the Order conclusively determines a significant contractual right and forecloses WSP's ability to rely upon its negotiated limitation of liability, it affects a substantial right and is immediately appealable.

E. Eagle House Mischaracterizes the Nature of the Appeal.

Eagle House repeatedly characterizes the Order as nothing more than a denial of summary judgment. That characterization overlooks what the lower court actually decided.

The court did not deny WSP's motion because factual disputes remained. Instead, it resolved the controlling legal issue presented by the parties - namely, the meaning and scope of

the PSA's limitation-of-liability provision - and held that the provision does not apply to Eagle House's claims. That legal determination conclusively extinguishes WSP's defense.

Accordingly, this appeal does not seek review of the denial of summary judgment itself. It seeks review of an interlocutory order that finally determines a contractual defense, involves the merits, and affects WSP's substantial rights.

IV. Conclusion

Eagle House's Motion to Dismiss proceeds from the erroneous premise that WSP appeals a routine denial of summary judgment. The Order is far more consequential. By definitively interpreting the parties' contract and holding that the contractual limitation-of-liability provision does not apply to Eagle House's claims, the lower court conclusively adjudicated WSP's Eleventh Affirmative Defense and eliminated a substantial contractual protection negotiated by the parties.

Because the Order finally determines a significant issue affecting both the merits of the litigation and WSP's substantial rights, it is immediately appealable under S.C. Code Ann. § 14-3-330. Eagle House's Motion to Dismiss should therefore be denied.

WINDLE | TERRY | BIMBO

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Attorney for WSP USA, Inc.

July 17, 2026

Charlotte, North Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Eagle House Mitigation Bank, LLC

Plaintiff,

v.

WSP USA Environment & Infrastructure, Inc.

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2024-CP-40-_____

**SUMMONS
(Jury Trial Demanded)**

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at Post Office Box 1390, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan

Ian T. Duggan (S.C. Bar No. 80074)

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Columbia, SC 29202-1390

Telephone: (803) 404-6900

Email: IanDuggan@CallisonTighe.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 13, 2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Eagle House Mitigation Bank, LLC

Plaintiff,

v.

WSP USA Environment & Infrastructure, Inc.

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2024-CP-_____

**COMPLAINT
(Jury Trial Demanded)**

The Plaintiff, complaining of the Defendant, would respectfully show as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff, Eagle House Mitigation Bank, LLC (“Eagle House”) is a company organized and existing under the laws of South Carolina and maintains its principal place of business in Richland County, South Carolina.

2. The Defendant, WSP USA Environment & Infrastructure, Inc. (“WSP”) is a corporation organized and existing under Nevada law and may be served via its registered agent, CT Corporation System, 2 Office Park, Suite 103, Columbia, South Carolina, 29223.

3. Defendant WSP is a wholly owned subsidiary of WSP Global, Inc., a corporation organized and existing under the laws of Quebec, a Canadian province, and which maintains its principal headquarters in Montréal, Quebec, Canada.

4. This Court has personal jurisdiction over the parties here.

5. The Court possesses subject matter jurisdiction over this dispute.

6. This Court is the proper venue for this dispute.

FACTS

7. A primary function of Eagle House's business is the development and sale of mitigation credits.

8. Mitigation is an environmental restoration process by which degraded streams or wetlands are repaired by a "mitigation banker" like Eagle House. Once such an area is restored and repaired to a more optimal state and with the approval of regulatory authorities, primarily the US Army Corps of Engineers ("USACE"), the mitigation banker can sell mitigation "credits" to those who intend to engage in construction projects that will negatively impact a stream or wetland elsewhere in the approved service area of the restored waterbody. In such a way, the government creates an economic market incentivizing those, like Eagle House, who invest in the prudent stewardship of the nation's waterbodies and wetlands.

9. One such "stream bank" that Plaintiff Eagle House maintains is on land in Fairfield County, South Carolina, bearing TMS No. 094-00-00-003-00, owned by Eagle House Farms, LLC.

10. On or about September 21, 2021, Wood Environment & Infrastructure Solutions, Inc. ("Wood"), a predecessor of WSP, made a formal written Proposal to offer consulting services to Eagle House for the purpose of securing USACE approval of a plan to mitigate the streams and wetlands in the Eagle House stream bank area—a necessary step before Eagle House could begin to generate revenue through the sale of mitigation credits.

11. By September 21, 2021, Wood was very familiar with the Eagle House project because it began providing consulting services to Eagle House sometime in or around 2019.

12. Shortly after Wood made its September 21, 2021, Proposal to Eagle House, Eagle House accepted the Proposal and further agreed to the terms of Wood's Professional Services

Agreement that was appended to the Proposal. A copy of both the Proposal and Professional Services Agreement from in or around September 2021, are appended here as **Exhibit A**.

13. The seven-page Proposal contemplates a multiple task, multi-year scope of services, including everything from “Pre-Construction and Banking Support Services” through several years of “Mitigation Bank Monitoring.” Included within such scope was the supervision of installation by a licensed contractor of the stream improvements designed by Wood, it being understood that the installation of the improvements required on-site coordination with Wood’s representatives in order to ensure compliance with the plans approved by USACE.

14. Wood’s Proposal was signed by Allen W. Conger, one of Wood’s “Senior Principal Scientist[s]” and Brendon Kelly, a “Senior Environmental Scientist.”

15. Mr. Conger worked in the West Columbia, South Carolina, office of Wood.

16. Mr. Kelly worked in the West Columbia, South Carolina, office of Wood.

17. A Wood office in South Carolina was the one that entered into the Professional Services Agreement.

18. Because the “state of the Wood office that” entered into the Professional Services Agreement was in South Carolina, under paragraph 17 of the Professional Services Agreement, “the court system of [South Carolina]” is the jurisdiction where the parties agreed to resolve their disputes.

19. In a similar way, the parties, through paragraph 15 of the Professional Services Agreement, agreed that the Professional Services Agreement was “governed and construed in accordance with the laws of” South Carolina.

20. At some point in or around September 2022, Wood was acquired by Defendant WSP, and WSP assumed the rights and obligations of Wood under the Professional Services Agreement with Eagle House.

21. Following WSP's acquisition of Wood, Eagle House continued to work directly with Mr. Conger in his new position as a Senior Vice President with WSP under the terms of the Professional Services Agreement.

22. Wood, and later, WSP, through the Professional Services Agreement, warranted and promised Eagle House, among other things, that they would:

... perform the Scope of Services ... utilizing the degree of skill and care ordinarily exercised under similar conditions by reputable members of Wood's profession practicing in the same or similar locality at the time of performance. ...

23. WSP failed to do so, however. Among other things, it permitted the construction contractor to install the remediation improvements in a manner that did not conform with the design submitted by WSP to the USACE and approved by USACE.

24. Because of WSP's defective acts and omissions, USACE has declined to release credits to Eagle House for sale, thus depriving Eagle House of substantial revenues, including a sale to York County for credits valued at \$1,133,442.15. Even more, upon receiving the notification by the USACE that the construction was not approved, WSP failed to design a necessary "fix" for the problem.

25. In paragraph 10 of the Professional Services Agreement, WSP promised and warranted that it would "re-perform any defective Services."

26. But WSP has refused to "re-perform" its "defective Services," and has thus far refused to reimburse Eagle House for the costs that it must outlay to re-perform deficient and

defective work undertaken by WSP, even though, as late as May 2024, it promised it would pay for this additional cost.

27. After WSP failed or refused to correct the design to meet USACE's requirements, Eagle House retained a new consultant whose design has been approved by USACE for repair of the Bank (by installation of the improvements designed originally). To perform this work, Eagle House solicited bids from qualified contractors, the lowest bid being in excess of \$800,000.00.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

28. The foregoing allegations are incorporated herein as if repeated verbatim.

29. The Professional Services Agreement was a binding contract entered into between on one hand, Defendant WSP, as successor in interest to Wood, and Plaintiff Eagle House.

