

TECHNICAL SERVICES AGREEMENT

THIS TECHNICAL SERVICES AGREEMENT (the "*Agreement*") is made and entered into as of the 24th day of April, 2023 (the "*Effective Date*") by and between The Westervelt Company ("*WESTERVELT*") and Montrose Air Quality Services, LLC ("*CONTRACTOR*").

WHEREAS, WESTERVELT requires annual compliance testing services at its sawmill facility in Moundville, Alabama and desires to contract with CONTRACTOR to perform these services; and

WHEREAS, CONTRACTOR desires to perform the services described in Section 1 for WESTERVELT, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Services. CONTRACTOR's services hereunder shall include the services (the "*Services*") described in the Proposal for Annual Emissions Testing - Permit 406-S003 - Engineering Evaluation - Units B-WW1 & B-WW2 Wood Fired Boilers (PM, NO_x & CO) - Compliance - Unit B-WW1 & B-WW2 Wood Fired Boilers (TPM, & Gases), Facility Located - Moundville, AL, Montrose Project No.: SE010AS-035320-PQ-1986 Rev 1, dated April 13, 2023, a copy of which is incorporated herein by reference (the "*Proposal*"). The Services shall be performed by CONTRACTOR in accordance with the Proposal and with this Agreement. In the event of any conflict between the terms of this Agreement and the Proposal, the terms of this Agreement shall govern.

2. Personnel. CONTRACTOR shall employ such personnel as may be necessary or required to perform the Services required hereunder in accordance with standards of the industry for the Services provided. CONTRACTOR shall use a degree of professional care and skill in the performance of the Services hereunder in accordance with acceptable professional industry practices. CONTRACTOR shall provide prompt written notice to WESTERVELT if CONTRACTOR becomes aware (after the Term or otherwise) of any error, omission or inconsistency in the Services or information provided to WESTERVELT.

3. Changes in Services. WESTERVELT or CONTRACTOR may request a change to the Proposal, including modification of the Services, by submitting such request in writing to the other party (a "*Change Order*"). Change Orders shall become effective only when executed by authorized representatives of both parties.

4. Term. The Services shall be performed pursuant to the Proposal.

5. Fees and Expenses. In consideration for the Services to be performed for WESTERVELT by CONTRACTOR, WESTERVELT agrees to pay the fees set forth in the Proposal (the "*Fees*") in accordance with the provisions set forth therein. The parties total Fees associated with performing the Services will not exceed \$26,000. Unless otherwise agreed to in the Proposal, CONTRACTOR shall be responsible for payment of all expenses incurred in the performance of

the Services. Invoices shall be prepared in accordance with the CONTRACTOR's standard invoicing practices and shall be paid in full by WESTERVELT within thirty (30) days of WESTERVELT's receipt thereof.

6. Intentionally deleted.

7. Representations, Warranties and Covenants of CONTRACTOR. CONTRACTOR represents, warrants and covenants that (a) the Services provided will be performed and delivered in a timely manner as required by the Proposal; (b) the Services provided will be performed, created and supervised by qualified personnel; (c) CONTRACTOR will comply with all applicable federal, state and local laws and regulations in performance of the Services; (d) CONTRACTOR expressly warrants that all Services performed by CONTRACTOR will conform to recognized acceptable professional standards and practices and shall be free from defects; (e) CONTRACTOR shall be solely responsible for the acts and omissions of CONTRACTOR, its employees, contractors, subcontractors and their agents and employees, and other persons or entities performing any portions of the Services for, or on behalf of or under the direction of CONTRACTOR; and (f) CONTRACTOR has the power and authority to enter into and perform its obligations under this Agreement.

8. Representations, Warranties and Covenants of WESTERVELT. WESTERVELT represents, warrants and covenants that WESTERVELT has the power and authority to enter into and perform its obligations under this Agreement.

