



## 2023 TERMS AND CONDITIONS

The following describes the compensation and terms of payment to Walden Environmental Engineering PLLC (Walden) for professional services in connection with the project outlined in the proposal/work authorization (the "Project"). Cost estimates presented in proposals are valid for sixty (60) days from the date of the proposal, unless an alternate period is specified therein. Acceptance of a proposal/work authorization by the Client constitutes a valid and binding contract subject to the terms and conditions set forth herein. These Terms and Conditions are deemed incorporated into the proposal/work authorization.

### 1.0 FEES

#### 1.1 Hourly Rates

Charges for services will be based upon the following hourly rates for the various classes of personnel, which may be assigned to the Project as Walden deems appropriate at its discretion.

#### Personnel Classification Hourly Rates

Principal	\$220.00
Vice President	\$200.00
Project Manager	\$170.00 to \$200.00
EHS Division Director	\$125.00 to \$175.00
Project Engineer	\$115.00 to \$190.00
Project Scientist	\$115.00 to \$190.00
CAD Analyst/GIS Analyst	\$115.00 to \$155.00
EHS Specialist	\$95.00 to \$165.00
Administrative	\$90.00
Intern	\$85.00
Subcontractors Per Proposal	

Increased hourly rates (typically 150% hourly rates) may be applicable for litigation support services and expert testimony and shall be negotiated by the Parties prior to the rendering of such services.

The foregoing hourly rates include Walden's overhead and profit. Out-of-pocket expenses such as travel, subsistence, long distance telephone, reproduction, computer time, equipment rental, laboratory costs and subcontractor charges shall be invoiced at Walden's cost plus 15% service fee to cover insurance and accounting costs.

#### 1.2 Invoicing and Payment

Invoices shall be submitted monthly to Client and shall contain a description of work performed, a list of personnel and time expended by each person and a detailed list of reimbursable expenses.

#### 1.3 Retainer

Any retainer provided by Client shall be applied to outstanding Invoices at the discretion of Walden.

#### 1.4 Subcontractors

Client shall be responsible for the fees and expenses of any subcontractors retained by Walden in connection with the Project. Such subcontractor fees shall be included in Walden invoices, as applicable. Walden shall not be liable for claims, damages, judgments, awards, penalties, fines, costs, and expenses whatsoever arising from acts or omissions of subcontractors whether engaged by Client or Walden.

#### 1.5 Terms

Terms are Net fifteen (15) days. Balances remaining unpaid fifteen (15) days after the date of the applicable Invoice are subject to a finance charge of 1.5% per month until paid. Notwithstanding such provision for the payment of interest, in the event any invoice remains unpaid for a period of

sixty (60) days, Walden shall have the option to stop rendering services and treat the contract as having been breached by Client.

#### 1.6 Costs of Collection

Walden shall have the right to recover from Client any and all fees and costs, including, without limitation, legal fees and expenses relating to time incurred by Walden personnel, in connection with the collection of any amounts owed by Client to Walden.

#### 1.7 Responsible Party for Payment

In the event that an attorney, contractor, or any other person/entity executes the contract on behalf of a third party, the attorney, contractor, or other person/entity that signs the proposal/work authorization will be responsible for all payments agreed to in the proposal/work authorization, if the third party refuses to pay. The attorney, contractor, or other person/entity shall provide Walden with the third party contact information including name of person responsible for payment, address, phone, fax and email at the time the agreement is signed by attorney, contractor, or other person/entity.

### 2.0 GENERAL TERMS & CONDITIONS

#### 2.1 Limitation of Liability

In consideration of the hourly rates charged Client, Client agrees that Walden's liability to Client (including liability under law to indemnify Client) shall not exceed fees paid by Client to Walden hereunder during the twelve (12) months immediately preceding the date of the act or omission that gave rise to the Claim (less any fees paid to Walden but passed on to subcontractors). If Client does not wish this limitation to apply, increased liability limits may be negotiated upon Client's written request, prior to commencement of services and must be set forth in the proposal/work authorization. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN WRITING, WALDEN MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO WALDEN'S SERVICES (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). IN NO EVENT SHALL WALDEN BE LIABLE, WHETHER UNDER CONTRACT, LAW, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF INVESTMENT), EVEN IF WALDEN IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY, ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THESE TERMS AND CONDITIONS. THIS LIMITATION ON LIABILITY SHALL NOT APPLY TO THE EXTENT NOT PERMITTED UNDER APPLICABLE LAW.

#### 2.2 Information Provided by Client

In connection with the Project, Client may furnish Walden with information. Client represents and warrants that all information will be complete and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances under which such statements are or will be made. Client acknowledges and agrees that in rendering its services, Walden will be using and relying on the information supplied to it by Client without independent verification and that Walden's obligations in connection with the Project are subject to the accuracy and completeness of such information. Walden shall have no liability for defects in any services attributable to Walden's reliance upon or use of information furnished by Client or third parties retained by Client.