30. WSP has breached and unjustifiably failed to perform its obligations under the Professional Services Agreement.

31. As a direct and proximate result of WSP's breach of its contractual obligations, Plaintiff Eagle House has suffered damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Express and Implied Warranties)

32. The foregoing allegations are incorporated herein as if repeated verbatim.

33. Defendant WSP advertises itself as "one of the world's leading engineering, environmental and professional services firms."

34. Through the Professional Services Agreement, Defendant WSP warranted that it would, among other things, perform its work on the Eagle House stream bank project "utilizing the degree of skill and care ordinarily exercised under similar conditions by reputable members of [WSP's] profession practicing in the same or similar locality at the time of performance."

35. Defendant WSP failed to perform its work under the Professional Services Agreement in a way that conformed with the way it warranted it would.

36. Defendant WSP breached its express and implied warranties to Plaintiff.

37. As a direct and proximate result of WSP's breach of its warranties, Plaintiff Eagle House has suffered damages.

PRAYER FOR RELIEF

WHEREFORE, having complained of Defendant, WSP, Plaintiff prays for a jury trial and that this Court enter judgment awarding them all available and appropriate relief, including:

- i. Actual damages, including incidental, special, and consequential damages, in an amount to be determined by a jury;
- ii. Punitive damages in an amount to be determined by a jury;
- iii. Pre- and post-judgment interest;
- iv. Attorney's fees, costs, and litigation expenses; and,
- v. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan
Ian T. Duggan (S.C. Bar No. 80074)
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 13, 2024

EXHIBIT

“A”



September 21, 2021

Mr. Michael Tighe
Eagle House Mitigation
Bank, LLC
P.O. Box 1390
Columbia, South Carolina 29202-1390
(o) 803.404.6900

**Subject: Proposal for Preconstruction Support, Quality Assurance Services
and Mitigation Monitoring
Eagle House Mitigation Bank
Fairfield County, South Carolina
Wood Proposal PROP21CARO323**

Dear Mr. Tighe:

Wood Environment & Infrastructure Solutions, Inc. (Wood) is pleased to present this proposal for Quality Assurance Services and Mitigation Monitoring for the Eagle House Mitigation Bank (Project Site), which was fully approved by the US Army Corps of Engineers (USACE) on July 14, 2021. The Project Site is located near River Road (State Road S-20-101) in Fairfield County, South Carolina. The Project Site has been created to offset jurisdictional impacts to Waters of the U.S. This proposal outlines our understanding of the project, our proposed scope of services, fee estimate, and schedule.

PROJECT BACKGROUND

Following approval of the Project site by the USACE, additional effort will be required to finalize the bank conservation easement, water quality sampling, assist with site planning, communicate with the agencies, work with the construction contractor to assist with and oversee the design build process and to monitoring the site to ensure compliance with the mitigation banking instrument. Eagle House Mitigation Bank, LLC has requested Wood's assistance with preconstruction and construction quality assurance services and mitigation monitoring for the Project Site. This proposal outlines the proposed scope of services and anticipated effort required for these services.

Eagle House Mitigation Bank, LLC will provide safe access to the property for Wood personnel to complete the following scope of services.

SCOPE OF SERVICES

Task 1: Pre-Construction Support and Banking Support

Wood will assist Eagle House with general banking support, agency interaction, answering technical questions, and address specific issues such as stream buffer enhancement treatment and enhancement. This task includes preparing a generalized Stormwater Pollution Prevention Plan, but no land disturbance permit application is expected to be required as your project appears to be exempted. In addition, to address a comment by SCDHEC, the MBI document was modified to include one pre-construction water quality sampling event. This sampling event will be completed as described in the MBI document and results of the sampling event will be included in the As-Built report. Wood will bill you for labor and time for this task up

to the lump sum budget. Any additional time for preconstruction assistance will be billed under a separate task and approval. Any tasks not mentioned above or in addition to the scope detailed within will be addressed under a separate proposal.

Task 2: Construction Quality Assurance Services

Wood will provide quality assurance services to ensure mitigation implementation, forestry activities, tree planting, and stream construction activities are being conducted in accordance with the Eagle House Mitigation Banking Instrument revised on August 13, 2020. The following quality assurance services will be provided by Wood:

- Perform periodic site visits up to two days per week for a maximum period of 15 weeks (12 weeks for construction and two weeks for planting for a total of 30 visits) during mitigation implementation/construction to observe that work is being performed in accordance with the Mitigation Banking Instrument. If additional days are required, Wood may request a change order for the additional labor and travel expense. During our site visits we will meet with your personnel, attend scheduled meetings, check materials, observe mitigation prescription implementation activities, examine work, and discuss future work. A record summarizing our observations will be provided to Eagle House Mitigation Bank, LLC.
- Conduct a Substantial Completion (Punchlist) inspection. Wood will perform and provide one pre-final inspection for each mitigation prescription area. Non-compliant items will be documented in a written punchlist with copies provided to Eagle House Mitigation Bank, LLC and the Contractor.
- Conduct a Final Inspection. Wood will perform one final inspection for each mitigation prescription area to verify punchlist items have been completed.
- Organize project close-out documents. Wood will gather as-built documents (as necessary), copies of pay applications, change orders, warranty information, product literature, meeting minutes and field reports. Wood will prepare a final report documenting all mitigation implementation activities and forward once work is complete.

Task 3: Mitigation Bank Monitoring Set-Up (MY0) and As-Built Report

MY 0 activities will be initiated following the completion of all mitigation prescription implementation activities and will include the establishment of the following to aid in subsequent year monitoring events:

- Permanent photograph stations for stream preservation and enhancement reaches.
- Permanent cross-sections on Rosgen Priority III Enhancement reaches.
- Install bank pins within each stream enhancement reach.
- Establishment of permanent vegetation monitoring plots for wetland enhancement and buffer enhancement areas.

An as-built report for all wetland and stream enhancement areas and natural community reestablishment areas will be completed within the Project Site to document the baseline conditions post-construction. Any changes to the projected wetland acreage or stream linear footage and associated credit amounts will be documented, and detailed descriptions provided in the as-built report. This scope does not include a professional survey or certified mapping of the stream features or as-built conditions, only a GPS/GIS - based map of the features. If a professional survey is required, additional fees under separate contract will be required.

The as-built report will be provided to the IRT within 90 days of completion of all physical and biological

improvements

Task 4: Mitigation Bank Monitoring (MY1 through MY5)

Wood will provide Year 1 – Year 5 monitoring services following the completion of the mitigation prescription implementation activities. Monitoring activities will be conducted in accordance with the Eagle House Mitigation Banking Instrument revised on August 13, 2020.

The monitoring activities will consist of the following:

Stream Preservation

Stream preservation monitoring stations will be established in representative areas along the protected streams. The placement of stations will consider spatial distribution of the stream preservation areas and document a variety of stream orders. Stream condition will be documented annually at permanent photograph stations. Each photograph station will be permanently marked in the field using rebar with a standard survey cap and a 10-foot tall PVC or metal pole with the photograph number demarcated. Photograph stations will be located with three-dimensional coordinates and georeferenced to NAD83-State Plane Feet. Successive photographs taken at the photograph station will replicate the orientation and capture the area of previous photographs.

Stream Enhancement

Channel Stability

Permanent cross-sections will be established in locations of Rosgen Priority III stream enhancement. Cross-Sections will be placed in representative features, and upper and lower extents to evaluate stream dimension. Permanent cross-sections will be installed at an approximate rate of 1 cross-section per 20 bankfull channel widths, with approximately 50 percent of cross-sections occurring at pools and 50 percent at riffles. Permanent monuments will be established by rebar with a standard survey cap and a tall PVC or metal pole with the cross-section number at the left and right extents of each cross-section by either conventional survey or Global Positioning System (GPS). The cross-section surveys will provide a detailed measurement of the stream and banks and pertinent features of the channel's geometry. The survey should include points located at:

- The left and right monument*
- On the floodplain (extending out past the monument if applicable) *
- Top of banks*
- At bankfull*
- Toe of slopes*
- At the edge of water *
- At the thalweg
- Terraces and other major grade changes along the entire length of stream

**These points should be identified looking downstream*

All channel cross-sections will include measurements of the Width/Depth (W/D) Ratio and Entrenchment Ratio (ER), which will be documented in monitoring reports. Once established, the cross-sections will be surveyed annually.

