

## COMMERCIAL PROJECT AGREEMENT

AGREEMENT made as of the 8th day of April in the year 2024.  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

The Westervelt Company  
1400 Jack Warner Parkway, NE  
Tuscaloosa, Alabama 35404

and the Contractor:  
(Name, legal status, address and other information)

Mark Conley Construction Co LLC  
1523 Magnolia Church Road  
Statesboro, GA 30461

for the following Project:  
(Name, location and detailed description)

Provide equipment and materials required to complete the repair and remodeling work at Owner's facility located at 1082 Hiltonia-Perkins Rd, Sylvania, GA 30467 in accordance with the Contract Documents and as requested by Owner.

The Owner and Contractor agree as follows:

### ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 written specifications provided by Owner;
- .3 the Proposal from Contractor (the "Contractor Proposal");
- .4 written orders for changes in the Work issued after execution of this Agreement.

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The number of calendar days available to the Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of this Agreement unless otherwise indicated below. The Contractor shall complete all work pursuant to the terms of this Agreement no later than September 1, 2024.

### ARTICLE 3 CONTRACT SUM

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is \$34,450.

### ARTICLE 4 PAYMENT

§ 4.1 Based on Contractor's Applications for Payment (or invoices) submitted to the Owner, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

The Owner shall make payment to the Contractor not later than 30 days after receipt of each Application for Payment (or invoice), subject to, however, the Owner's right to withhold payment as set forth in Article 12 of this Agreement.

## ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall provide Contractor's general liability and other insurance as follows:

In addition to any insurance the Contractor deems in its interest to purchase because of risks assumed under this Agreement or otherwise, the 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. Additionally, the Contractor shall maintain such forms of insurance as required by this section for the longer of: (i) 5 years or (ii) the statute of limitations applicable to this Agreement. The Contractor agrees to have the Owner designated as an additional insured under all insurance policies of the Contractor acquired or maintained to fulfill the requirements for insurance imposed by this section. The Contractor waives any and all rights of recovery against the Owner for any loss or damage covered by any insurance acquired or maintained by the Contractor for its benefit (including all rights that might otherwise accrue to any subrogee) where such waiver does not void the Contractor's insurance. The Contractor further waives subrogation rights against the Owner.

- .1 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
- .2 Commercial Public Liability – 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 cover all contractual agreements, both oral and written, including, but not limited to, the hold harmless and indemnification agreements of the Contractor set forth in this Agreement in favor of the Owner.
- .3 Automobile Liability – Comprehensive Form (including contractual liability endorsement)
  - (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) the Owner to be included as an Additional Insured
    - (3) Waiver of subrogation in favor of the Owner
- .4 Umbrella
  - 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

Upon the commencement of the Work hereunder, the Contractor shall furnish to the Owner insurance certificates evidencing that all insurance required herein is in full force and effect and naming the Owner 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 it will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Contractor shall not begin any portion

of the Work until all certificates of insurance have been provided to the Owner.

§ 5.2 The Contractor shall cause the general liability insurance coverage required herein to be primary and non-contributory to any coverage of the Owner.

## **ARTICLE 6 GENERAL PROVISIONS**

### **§ 6.1 THE CONTRACT**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

### **§ 6.2 THE WORK**

The term "Work" means the construction, installation and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

### **§ 6.3 INTENT**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

## **ARTICLE 7 OWNER**

### **§ 7.1 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### **§ 7.2 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

### **§ 7.3 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

§ 7.3.1 The Owner reserves the right to perform construction, installation or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.3.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

## **ARTICLE 8 CONTRACTOR**

### **§ 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.

## **§ 8.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

§ 8.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction and installation means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Contractor shall be an independent contractor in respect to all services to be performed hereunder. Nothing herein contained shall in any way constitute the parties hereto as partners or joint ventures or create any other relationships between them.

§ 8.2.2 The Contractor shall be solely responsible for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of or under the direction of the Contractor or any of its Subcontractors.

§ 8.2.3 The Contractor shall, in the performance of the Work, comply with all applicable federal, state (including any and all Georgia immigration laws) and local laws, ordinances, rules and regulations, and shall require such compliance by its Subcontractors and all other persons and legal entities for which the Contractor is responsible.

## **§ 8.3 LABOR AND MATERIALS**

§ 8.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

## **§ 8.4 WARRANTY**

§ 8.4.1 The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects; and (3) the Work will conform to the requirements of the Contract Documents.

§ 8.4.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work, any and all warranties relating to the materials and/or labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

## **§ 8.5 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

## **§ 8.6 PERMITS, FEES AND NOTICES**

§ 8.6.1 The Contractor shall obtain and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

§ 8.6.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work that is contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

## **§ 8.7 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

## **§ 8.9 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

#### **§ 8.10 INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, except to the extent that such claims, liabilities, damages, actions, costs and expenses arise solely from the negligence or misconduct of the Owner.

#### **ARTICLE 9 ARCHITECT**

Intentionally Deleted.

#### **ARTICLE 10 CHANGES IN THE WORK**

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead.

§ 10.2 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

#### **ARTICLE 11 TIME**

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

#### **ARTICLE 12 PAYMENTS AND COMPLETION**

##### **§ 12.1 CONTRACT SUM**

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

##### **§ 12.2 APPLICATIONS FOR PAYMENT**

§ 12.2.1 The Contractor shall present Applications for Payment (or invoices) to the Owner once every thirty (30) days, together with supporting evidence, as required by the Owner, demonstrating that the Work for which payment is sought, has been completed in accordance with the Contract Documents. Each such invoice shall show the Work completed for which payment is requested under such invoice and shall include such back-up documentation as Owner may require to evidence the Work being invoiced, including receipts, bills, supporting invoices and other reasonable documents and such other backup documentation evidencing the payment of subcontractors, materialmen and suppliers for Work previously invoiced and paid for by the Owner (including lien waivers if requested by the Owner). The Owner shall have the right to inspect the Work to determine its compliance with the Contract Documents.