9. Indemnities. CONTRACTOR agrees to indemnify, hold harmless, and defend WESTERVELT, its officers, directors, employees and agents (the "Indemnified Parties"), from and against all demands, claims, actions or causes of action, litigation, liability, loss, damages, and all reasonable costs and expenses (including attorneys' fees and costs) relating thereto, whenever asserted against the Indemnified Parties to the extent caused by or arising out of (i) a breach of any representation, warranty, covenant or agreement of CONTRACTOR contained in or made pursuant to this Agreement or any agreement delivered pursuant hereto; (ii) any claim of conflict with or infringement upon any patent, application for patent, invention, service mark, trademark, trade name, copyright, trade secret or secret formula of any person, corporation, or entity arising out of the development, design, engineering and production of the Services; or (iii) the negligence or intentional misconduct of CONTRACTOR, its officers, employees, agents or contractors; provided, however, that CONTRACTOR's foregoing obligations shall be limited by the extent, if any, of an indemnitee's proportionate negligence and/or fault.

10. Confidential Information.

(a) During the course of this Agreement, information that is confidential or proprietary to one party (the "*Disclosing Party*") may be disclosed to the other party (the "*Receiving Party*"), including, but not limited to, product designs, structural details, construction and installation methods, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, marketing plans and business data (collectively, the "*Confidential Information*"). The parties agree that the existence of, and terms and conditions of, this Agreement shall be considered Confidential Information for the purposes of this Section 10. Confidential Information shall not

include information: (i) that was in the public domain, or which subsequently becomes part of the public domain, except by the wrongful disclosure hereunder by the Receiving Party; (ii) that was in the Receiving Party's possession prior to receipt of the same hereunder and was not acquired from a third party under any obligation of confidentiality with respect to such information; (iii) that was received by the Receiving Party from a third party who had a right to make such disclosure; (iv) that can be proven to have been independently developed by the Receiving Party; (v) that is approved in writing for release by the Disclosing Party; or (vi) that a party has been compelled to produce by subpoena or other legal process, provided that such compelled party gives the other party prompt notice of such legal process and cooperates with the other party in seeking a protective order or other appropriate protection.

(b) Each party agrees: (i) that the Receiving Party shall treat the Disclosing Party's Confidential Information as confidential and will take reasonable precautions to prevent unauthorized disclosure or use of the Disclosing Party's Confidential Information, such precautions taken being at least as great as the precautions taken to protect its own Confidential Information (but in no case less than reasonable care); (ii) that the Receiving Party will not disclose the Disclosing Party's Confidential Information to any third party without the Disclosing Party's prior written authorization; (iii) that the Receiving Party will not use the Disclosing Party's Confidential Information except for the purpose of providing Services or fulfilling obligations under this Agreement; (iv) that the Receiving Party will promptly return any documents, models, software storage devices, audio tapes, video tapes, or prototypes embodying the Disclosing Party's Confidential Information upon request; and (v) that the Receiving Party will limit disclosure of Confidential Information to those officers and employees of the Receiving Party and any other authorized persons requiring such disclosure to perform Services under this Agreement, in which case the Receiving Party shall notify its employees, officers, and such other authorized persons of their confidentiality obligations with respect to the Confidential Information and shall require such employees, officers and other authorized persons to comply with the obligations in this Section 10. Notwithstanding the foregoing, the Receiving Party may retain copies of the Confidential Information or other documents, notes and records derived from the Confidential Information retained in Receiving Party's standard automatic electronic archives or as are required to be maintained in order to satisfy any law, regulation, or internal record-keeping requirement of the Receiving Party. The Receiving Party shall hold such Confidential Information, documents or records in accordance with the terms of this Agreement.

11. Termination.

(a) Termination for Default. If one party defaults in the performance of, or fails to perform, any of its material obligations under this Agreement, the non-defaulting party shall have the right to terminate this Agreement effective on the date thirty (30) days after the date of written notice to the defaulting party of the non-defaulting party's intention to terminate this Agreement if such default is not cured to the non-defaulting party's satisfaction within such thirty (30) day period. In the event of any such termination, the non-defaulting party shall be entitled (i) to pursue such remedies as are available to it in law or in equity and (ii) to recover from the defaulting party reasonable attorneys' fees incurred by the non-defaulting party in conjunction with the same.

(b) Termination for Cause. Either party may terminate this Agreement effective immediately upon written notice to the other party if any one of the following events occurs: (i) the other files a voluntary petition in bankruptcy or an involuntary petition is filed against it, (ii) the other is adjudged a bankrupt, (iii) a court assumes jurisdiction of the assets of the other under a federal reorganization act, (iv) a trustee or receiver is appointed by the court for all or a substantial portion of the assets of the other, (v) the other becomes insolvent or suspends business or (vi) the other makes an assignment of its assets for the benefit of its creditors.