Permanent photograph stations at each cross-section will document stability and channel evolution during the monitoring period. The location of each photo point will be permanently marked in the field using rebar with a standard survey cap and/or a tall PVC or metal pole with the photograph number

demarcated. The bearing/orientation of the photograph will be documented. Photographs should be taken looking across channel, looking upstream, and looking downstream, showing as much of the banks and channel as possible. The survey tape will be centered in each photograph and the water line will be located near the lower edge. An effort will be made to consistently show the same photograph area in each subsequent monitoring event.

Bank Stability

Bank stability will be monitored annually using the Bank Erosion Hazard Index (BEHI), a bank erodibility estimation tool as per the Bank Assessment for Non-point source Consequences of Sediment (2001) and the Near Bank Stress (NBS) assessment method. The BEHI/NBS will be used to evaluate bank characteristics along stream reaches and mapping various risk ratings commensurate with bank and channel changes. Forms and procedures associated with the BEHI/NBS can be found at the Environmental Protection Agency website:

Bank Pins will also be installed in each of the enhancement streams to assess bank stability. Bank pins will be installed in sets of four within two pool sections and two riffle sections for each enhancement stream. The distance between each installed bank pin within a set will vary. Bank pins will consist of an approximately 5-foot in length steel rod (rebar) and painted with a high-visibility paint to aid in locating them in the future. Bank pins will be removed once monitoring activities are complete.

In-stream Structures

Visual inspections of in-stream structures will be conducted bi-annually during the first year of monitoring and annually thereafter for the remainder of the monitoring period. Each photograph station will be permanently marked in the field using rebar with a standard survey cap and/or a 5-foot tall PVC or metal pole with the reach name/number demarcated. Photograph stations will be located with three-dimensional coordinates and georeferenced to NAD83-State Plane Feet. Successive photographs taken at the photograph station will replicate the orientation and capture the area of previous photographs. Photographs will also be used to document significant or adverse changes in other portions of the stream restoration or enhancement area.

Habitat Availability

Habitat availability will be assessed prior to construction and on an annual basis during the monitoring period. Monitoring stations will be located at the most upstream and downstream limits of the mitigation site and at additional stations located downstream of each restoration reach. Habitat availability will be assessed by completing the Low or High Gradient Stream Assessment Data Sheet (USACE 2010). The Low Gradient Stream Assessment Data Sheet will be used for glide/pool prevalent streams found in low to moderate gradient landscapes. The High Gradient Stream Assessment Data Sheet will be used in riffle/run prevalent streams found in moderate to high gradient landscapes.

Water Quality

Water quality will be assessed prior to construction and on an annual basis during the monitoring period. Two locations on Stream A, upstream and downstream of the project reach, will be monitored for temperature, pH, conductivity, dissolved oxygen, and turbidity. Multiparameter water quality measurement tools will be used to monitor the five water quality parameters

Wetland Preservation

Visual assessments will be conducted annually to qualitatively evaluate EHMB conditions. Permanent

photograph stations will be established at representative locations within the wetland preservation area. The placement of stations should consider spatial distribution of the wetland preservation areas and document various wetland types. Each photograph station will be permanently marked in the field using rebar with a standard survey cap as well as a tall poly-vinyl chloride (PVC) pipe to aid in location (metal pipe to be used in areas where prescribed burns are planned). Photograph stations will be located with three-dimensional coordinates and georeferenced to NAD83-State Plane Feet. Successive photographs taken at the photograph station will replicate the orientation and capture area of previous photographs. Photographs will also be used to document significant or adverse changes in other portions of the wetland preservation area.

Wetland Enhancement and Buffer Enhancement

Hardwood Enhancement

Hardwood enhancement areas (Zones 1 and 2) will be monitored using a modification of *The Carolina Vegetation Survey Sampling Methodology* (Peet 1998). Hardwood monitoring plots will be set at random locations throughout the hardwood enhancement zones to account for proper scientific sampling (Figure 16, Appendix A). Within these plots, herbaceous subplots will be placed within each corner and in the center of each larger vegetation plot. Groundcover will be documented within the subplots by relative cover estimates of any herbaceous or woody vegetation less than one foot tall. Shrubs will be documented within a 5m x 5m subplot in each vegetation plot by stem count and percent areal coverage of all woody stems above ground level, but below 4.5 feet tall. Species identification will be based on the taxonomy used in the USFWS 2016 *Regional Wetland Plants List, Eastern Mountains and Piedmont Region* (Lichvar et al. 2016).

Planted hardwoods within the vegetation plots will be measured and identified in coordination with a numbered forestry tag to document the growth of each specific tree over time. Each stem will be measured for height, lateral growth, and root collar diameter. Live stakes will not count toward the stem count calculations.

Other Monitoring Methods

Photographs will be taken at each monitoring plot, facing towards the interior of the plot. Photos will include plot center and surrounding vegetation. The photograph will include the marker pole and its label taken towards the opposite corner.

At least 180 days must separate the completion of the initial vegetation planting and the initiation of the first year of monitoring. If the monitoring report deadline of the end of the first monitoring year occurs less than 180 days after the completion of vegetation plantings, the first year of monitoring will occur during the following calendar year.

Reporting

Wood will prepare one yearly monitoring report for the Eagle House Mitigation Bank. Monitoring reports will contain a discussion of any deviations from the Year 0 - Monitoring Report and an evaluation of the significance of these deviations. The content and level of detail included in monitoring reports shall be commensurate with the scale and scope of this mitigation project. Consistent with current guidance (USACE 2008), monitoring reports will provide a convenient and concise mechanism for assessing the status of the mitigation project. This report will consist of a narrative and supporting data including: maps and photographs to illustrate site conditions as well as results of functional, condition, or other assessments used to provide quantitative or qualitative measures of the functions. The annual report will include: 1) project overview, 2) monitoring requirements and performance standards, 3) summary of data, 4) maps and photos,

and 5) conclusions. Within the Conclusions section, recommendations for suggested increased observation, maintenance and/or repair in problem areas will be made based on the Results and Discussion sections of the annual monitoring reports. Recommendations for repair, maintenance, or a recommendation for continued observation in accordance with the Adaptive Management Plan will be based on the data that is collected during that monitoring period or a developing downward trend.

DELIVERABLES

Consultant will provide the following Deliverables:

- a) Daily Quality Assurance Reports during Construction
- b) MY 0 As-Built Report to submit to the USACE
- c) MY1 through MY5 monitoring reports.

Cost Information and Schedule

The costs for each of the tasks involved are as follows for the above-described scope-of-services:

Tasks	Fee
Task 1- Pre-Construction and Banking Support Services	\$12,300
Task 2: Quality Assurance Services	\$24,400
Task 3: MY 0 and As-Built Report	\$26,600
Task 4: Mitigation Bank Monitoring	--
Monitoring Year 1	\$27,500
Monitoring Year 2	\$24,500
Monitoring Year 3	\$24,500
Monitoring Year 4	\$24,500
Monitoring Year 5 (Close Out)	\$28,800
PROPOSAL TOTAL	\$193,100

Based on our understanding of the project requirements, we propose a firm-fixed price for the specified tasks. Task 1 services will be completed concurrently with the construction of the mitigation project. Task 2 will be completed within 90 days of completion of construction activities. Task 3 will be completed yearly, with a monitoring report ready for submittal to the IRT no later than March 15 of the year following the monitoring period. Should the IRT require additional monitoring beyond five years, Wood can complete this scope under a separate proposal.

This cost is based on the total area of the project and estimated time required to complete the above listed tasks. It includes travel, expenses, materials and labor, and is based on our Fee Schedule. Any approved, supplemental services will be billed on a unit rate basis per our Fee Schedule.