##### **§ 12.3 REASONS FOR WITHHOLDING PAYMENTS**

The Owner may withhold payment of an invoice or Application for Payment, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- (a) defective Work not remedied;
- (b) third party claims filed unless security acceptable to Owner is provided by the Contractor;
- (c) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract;
- (e) reasonable evidence that the Work will not be completed by the date required hereunder; or
- (f) failure to carry out the Work in accordance with the Contract Documents

##### **§ 12.4 FINAL COMPLETION AND FINAL PAYMENT**

§ 12.4.1 Once the Contractor believes that the Work has been fully completed, the Contractor shall submit to the Owner an itemized final Application for Payment (or invoice) for the Work. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner may reasonably require (including any backup

documentation included in Section 12.2.1 above). Upon receipt of such final Application for Payment and all supporting materials reasonably required by the Owner, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner shall make final payment to the Contractor, subject to the Owner's right to withhold payment in whole or in part, pursuant to Section 12.3 above.

§ 12.4.2 Final payment shall not become due until the Contractor submits to the Owner releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

§ 12.4.3 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.4 The Owner shall not have responsibility for payments to a subcontractor or supplier.

§ 12.4.5 In the event that there exists, or subsequently exists at any time after final payment by the Owner under this Agreement, any mechanics', materialmen's or laborers' lien or claim or any other lien or claim, legal or equitable, contractual, or statutory, on the Work caused to be filed by a subcontractor, sub-subcontractor, material supplier or laborer in connection with the Work, the Contractor herein agrees to indemnify, defend and hold harmless, the Owner from any such lien or claim and immediately satisfy payment of such lien so as to cause the lien to be immediately released and satisfied (which such indemnification shall not be interpreted to limit any other indemnification provision set forth in this Agreement between the Owner and the Contractor).

§ 12.4.6 Such final payment to the Contractor, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not otherwise in accordance with the requirements of the Contract Documents.

§ 12.4.7 Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

#### **ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

Further, the Contractor shall take all reasonable measures and precautions for the safety of its employees and subcontractors so as to prevent injuries to any person who enters upon the Work site, and shall comply with all applicable provisions of federal, state and local safety laws, including but not limited to all requirements under the Occupational Safety and Health Act. Contractor shall ensure that its employees and subcontractors are provided with and comply with any plant safety requirements of Owner, however, Owner shall have no responsibility to ensure that the Contractor provides a safe working environment or complies with such requirements or other occupational safety and health laws, rules and regulations.

#### **ARTICLE 14 CORRECTION OF WORK**

§ 14.1 The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents. The one year period for correction of the Work shall include all labor and materials supplied by the Contractor, any Subcontractors or sub-subcontractors. Furthermore, the one-year period for correction of Work shall be extended by corrective Work performed by the Contractor for an additional year, but only as to the corrective Work (labor and materials) and any inseparable components of such corrective Work.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.2 and invoice the Contractor for the cost of such work.

§ 14.4 Nothing contained in this Article 14 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Article relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

##### **§ 15.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

##### **§ 15.2 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

#### **ARTICLE 16 TERMINATION OF THE CONTRACT**

##### **§ 16.1 Intentionally Deleted.**

##### **§ 16.2 TERMINATION BY THE OWNER FOR CAUSE**

§ 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

##### **§ 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

#### **ARTICLE 17 OTHER TERMS AND CONDITIONS**

§ 17.1 All actions required to be taken by the Owner and the Contractor for the authorization, execution, delivery and performance of this Agreement and any other documents contemplated hereby have been taken. This Agreement is, and any documents executed pursuant hereto will be, legal, valid and binding obligations of the parties hereto or thereto, enforceable against each such party in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium and other laws or equitable principles affecting creditors' rights generally.

§ 17.2 The Contractor is and shall at all times during the term of this Contract, be properly licensed as a contractor under Georgia law.

##### **§ 17.3 SEVERABILITY.**

Should any provision of this Agreement be declared invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected and shall continue in full force and effect as if this Agreement had been executed with the invalid or unenforceable portion eliminated.

**§ 17.4 ENTIRE AGREEMENT.**

This Contract, including all exhibits hereto (each of which are incorporated herein by reference) constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, representations, or promises between the parties. Neither party may rely upon or attempt to enforce any agreement, promise or representation regarding the subject matter of this Agreement that is not contained in the written provisions of this Agreement and its Exhibits. This Agreement may not be modified or amended except by a written instrument specifically referring to this Agreement and signed by the Parties.

**§ 17.5 HEADINGS, INTERPRETATION.**


The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract. This Contract is the product of negotiations between commercial parties represented by counsel, and shall not be construed against either party.

**§ 17.6 COUNTERPARTS.**


This Contract may be executed and delivered by facsimile, electronically transmitted signature and/or by "PDF", and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties shall promptly after execution deliver original, signed copies of this Agreement to the other Party, but the failure to deliver originals shall not affect the validity of this Agreement.

This Agreement entered into as of the day and year first written above.

**THE WESTERVELT COMPANY**

By:   
Name: Dave Donaldson  
Its: Executive Vice President

**MARK CONLEY CONSTRUCTION CO, LLC**

By:   
Name: Benjamin Mark Conley  
Its: Member/Manager

LICENSE NO.: Not Applicable/Not Needed  
JURISDICTION: Georgia