(c) Termination without Cause. Either party may terminate this Agreement for its convenience, effective upon five (5) days' prior written notice to the other party.

(d) Effect of Termination. Upon termination of this Agreement for any reason, CONTRACTOR shall (i) immediately stop work on the terminated portion of this Agreement, and (ii) submit to WESTERVELT an invoice with supporting information setting forth the Fees for the Services performed prior to the effective date of termination, which WESTERVELT shall pay in accordance with Section 5 hereof. In addition, each party shall return the other party's respective Confidential Information in accordance with Section 10(b).

12. Records.

(a) Agreement to Keep Records. CONTRACTOR agrees to keep itemized records with respect to all aspects of the Services (the "Records"), with copies of such Records to be the property of WESTERVELT.

(b) Delivery of Records to WESTERVELT. On termination of this Agreement, final completion of the Services or on demand of WESTERVELT at any time, CONTRACTOR shall deliver to WESTERVELT copies of the Records that are in the possession of CONTRACTOR or under the control of CONTRACTOR and that are the property of WESTERVELT or relate to the Services. CONTRACTOR shall deliver the Records in paper and electronic format, with the electronic format being provided as CAD files or other similar program. CONTRACTOR shall be able to retain the Records for future use and services to be provided to WESTERVELT. CONTRACTOR shall not use such Records in connection with any other project or party without first obtaining WESTERVELT's prior written consent.

13. Insurance. In addition to any insurance CONTRACTOR deems in its interest to purchase because of risks assumed under this Agreement or otherwise, CONTRACTOR shall maintain in force at its own expense: (i) all insurance required by any applicable federal, state or local statutes, laws, rules or regulations; and, (ii) the following forms of insurance coverage at least in the amounts specified:

Workmen's Compensation - Statutory

- (A) Employer's Liability - \$1,000,000 each accident
\$1,000,000 disease - policy limit
\$1,000,000 disease - each employee
- (B) Voluntary Compensation Endorsement
- (C) Waiver of subrogation in favor of WESTERVELT
- (D) Broad Form All States Endorsement (when applicable)

- (E) United States Longshoremen and Harbor Workers Act Coverage and/or Jones Act (when applicable)

Commercial Public Liability (ISO Form CG 00 01 10 01 or equivalent) – without limiting endorsements

- (A) Limits of Liability – \$1,000,000 each occurrence
\$2,000,000 general aggregate
\$2,000,000 products – completed operations aggregate
\$1,000,000 personal injury
\$5,000 medical payments
- (B) Policy shall include the following types of coverage:
- (1) Premises & Operations
 - (2) Independent Contractors
 - (3) Products & Completed Operations
 - (4) Explosion, Collapse and Underground (XC&U)
 - (5) Contractual Liability. This insurance shall include standard contractual liability coverage of the hold harmless and indemnification provisions set forth in this Agreement in favor of WESTERVELT.
 - (6) Additional insured including completed operations
 - (7) Waiver of subrogation
 - (8) CONTRACTOR's coverage shall be primary and non-contributory

Automobile Liability – Comprehensive Form (including contractual liability)

- (A) Limits of Liability – \$1,000,000 each accident (combined single limit for bodily injury and property damage)
- (B) Policy shall include the following types of coverage:
- (1) Owned, non-owned and hired vehicles
 - (2) WESTERVELT to be included as an Additional Insured
 - (3) Waiver of subrogation in favor of WESTERVELT

Professional Liability

Limits of Liability - \$2,000,000 per claim
\$4,000,000 aggregate

Policy to provide coverage for negligent acts, errors or omissions arising out of the professional services to performed for or on behalf of WESTERVELT. Prior acts coverage shall have a retroactive coverage date that precedes the commencement of any professional services to be performed under this Agreement and be kept in force for a period of 1 year following completion of the Services.