AUTHORIZATION

If this proposal is acceptable to you, please sign and return the attached Professional Services Agreement. Our work will be performed in accordance with the attached Terms and Conditions under this contract as confirmed in writing by both parties.

CLOSING

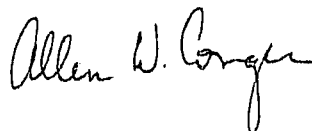
Wood appreciates the opportunity to provide our professional environmental services for this project. We are available at your convenience to discuss the contents of this scope of work or other aspects of the project.

Sincerely,

WOOD ENVIRONMENT & INFRASTRUCTURE SOLUTIONS, INC.



Brendon Kelly
Senior Environmental Scientist



Allen W. Conger, SPWS
Senior Principal Scientist

attachments: Professional Services Agreement



Professional Services Agreement

PARTIES

THIS AGREEMENT (the "Agreement"), effective this 21st day of September 2021, is made by and between **Wood Environment & Infrastructure Solutions, Inc.**, a Nevada corporation, with an address at 104 Corporate Blvd, Suite 704, West Columbia, South Carolina 29169 ("Wood") and Eagle House Mitigation Bank, LLC, a South Carolina corporation, with an address at P.O. Box 1390 Columbia, South Carolina 29202-1390 ("CLIENT").

NOW, THEREFORE, in consideration of the mutual undertakings and subject to the terms set forth below and intending to be legally bound, the parties agree as follows:

PROJECT

CLIENT engages Wood to provide services in connection with:

Eagle House Mitigation Bank

SCOPE OF SERVICES

Wood agrees to perform services in accordance with its Proposal as follows:

Tasks 1, 2 and 3 of the Wood Proposal PROP21CARO323 - Proposal for Preconstruction and Monitoring dated September 21, 2021

CLIENT agrees that all services not expressly included are excluded from Wood's Scope of Services.

COMPENSATION (in U.S. Dollars)

 Firm-fixed price: CLIENT agrees to compensate Wood on a lump sum fee basis in the amount of: \$193,100. Wood will invoice CLIENT on a monthly basis until the project is considered 100% complete. Full payment of our percent complete invoices is required within 30 days of invoice submittal.

 X **Time and materials:** CLIENT agrees to compensate Wood for all hours worked and other costs incurred at the rates and terms set forth herein. Should the total cost of Wood's performance be greater than the estimated amount shown below, Wood will notify CLIENT and provide a revised estimate for CLIENT's approval. In such event, continued performance is subject to additional funding as mutually agreed.

Labor Categories and Hourly Labor Rates: See attached Fee Schedule

Other Direct Costs (Reimbursed at cost plus 15% mark-up):

Total estimated time and materials cost:

In addition to the Agreement amount, CLIENT assumes full responsibility for the payment of any applicable sales, use, or value-added taxes under this Agreement, except as otherwise specified.

ATTACHMENTS

The listed attachments form part of this Agreement:

1. Proposal for Preconstruction and Monitoring dated September 21, 2021

Terms and Conditions

1. COMPENSATION: Invoices will be submitted at least monthly for Services rendered. Terms of payment are net thirty (30) days from date of invoice with a late fee of one and one-half percent (1.5%) per month or eighteen percent (18%) per annum or the maximum amount allowable by law on balances past due. Interest shall be computed at 31 days from the date of invoice. In addition, any collection fees, attorneys' fees, court costs, and other related expenses incurred by Wood in the collection of delinquent invoice amounts shall be paid by CLIENT.

If CLIENT reasonably objects to all or any portion of an invoice, CLIENT shall notify Wood of that fact in writing within ten (10) days from the date of receipt of Wood's invoice, give reasons for the objection, and pay that portion of the invoice not reasonably in dispute. Failure of CLIENT to provide such written notice within the allowed ten (10) day period shall be deemed to be a waiver of all objections to that invoice.

CLIENT's payment shall represent CLIENT's acceptance of the Services invoiced by Wood. Wood may suspend performance of Services under this Agreement if: (i) CLIENT fails to make payment in accordance with the terms hereof, or (ii) Wood reasonably believes that CLIENT will be unable to pay Wood in accordance with the terms hereof and notifies CLIENT in writing prior to such suspension of Services. Such suspension shall continue until Wood has been paid in full for all balances past due including applicable service charges and CLIENT provides Wood with adequate assurance of CLIENT's ability to make future payments in accordance with the terms hereof. If any such suspension causes an increase in the time required for the performance of any part of the Services, the performance schedule and/or period for performance shall be extended for a period of time equal to the suspension period.

2. STANDARD OF CARE: Wood will perform the Scope of Services specified in a Work Order utilizing that degree of skill and care ordinarily exercised under similar conditions by reputable members of Wood's profession practicing in the same or similar locality at the time of performance. NO OTHER WARRANTY, GUARANTY, OR REPRESENTATION, EXPRESS OR IMPLIED, IS MADE OR INTENDED IN THIS AGREEMENT, OR IN ANY COMMUNICATION (ORAL OR WRITTEN), REPORT, OPINION, DOCUMENT, OR INSTRUMENT OF SERVICE, AND THE SAME ARE SPECIFICALLY DISCLAIMED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3. INDEPENDENT CONTRACTOR: Wood shall be fully independent and shall not act, except as permitted herein, as an agent or employee of CLIENT. Wood shall be solely responsible for its employees and for their compensation, benefits, contributions, and taxes, if any.

Unless otherwise agreed to in writing by Wood and CLIENT, neither party shall directly or indirectly solicit, hire or retain, or knowingly cause a third party to solicit, hire or retain, during the term of this Agreement and for a period of one (1) year after the date on which this Agreement terminates, any employee of the other party who works on the preparation of the Proposal or otherwise performs Services under or in connection with this Agreement. Nothing herein shall prevent either party from hiring any individual who responds to a general advertisement for services.

4. INSURANCE: Wood will maintain insurance for this Agreement in the following types and limits: (i) worker's compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL) (\$1,000,000 per occurrence / \$2,000,000 aggregate), and (iii) automobile liability insurance for bodily injury and property damage (\$1,000,000 CSL).

5. CHANGES: CLIENT may order changes within the general scope of the Services by altering, adding to, or deleting from the Services to be performed. Work beyond the scope of services or re-doing any part of the project through no fault of Wood, shall constitute extra work and shall be paid for on a time-and-materials basis in addition to any other payment provided for in this Agreement.

Should Wood encounter conditions which were (i) not reasonably anticipated, including, but not limited to, changes in applicable law, (ii) subsurface or otherwise concealed physical conditions that differ materially from those indicated in this Agreement or (iii) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character contemplated by this Agreement, Wood shall promptly provide notice to CLIENT. CLIENT shall promptly investigate such conditions. If, in Wood's reasonable opinion, the conditions cause an increase or decrease in Wood's cost of, or time required for, performance of any part of its Services, CLIENT shall issue a Change Order with an equitable adjustment in Wood's compensation, schedule, or both. In the event no Change Order is agreed to, Wood reserves the right to either (i) suspend its performance until a Change Order is agreed to or (ii) discontinue its performance and terminate this Agreement.

6. FORCE MAJEURE: Should performance of Services by Wood be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes but is not restricted to: acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by Wood; earthquakes; fires; floods; labor disturbances; epidemics, pandemics; and unusually severe weather. Wood will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Services, where appropriate, based upon the effect of

the Force Majeure on performance by Wood. The Parties agree that the current COVID-19 Pandemic shall be deemed a Force Majeure under this section and that any on-going or future potential or actual disruptions, or delays in performance of services or deliverables related to the COVID-19 Pandemic will be subject to the time and compensation requirements listed in this Section 6.

7. CLIENT'S RESPONSIBILITIES: CLIENT agrees to provide Wood all available material, data, and information pertaining to the Services.

8. SITE ACCESS: CLIENT shall at its cost and at such times as may be required by Wood for the successful and timely completion of Services: (i) provide unimpeded and timely access to any site, including third party sites if required (ii) provide an adequate area for Wood's site office facilities, equipment storage, and employee parking; (iii) furnish all construction utilities and utilities releases necessary for the Services; (iv) provide the locations of all subsurface structures, including piping, tanks, cables, and utilities; (v) approve all locations for digging and drilling operations; and (vi) obtain all permits and licenses which are necessary and required to be taken out in CLIENT's name for the Services. Wood will not be liable for damage or injury arising from damage to subsurface structures that are not called to its attention and correctly shown on the plans furnished to Wood in connection with its work.

9. WARRANTY OF TITLE, WASTE OWNERSHIP: CLIENT has and shall retain all responsibility and liability for the environmental conditions on the site. Title and risk of loss with respect to all materials shall remain with CLIENT. At no time will Wood assume possession or title, constructive or express, to any such samples or wastes.

10. LIMITATION OF LIABILITY: As part of the consideration Wood requires for provision of the Services indicated herein, CLIENT agrees that any claim for damages filed against Wood by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against Wood or its successors or assigns and that no individual person shall be made personally liable for damages, in whole or in part.

CLIENT's sole and exclusive remedy for any alleged breach of Wood's standard of care hereunder shall be to require Wood to re-perform any defective Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after substantial completion of the Services.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CLIENT AGREES THAT THE LIABILITY OF WOOD TO CLIENT FOR ANY AND ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, CONTRIBUTION, ASSERTED BY CLIENT AND ARISING OUT OF OR RELATED TO THE NEGLIGENCE ACT(S), ERROR(S) OR OMISSION(S) OF WOOD IN PERFORMING SERVICES, SHALL BE LIMITED TO FIFTY THOUSAND DOLLARS (\$50,000) OR THE TOTAL FEES ACTUALLY PAID TO WOOD BY CLIENT UNDER THIS AGREEMENT WITHIN THE PRIOR ONE (1) YEAR PERIOD, WHICHEVER IS LESS ("LIMITATION"). CLIENT HEREBY WAIVES AND RELEASES (I) ALL PRESENT AND FUTURE CLAIMS AGAINST WOOD OTHER THAN THOSE DESCRIBED IN THE PRECEDING SENTENCE, AND (II) ANY LIABILITY OF WOOD IN EXCESS OF THE LIMITATION.

In consideration of the promises contained herein and for other separate, valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLIENT acknowledges and agrees that (i) but for the Limitation, Wood would not have performed the Services, (ii) it has had the opportunity to negotiate the terms of the Limitation as part of an "arms-length" transaction, (iii) the Limitation amount may differ from the amount of professional liability insurance carried by Wood, (iv) the Limitation is merely a limitation of, and not an exculpation from, Wood's liability and does not in any way obligate CLIENT to defend, indemnify or hold harmless Wood, (v) the Limitation is an agreed remedy, and (vi) the Limitation amount is neither nominal nor a disincentive to Wood performing the Services in accordance with the Standard of Care.

Wood and CLIENT each hereby waive any right to recover from the other party for any special, incidental, indirect, or consequential damages (including, but not limited to: loss of use, loss of revenue, loss of profit, loss of contracts, loss of product or production, or loss of business opportunity) incurred by either Wood or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by services performed or reports prepared or other work performed hereunder.

CLIENT agrees that the damages for which Wood shall be liable are limited to that proportion of such damages which is attributable to Wood's percentage of fault subject to the other limitations herein.

11. INDEMNITY. CLIENT agrees to defend, indemnify, protect and hold harmless Wood and its officers, employees and agents from any and all claims, liabilities, damages or expenses, including but not limited to delay of the project, reduction of property value, fear of or actual exposure to or release of toxic or hazardous substances, and any consequential damages of whatever nature, which may arise directly or indirectly, to any party, as a result of the services provided by Wood under this Agreement, unless such injury or loss is caused by the sole negligence of Wood.

12. ASSIGNMENT AND SUBCONTRACTING: Neither party shall assign its interest in this Agreement without the written consent of the other.

13. COST ESTIMATES: If included in the Services, Wood will provide cost estimates based upon Wood's experience on similar projects, which are not intended for use by CLIENT or any other party in developing firm budgets or financial

models, or in making investment decisions. Such cost estimates represent only Wood's judgment as a professional and, if furnished, are only for CLIENT's general guidance and are not guaranteed as to accuracy.

14. TERMINATION Either party may terminate this Agreement at any time by providing not less than ten (10) days advance written notice to the other party. In the event of a termination, CLIENT shall pay for all reasonable charges for work performed and demobilization by Wood to date of notice of termination. The limitation of liability and indemnity obligations of this Agreement shall be binding notwithstanding any termination of this Agreement.

15. GOVERNING LAWS/LANGUAGE: This Agreement shall be governed and construed in accordance with the laws of the state of the Wood office entering into this Agreement. All communications relating to or arising out of this Agreement shall be in the English language.

16. FIELD REPRESENTATION: The Services do not include supervision or direction of the means, methods or actual work of other consultants, contractors and subcontractors not retained by Wood. The presence of Wood's representative will not relieve any such other party from its responsibility to perform its work and services in accordance with its contractual and legal obligations and in conformity with the plans and specifications for the project. CLIENT agrees that each such other party will be solely responsible for its working conditions and safety on the site. Wood's monitoring of the procedures of any such other party is not intended to include a review of the adequacy of its safety measures. It is agreed that Wood is not responsible for safety or security at a site, other than for Wood's employees, and that Wood does not have the contractual duty or legal right to stop the work of others.

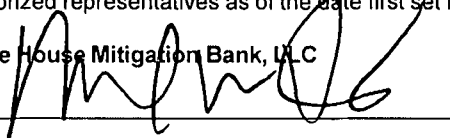
17. DISPUTES. Any dispute arising hereunder shall first be resolved by taking the following steps, where a successive step is taken if the issue is not resolved at the preceding step: 1) by the technical and contractual personnel for each party performing this Agreement, 2) by executive management of each party, 3) by mediation, or 4) through the court system of the state of the Wood office that is entering into this Agreement. CLIENT hereby waives the right to trial by jury for any disputes arising out of this Agreement. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

18. EXCLUSIVE USE. Services provided under this Agreement, including all reports, information or recommendations prepared or issued by Wood, are for the exclusive use of the CLIENT for the project specified. No other use is authorized under this Agreement. CLIENT will not distribute or convey Wood's reports or recommendations to any person or organization other than those identified in the project description without Wood's written authorization. CLIENT releases Wood from liability and agrees to defend, indemnify, protect and hold harmless Wood from any and all claims, liabilities, damages or expenses arising, in whole or in part, from such unauthorized distribution. All reports, drawings, plans, documents, software, source code, object code, field notes and work product (or copies thereof) in any form prepared or furnished by Wood under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with Wood.

19. ENTIRE AGREEMENT: The terms and conditions set forth herein constitute the entire understanding and agreement of Wood and CLIENT with respect to the Services. All previous proposals, offers, and other communications relative to the provisions of these Services are hereby superseded. Should CLIENT utilize its purchase order or any other form to procure services, CLIENT acknowledges and agrees that its use of such purchase order or other form is solely for administrative purposes and in no event shall Wood be bound to any terms and conditions on such purchase order or other form, regardless of reference to (e.g. on invoices) or signature upon (e.g. acknowledgement) such purchase order or other form by Wood. CLIENT shall reference this Agreement on any purchase order or other form it may issue to procure Wood services, but CLIENT's failure to do so shall not operate to modify this Agreement.

IN WITNESS WHEREOF, CLIENT and Wood have caused this Agreement to be executed by their respective duly authorized representatives as of the date first set forth above.

Eagle House Mitigation Bank, LLC

By: 

Name: Michael W. Tighe

Title: Manager

Wood Environment & Infrastructure Solutions, Inc.

By: _____

Name: _____

Title: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Eagle House Mitigation Bank, LLC,

Plaintiff,

vs.

WSP USA, Inc.,

Defendant.

Civil Action No.: 2024-CP-40-07265

THIRD-PARTY SUMMONS

WSP USA, Inc.,

Third-Party Plaintiff,

vs.