Umbrella Liability

Limit of Liability - \$5,000,000 per occurrence
\$5,000,000 aggregate
Self -Insured Retention - \$10,000
Employer's Liability in Excess of \$100,000

At least five (5) days prior to the commencement of the Services hereunder, CONTRACTOR shall furnish to WESTERVELT insurance certificates evidencing that all insurance required herein is in full force and effect and naming WESTERVELT as an additional insured or loss payee, as applicable. All such certificates and policies of insurance required herein shall include evidence of or contain an endorsement specifying that such insurance will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to WESTERVELT. CONTRACTOR shall not begin any portion of the Services until all certificates of insurance have been provided to WESTERVELT.

The fact that insurance is obtained by CONTRACTOR or by WESTERVELT on behalf of CONTRACTOR will not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by WESTERVELT from CONTRACTOR or any third party will not be limited by the amount of the required insurance coverage.

14. Relationship of the Parties. CONTRACTOR and WESTERVELT acknowledge and agree that the relationship between CONTRACTOR and WESTERVELT hereunder shall be that of independent contractor, and nothing contained herein shall be construed or interpreted as creating any other relationship between the parties including, but not limited to, employer/employee, principal/agent, partnership, or joint venture. Neither party shall have the right, or be permitted to represent itself as having the right, to bind or obligate the other party in any manner whatsoever.

15. Intentionally deleted.

16. Severability. Should any provision of this Agreement or part thereof be held under any circumstances in any jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or other part of such provision.

17. Governing Law. This Agreement shall be deemed to have been made and entered into in the State of Alabama, and the construction, validity and enforceability of this Agreement shall be governed by the internal laws of the State of Alabama, without regard to conflict of laws principals. The parties hereto hereby consent to the exclusive jurisdiction of the federal or state courts located in Tuscaloosa County, Alabama for purposes of enforcing this Agreement or resolving any and all disputes or disagreements arising out of this Agreement. In the event of a dispute regarding any of the terms and conditions of this Agreement, the prevailing party shall be entitled to recover from the other party the costs and expenses of resolving the dispute, including without limitation reasonable attorneys' fees.

18. Entire Agreement. This Agreement, including any and all Exhibits hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All prior contemporaneous or other oral or written statements, representations or agreements by or between the parties with respect to the subject matter hereof are merged herein. Notwithstanding the foregoing, if the parties have previously or contemporaneously executed a written agreement with respect to the exchange of confidential information, then that agreement shall remain in full force and effect following the execution and termination of this Agreement.

19. Amendments. Any modification or amendment of any provision of this Agreement (including the Exhibits) must be made in writing and signed by an authorized representative of each party. An amendment may be made as of an effective date specified therein, notwithstanding the actual date of execution of the amendment.

20. Consent and Waiver. No term or provision of this Agreement shall be deemed waived, and no variation of terms or provisions hereof shall be deemed consented to, unless such waiver or consent shall be in writing and signed by the party against whom such waiver or consent is sought to be enforced. Any delay, waiver or omission by either party to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver by such party of any subsequent breach or default of the same or other terms, provisions or covenants on the party of either party.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

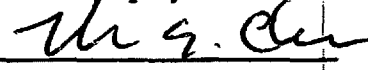
22. Survival. Those provisions that would require survival in order to give them full force and effect shall survive the termination or expiration of this Agreement, regardless of the date, cause or manner of such termination.

23. Costs and Attorneys' Fees. If any party hereto is required to retain an attorney to enforce any provision of this Agreement, whether or not a legal proceeding is commenced, the substantially prevailing party or parties shall be entitled to recover from the other reasonable attorneys' fees and other costs incurred, regardless of whether at trial, on appeal, in any bankruptcy proceeding or without resort to suit. Attorneys' fees covered by this paragraph include, without limitation, fees incurred without resort to suit, at trial, in bankruptcy proceedings to modify or vacate any automatic stay of such legal action or proceeding, in appeals, and in post-judgment collection services. Costs covered by this paragraph include, without limitation, the costs of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, and title insurance premiums.

IN WITNESS WHEREOF, WESTERVELT and CONTRACTOR have caused this Agreement to be signed by their respective duly authorized representatives, all as of the day and year first above written.

"WESTERVELT"

The Westervelt Company


By: 

Name: Tommy Clemmons

Title: Complex Manager

"CONTRACTOR"

Montrose Air Quality Services, LLC

By: 

Name: Jeremy S. Clark

Title: VP Operations