H2O Mitigation Services, LLC; and Pond
& Company, Inc.,

Third-Party Defendants.

TO THE THIRD-PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Third-Party Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

This 3rd day of March, 2025.

WINDLE | TERRY | BIMBO

s/ Louis Segreti

Louis Segreti (S.C. Bar. No. 107134)

3020 W. Arrowood Rd., Suite 102

Charlotte, NC 28273

Telephone: (704) 944-3244

Facsimile: (704) 626-6446

lsegreti@wtbconstructionlaw.com

Attorneys for Defendant/Third-Party Plaintiff WSP
USA, Inc.

EXHIBIT

2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Eagle House Mitigation Bank, LLC,

Plaintiff,

vs.

WSP USA, Inc.,

Defendant.

Civil Action No.: 2024-CP-40-07265

**DEFENDANT WSP USA, INC.'S
ANSWER, MOTION TO DISMISS,
COUNTERCLAIM AND THIRD-PARTY
COMPLAINT**

WSP USA, Inc.,

Third-Party Plaintiff,

vs.

H2O Mitigation Services, LLC; and Pond &
Company, Inc.,

Third-Party Defendants.

COMES NOW Defendant WSP USA, Inc. ("WSP") by and through its undersigned counsel, and hereby answers the Complaint of Eagle House Mitigation Bank, LLC ("Plaintiff" or "Eagle House") as follows:

FIRST DEFENSE
MOTION TO DISMISS

WSP moves to dismiss Plaintiff's Complaint in its entirety for failure to state a claim upon which relief may be granted.

SECOND DEFENSE
ANSWER

GENERAL DENIAL

PARTIES, JURISDICTION AND VENUE

1. WSP lacks sufficient information to admit or deny; therefore, denied.
2. Denied.

3. Denied.
4. Admitted.
5. Admitted.
6. Admitted.

FACTS

7. WSP lacks sufficient information to admit or deny; therefore, denied.
8. This paragraph does not assert any factual allegations against WSP. To the extent this paragraph may be construed to assert factual allegations against WSP, those allegations are denied.
9. Admitted upon information and belief.
10. WSP admits only that Wood Environment & Infrastructure Solutions, Inc. (“Wood”) made a September 21, 2021 proposal to Eagle House (the “Proposal”). The Proposal is a writing that speaks for itself. Any remaining allegations of this paragraph are denied.
11. WSP lacks sufficient information to admit or deny; therefore, denied.
12. WSP admits that Wood and Eagle House entered into a Professional Services Agreement that appears to be attached as Exhibit A to Plaintiff’s Complaint. The Professional Services Agreement is a writing that speaks for itself. WSP further admits that a document is attached to the Complaint as part of Exhibit A which appears to be the Proposal, which is a writing that speaks for itself. Any remaining allegations of this paragraph are denied.
13. The Proposal is a writing that speaks for itself. To the extent the allegations of this paragraph are inconsistent in any way with the Proposal, the allegations are denied.
14. Admitted.
15. Admitted.
16. Admitted.

17. Admitted.

18. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

19. The Professional Services Agreement is a writing that speaks for itself. To the extent the allegations of this paragraph are inconsistent with the Professional Services Agreement, the allegations are denied.

20. Admitted.

21. Admitted.

22. The Professional Services Agreement is a writing that speaks for itself. To the extent the allegations of this paragraph are inconsistent with the Professional Services Agreement, the allegations are denied.

23. Denied.

24. Denied.

25. The Professional Services Agreement is a writing that speaks for itself. To the extent the allegations of this paragraph are inconsistent with the Professional Services Agreement, the allegations are denied.

26. Denied.

27. WSP lacks sufficient information to admit or deny; therefore, denied

FIRST CAUSE OF ACTION
(Breach of Contract)

28. WSP reincorporates and restates its preceding responses herein.

29. This paragraph sets forth legal conclusions to which no response is required. To the extent a response is deemed required, the allegations are denied.

30. Denied.

31. Denied.

SECOND CAUSE OF ACTION
(Breach of Express and Implied Warranties)

32. WSP reincorporates and restates its preceding responses herein.
33. Admitted.
34. The Professional Services Agreement is a writing that speaks for itself. To the extent the allegations of this paragraph are inconsistent with the Professional Services Agreement, the allegations are denied.
35. Denied.
36. Denied.
37. Denied.
38. Each and every allegation contained in the Complaint not specifically admitted is denied.

THIRD DEFENSE
SET OFF

WSP is entitled to a set off for amounts owed to WSP by Eagle House pursuant to the Professional Services Agreement.

FOURTH DEFENSE
GOOD FAITH

WSP acted in good faith and believed its actions were legitimate.

FIFTH DEFENSE
WAIVER, ESTOPPEL, and LACHES

The claims set forth in the Complaint are barred by the doctrines of waiver, estoppel, and/or laches.

SIXTH DEFENSE
CONTRIBUTORY FAULT

Plaintiff's claims should be barred or reduced according to Plaintiff's own fault, or the fault of its agents, representative and/or consultants.

SEVENTH DEFENSE
FAILURE TO MITIGATE

Plaintiff has failed to act reasonably to prevent, mitigate, or otherwise lessen the alleged damages.

EIGHTH DEFENSE
PRIOR BREACH BY PLAINTIFF

Plaintiff's claims should be barred or reduced on account of Plaintiff's prior breach of the contract at issue.

NINTH DEFENSE
THIRD PARTY FAULT

The claims against WSP are barred or limited by the contributing, concurring, intervening, or superseding fault, negligence, or breach by persons or entities other than WSP, and any fault or negligence by WSP, the existence of which is denied, was passive and secondary in light of the primary and active fault, negligence, or breach by others. WSP asserts such fault, negligence, or breach as a basis for the elimination or reduction of any liability by WSP, the existence of which is denied.

TENTH DEFENSE
PUNITIVE DAMAGES UNAVAILABLE

The claims asserted by Plaintiff do not support recovery of punitive damages, which were in any event waived under the Professional Services Agreement.

ELEVENTH DEFENSE
CONTRACTUAL LIMITATIONS ON LIABILITY AND DAMAGES

Plaintiff's claims are barred or reduced by the contractual limitations on liability and damages set forth in the Professional Services Agreement.

TWELFTH DEFENSE
WAIVER OF JURY TRIAL

Plaintiff waived the right to a jury trial for any disputes arising out of the Professional Services Agreement.

THIRTEENTH DEFENSE
STATUTE OF LIMITATIONS/CLAIMS TIME BARRED

Plaintiff's claims are barred by the applicable statutes of limitations and/or the time limitations set forth in the Professional Services Agreement.

FOURTEENTH DEFENSE
WAIVER AND RELEASE

Plaintiff's claims and alleged damages have been waived or released to the extent provided in the Professional Services Agreement.

FIFTEENTH DEFENSE
NO REPRESENTATION OR WARRANTY

WSP disclaimed any representations or warranties to Plaintiff other than what was expressed in Paragraph 2 of the Professional Services Agreement

SIXTEENTH DEFENSE
NO ATTORNEYS FEES

The Professional Services Agreement does not allow Plaintiff to recover its attorneys' fees.

SEVENTEENTH DEFENSE
RESERVATION

WSP reserves the right to assert additional defenses as the evidence so warrants.

WSP'S COUNTERCLAIM AGAINST EAGLE HOUSE AND THIRD-PARTY
COMPLAINT AGAINST H2O MITIGATION SERVICES, LLC AND POND &
COMPANY, INC.

1. WSP incorporates its previous responses to the Complaint herein. WSP is a corporation organized under the laws of the State of New York and authorized to do business in South Carolina. WSP is the successor-in-interest to the rights and obligations of WSP USA

Environment & Infrastructure, Inc. under the Professional Services Agreement. WSP USA Environment & Infrastructure, Inc. was the successor-in-interest to Wood's rights and obligations under the Professional Services Agreement.

2. Eagle House Mitigation Bank, LLC ("Eagle House") is a company organized and existing under the laws of South Carolina and maintains its principal place of business in Richland County, South Carolina.

3. Pond & Company, Inc. ("Pond") is a corporation organized under the laws of the State of Georgia and authorized to do business in South Carolina.

4. H2O Mitigation Services, LLC ("H2O") is a limited liability company organized under the laws of the State of South Carolina and authorized to do business in South Carolina.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this Court because the original action giving rise to these claims was filed in this Court.

FIRST CAUSE OF ACTION **BREACH OF CONTRACT – AGAINST EAGLE HOUSE**

6. WSP hereby incorporates its prior responses and allegations, including those in its Answer, as if fully set forth herein.

7. Wood and Eagle House entered into the Professional Services Agreement.

8. After acquiring Wood, WSP USA Environment & Infrastructure, Inc. performed all obligations required of it under the Professional Services Agreement except as may have been excused by Eagle House's conduct.

9. Eagle House breached the Professional Services Agreement by failing to pay WSP all sums owed pursuant to the Professional Services Agreement.

10. Eagle House's breach is the proximate and actual cause of damages sustained by WSP in an amount greater than \$25,000.00.

SECOND CAUSE OF ACTION
BREACH OF CONTRACT – AGAINST POND

11. WSP hereby incorporates its prior responses and allegations, including those in its Answer, as if fully set forth herein.

12. WSP or its predecessor-in-interest subcontracted a portion of its scope of work under the Professional Services Agreement to Pond pursuant to a June 8, 2021 Reciprocal Services Subcontract Agreement and associated Work Orders (the “Subcontract”).

13. WSP or its predecessor-in-interest fully performed all obligations required of it under the Subcontract except as may have been excused by Pond’s conduct.

14. WSP denies Eagle House’s allegations that it or its predecessors-in-interest failed to perform its/their obligations under the Professional Services Agreement; however, to the extent it is determined that WSP or its predecessors-in-interest failed to perform under the Professional Services Agreement, it is due to Pond’s failure to fully and adequately perform the services required by the Subcontract.

15. To the extent it is determined that WSP or its predecessors-in-interest failed to perform under the Professional Services Agreement, Pond’s breach of the Subcontract is the proximate and actual cause of damages sustained by WSP, to the extent damages are awarded to Eagle House and against WSP in this action.

THIRD CAUSE OF ACTION
NEGLIGENCE – AGAINST H2O

16. WSP hereby incorporates its prior responses and allegations, including those in its Answer, as if fully set forth herein.

17. H2O contracted to perform the work for Eagle House on the project that is the subject of Eagle House’s complaint.

18. H2O owed a duty of care to Eagle House and WSP or WSP's predecessors-in-interest to competently perform its work on the project consistent with the applicable standard of care and industry standards.

19. To the extent it is determined that WSP or its predecessors failed to perform pursuant to the Professional Services Agreement, those failures were the result of H2O's failure to properly perform its work on the project consistent with the applicable standard of care and industry standards.

20. To the extent it is determined that WSP or its predecessors failed to perform under the Professional Services Agreement, H2O's breach of the applicable standard of care is the proximate and actual cause of damages sustained by WSP, to the extent damages are awarded to Eagle House and against WSP in this action.

FOURTH CAUSE OF ACTION
EQUITABLE INDEMNITY - AGAINST H2O

21. WSP hereby incorporates its prior responses and allegations, including those in its Answer, as if fully set forth herein

22. H2O contracted to perform the work for Eagle House on the project that is the subject of Eagle House's complaint.

23. Eagle House asserts claims and seeks damages against WSP that, while disputed, if determined to be valid, result from H2O's defective and incomplete work and failure to perform work consistent with the applicable standard of care and industry standards.

24. WSP and its predecessors had no fault in causing the damages sought by Eagle House.

25. WSP has incurred expenses necessary to protect its interest in defending against Eagle House's claims.

26. To the extent it is determined that WSP or its predecessors failed to perform under the Professional Services Agreement, H2O's defective and incomplete work and breach of the applicable standard of care are the proximate and actual cause of damages sustained by WSP, to the extent damages are awarded to Eagle House and against WSP in this action.

WHEREFORE, WSP respectfully prays the Court as follows:

1. That Plaintiffs have and recover nothing from WSP by way of this action;
2. That the Court enter a judgment in favor of WSP and against Eagle House in an amount to be proven at trial, but in excess of \$25,000.00;
3. That the Court enter a judgment in favor of WSP and against Pond in an amount to be proven at trial, but in excess of \$25,000.00;
4. That the Court enter a judgment in favor of WSP and against H2O in an amount to be proven at trial, but in excess of \$25,000.00;
5. That the costs of this action be taxed to Plaintiff and/or Pond and H2O;
6. For such other and further relief as this Court may deem just and appropriate.

This the 3rd day of March, 2025.

WINDLE | TERRY | BIMBO

s/ Louis Segreti

Louis Segreti (S.C. Bar. No. 107134)

3020 W. Arrowood Rd., Suite 102

Charlotte, NC 28273

Telephone: (704) 944-3244

Facsimile: (704) 626-6446

lsegreti@wtbconstructionlaw.com

*Attorneys for Defendant/Third-Party Plaintiff WSP
USA, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he/she served the foregoing **DEFENDANT WSP USA, INC.'S ANSWER, MOTION TO DISMISS, COUNTERCLAIM AND THIRD-PARTY COMPLAINT** by depositing a copy by electronic mail and/or in the United States mail, postage paid and addressed to the following:

Ian T. Duggan, Esq.
Callison Tighe & Robinson, LLC
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Columbia, SC 29202-1390
Email: IanDuggan@CallisonTighe.com
Attorneys for Plaintiff

This the 3rd day of March, 2025.

/s/ Louis Segreti
Louis Segreti

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Eagle House Mitigation Bank, LLC,

Plaintiff,

vs.

WSP USA, Inc.,

Defendant.

C.A. No: 2024-CP-40-07265

DEFENDANT WSP USA, INC.'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

WSP USA, Inc.,

Third-Party Plaintiff,

vs.

H2O Mitigation Services, LLC; and Pond
& Company, Inc.,

Third-Party Defendants.

COMES NOW, Defendant WSP USA, Inc. (“WSP” or “Defendant”), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and files this Motion for Partial Summary Judgment as to Plaintiff Eagle House Mitigation Bank, LLC’s (“Eagle House”) First Cause of Action for Breach of Contract, Second Cause of Action for Breach of Express and Implied Warranties, and WSP’s Eleventh Affirmative Defense – Contractual Limitations on Liability and Damages. In support of this Motion, Plaintiff relies on the pleadings in this action, which incorporate the Professional Services Agreement between WSP’s predecessor-in-interest and Eagle House, and would show the Court the following:

MOTION FOR PARTIAL SUMMARY JUDGMENT

1. Plaintiff Eagle House is a mitigation banker involved in the environmental mitigation of degraded streams and wetlands in exchange for marketable credits. After a degraded

EXHIBIT

3

area is restored to an adequate state, a mitigation banker like Eagle House may be permitted to sell mitigation credits to others who intend to engage in construction projects that will negatively affect a stream or wetland within the approved service area. The US Army Corps of Engineers (“USACE”) ultimately determines whether mitigation credits are issued to the mitigation banker.

2. Defendant WSP is the successor-in-interest to Wood Environment & Infrastructure Solutions, Inc. (“Wood”). Wood entered into a September 21, 2021 Professional Services Agreement with Eagle House to perform certain services for the Eagle House Mitigation Bank Project located in Fairfield County, South Carolina (the “Project”), including pre-construction support, construction quality assurance, and preparation of an as-built report.

3. In its Complaint, Eagle House alleges that Eagle House “agreed to the terms of Wood’s Professional Services Agreement...” which is attached to the Complaint as Exhibit A, along with Wood’s proposal for the Project.

4. The PSA was executed by Michael Tighe, Manager of Eagle House and a founding member of the law firm Callison Tighe. Mr. Tighe is an attorney and an experienced mitigation banker.

5. The PSA contains a limitation of liability which provides in relevant part:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CLIENT AGREES THAT THE LIABILITY OF WOOD TO CLIENT FOR ANY AND ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, CONTRIBUTION, ASSERTED BY CLIENT AND ARISING OUT OF OR RELATED TO THE NEGLIGENT ACT(S), ERROR(S) OR OMISSION(S) OF WOOD IN PERFORMING SERVICES, SHALL BE LIMITED TO FIFTY THOUSAND DOLLARS (\$50,000) OR THE TOTAL FEES ACTUALLY PAID TO WOOD BY CLIENT UNDER THIS AGREEMENT WITHIN THE PRIOR ONE (1) YEAR PERIOD, WHICHEVER IS LESS (“LIMITATION”). CLIENT HEREBY WAIVES AND RELASES (I) ALL PRESENT AND FUTURE CLAIMS AGAINST WOOD OTHER THAN THOSE DESCRIBED IN THE PRECEDING SENTENCE, AND (II) ANY LIABILITY OF WOOD IN EXCESS OF THE LIMITATION.

In consideration of the promises contained herein and for other separate, valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLIENT acknowledges and agrees that (I) but for the Limitation, Wood would not have performed the Services, (II) it has had the opportunity to negotiate the terms of the Limitation as part of an “arms-length” transaction, (III) the Limitation amount may differ from the amount of professional liability insurance carried by Wood, (IV) the Limitation is merely a limitation of, and not an exculpation from, Wood’s liability and does not in any way obligate CLIENT to defend, indemnify or hold harmless Wood, (V) the Limitation is an agreed remedy, and (VI) the Limitation amount is neither nominal or a disincentive to Wood performing the Services in accordance with the Standard of Care.

Wood and CLIENT each hereby waive any right to recover from the other party for any special, incidental, indirect, or consequential damages (including, but not limited to: loss of use, loss of revenue, loss of profit, loss of contracts, loss of product or production, or loss of business opportunity) incurred by either Wood or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by services performed or reports prepared or other work performed hereunder.

6. The contractual limitation of liability in the PSA plainly and unambiguously limits the liability of WSP for any and all claims and causes of action arising out of or related to Wood’s negligent acts, errors or omissions in performing services to the lesser of \$50,000.00 or the fees paid to WSP within the prior one-year period.

7. Both parties also plainly and unambiguously waived the right to recover any special, incidental, indirect or consequential damages.

8. Contracts should be liberally construed so as to give them effect and carry out the intention of the parties, which intention must, in the first instance, be derived from the language of the contract. *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 497-98 (Ct. App. 2007). If the language of the contract is perfectly plain and capable of legal construction, it alone determines the document’s force and effect. *Id.*

9. The construction of a clear and unambiguous contract is a question of law for the court to determine. *See Can Ins. Co. v. National House Movers, LLC*, 414 S.C. 255, 260 (Ct. App. 2015).

10. Moreover, in an arms-length transaction such as this, South Carolina courts will not invalidate a limitation of liability clause, but will preserve the parties' freedom of contract. *See Gladden v. Boykin*, 402 S.C. 140, 145 (2013) ("Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract.").

11. South Carolina Rules of Civil Procedure, Rule 56 provides that a defending party "may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all **or any part thereof.**" *See also Bank of America v. Draper*, 405 S.C. 214 (Ct. App. 2013) (affirming summary judgment as to a portion of a claim for damages).

12. Eagle House asserts two claims against WSP, its First Cause of Action for Breach of Contract and Second Cause of Action for Breach of Express and Implied Warranties.

13. Eagle House alleges that WSP failed to "utiliz[e] the degree of skill and care ordinarily exercised under similar conditions by reputable members of Wood's profession practicing in the same or similar locality at the time of performance." *See* Complaint ¶ 22 and 23. Eagle House further alleges that "[b]ecause of WSP's defective acts and omissions, USACE has declined to release credits to Eagle House for sale..."

14. These limitations of liability in the PSA clearly and unambiguously apply to both of Eagle House's claims against WSP, which allege, among other things, "defective acts and omissions."

15. While Eagle House apparently contends that the limitation of liability only applies to claims actually sounding in negligence, this interpretation of the PSA flies in the face of the plain language of the PSA, which clearly applies to "ANY AND ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, CONTRIBUTION, ASSERTED BY CLIENT AND ARISING OUT OF OR RELATED TO THE NEGLIGENT ACT(S), ERROR(S) OR OMISSION(S) OF WOOD IN PERFORMING SERVICES...", and violates a cardinal rule of contract interpretation by rendering the "ANY AND ALL CAUSES OF ACTION" language meaningless. *See Stevens Aviation, Inc. v. DynCorp Intern. LLC*, 407 S.C. 407, 416-17 (2014) (interpretations that give meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous); *Thomas-McCain, Inc. v. Siter*, 268 S.C. 193, 197 (1977) (The parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof.) *See also Reyhani v. Sone Creek Cove Condominium II Horizontal Property Regime*, 329 S.C. 206, 212 (Ct. App. 1997) (contracts should be interpreted so as to give effect to all provisions, if practical) (citing 17A Am.Jur.2d Contracts § 385 (1991)).

16. Eagle House's proffered construction also fails because a party can negligently fail to perform a contract (which is essentially what Eagle House alleges in this case) and such a claim sounds in contract, not in tort. *See Carroll v. Isle of Palms Pest Control, Inc.*, 2025 WL 2055721 *5, No. 2023-001655 (July 23, 2025) ("The cause of action for failing to perform or negligently performing a contract is breach of contract.").

17. Eagle House's proffered construction would also render the limitation inapplicable to any claim whatsoever (when the limitation expressly provides that it is applicable to all claims), because a negligence claim between contracting parties is ordinarily barred by the economic loss rule.

18. Accordingly, there is no genuine issue of material fact and WSP is entitled to judgment of a matter of law that the limitation of liability in the PSA applies to both of Eagle House's claims, capping Eagle House's damages at a maximum of \$50,000.00 in direct damages.

19. WSP is entitled to partial summary judgment in its favor on Eagle House's First Cause of Action for Breach of Contract, Second Cause of Action for Breach of Express and Implied Warranties, and WSP's Eleventh Affirmative Defense – Contractual Limitations on Liability and Damages.

20. WSP may also rely upon WSP's Memorandum of Law in Support of this Motion, which will be filed in accordance with the SCRCP, responses to written discovery in this case, and the arguments of counsel for WSP at the hearing on this Motion.

WHEREFORE, Defendant WSP USA, Inc. respectfully prays that the Court:

1. Grant partial summary judgment in favor of WSP and against Eagle House as to Eagle House's First Cause of Action for Breach of Contract against WSP, capping Eagle House's potential damages at a maximum of \$50,000.00 in direct damages;

2. Grant partial summary judgment in favor of WSP and against Eagle House as to Eagle House's Second Cause of Action for Breach of Warranty against WSP, capping Eagle House's potential damages at a maximum of \$50,000.00 in direct damages;

3. Grant partial summary judgment in favor of WSP and against Eagle House as to WSP's Eleventh Affirmative Defense – Contractual Limitations on Liability and Damages, capping Eagle House's potential damages at a maximum of \$50,000.00 in direct damages;

4. Grant WSP such other and further relief as the Court deems just and proper.

This the 5th day of September, 2025.

WINDLE | TERRY | BIMBO

s/ Louis Segreti

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Jul 17 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Court Judge

Appellate Case No. 2026-001292
Case No.: 2024-CP-40-07265

Eagle House Mitigation Bank, LLC, Respondent,

v.

WSP USA, Inc., Appellant,

AND

WSP USA, Inc., Third-Party Plaintiff,

v.

H2O Mitigation Services, LLC and Pond & Company, Inc., Third-Party Defendants.

PROOF OF SERVICE

The undersigned hereby certifies that on July 17, 2026, a copy of ***RETURN ON MOTION TO DISMISS*** was served on all counsel of record via email containing the above referenced document to counsel's individual email addresses:

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July 17, 2026
Charlotte, North Carolina