### 2.3 Indemnification of Walden

Client agrees to indemnify and hold Walden harmless from all claims, judgments, awards, penalties, and fines whatsoever and fees, costs, and expenses relating thereto including, without limitation, attorney's fees ("Claims"), for damage to property and personal injury arising out of the breach of these Terms and Conditions, negligent acts or misconduct of Client, those persons for whom it is legally responsible and third parties retained by Client, or arising out of any unsafe condition not created by Walden on Client's property.

### 2.4 Indemnification for Services as Arranger

In addition to any other provision for indemnification of Walden provided for herein, Client agrees to indemnify Walden from all Claims whatsoever arising out of Walden's arranging for the transportation of any hazardous waste or contaminants from the site of the Project. In the event that Client requests Walden to sign any manifest or other document or agreement in connection with the transportation of any hazardous waste or contaminants from the site of the Project, Walden shall not be liable for any Claims arising in connection therewith.

### 2.5 Walden Not Generator of Waste

Nothing implied by or stated in these Terms and Conditions shall be interpreted or construed to make Walden the owner or generator of any waste, contamination, or contaminated product present on the site. Client has the entire responsibility for all contaminants and wastes found at the worksite, and further hereby indemnifies and holds Walden harmless from any and all Claims relating to or arising in connection with any waste, contamination, or contaminated product present on the site.

### 2.6 Spread of Contamination

Client understands and agrees that Walden shall not be responsible for any claim for direct or indirect damage arising as a result of contamination caused by Walden's or its subcontractor's work unless shown to be caused by Walden's gross negligence.

### 2.7 Site Access and Security

Unless specifically agreed otherwise, Client is responsible for obtaining any necessary permission from any property owners for access or use of their property, and Client shall obtain written authorizations to enter and use property as necessary in Walden's performance of the Services. Client shall be responsible for, and further indemnify and hold Walden harmless from, any and all Claims arising from the disturbance of surface or subsurface lands or waters, except where such damage can be shown to be caused by Walden's gross negligence.

### 2.8 Underground Structure and Utilities

In the performance of its services, Walden will take all reasonable care and precautions to avoid damage to underground structures or utilities. Client agrees to indemnify, and hold Walden harmless from any and all Claims and damage to or consequential loss from damage to any underground structures or utilities which are not called to Walden's attention in writing or which were not shown on plans furnished to Walden by Client, except where such damage can be shown to be caused by Walden's gross negligence.

### 2.9 Federal/Local Right to Know Compliance

Client shall provide Walden with a list of hazardous substances known to be present at the worksite.

### 2.10 Engineering Services in New York State

The education laws of the State of New York require that a licensed professional engineer or registered architect in the state be in responsible charge of all professional services rendered in New York. Walden is a New York Professional Limited Liability Corporation (PLLC) whose principal shareholder is a professional engineer in the State of New York. Walden, through its principal shareholder, will be in responsible charge of all professional engineering and architectural services under any contract for such services performed for the Client. Such employee will have direct supervisory authority over all personnel assigned to perform professional

engineering services. All professional services rendered to the Client in the State of New York will be performed by Walden.

### 2.11 No Liability for Subcontractors

Walden is not liable for any act or omission of a subcontractor retained in connection with the Project.

### 2.12 Client Representations

Client represents and warrants as follows:

- (a) The person executing the proposal/work authorization has the authority to do so and to bind the Client to these Terms and Conditions and the proposal/work authorization;
- (b) Client has disclosed all information necessary for Walden to provide the services set forth in the proposal/work authorization;
- (c) Client has obtained any necessary permission from any property owners for access or use of their property and for Walden to enter and use property as necessary in Walden's performance of the Services;
- (d) Client has disclosed any and all information it knows or should know relating to any contamination of or hazardous waste or product on the site;
- (e) Client has provided Walden all information it knows or should know about the existence of any underground structures or utilities on the site;
- (f) Client agrees not to disclose the terms of the proposal/work authorization or of these Terms and Conditions without Walden's written consent.

### 2.13 Compliance Audit/Reporting Obligations

- (a) If, as a result of (i) providing the Services or (ii) conducting an environmental compliance audit, Walden discovers and discloses to Client any contamination or the existence of hazardous substances or product on the site, Walden shall not be liable for Client's failure to take any measures (including, without limitation, any remediation) suggested by Walden.
- (b) Client acknowledges that Walden may be required under applicable laws and regulations to disclose any contamination or existence of hazardous substances or products on the site and Client agrees not to assert or commence any claim of any nature against Walden as a result of its disclosure of any contamination or the existence of hazardous substances or products on the site.

### 2.14 Termination

The services may only be terminated in accordance with the proposal/work authorization. In the event of such termination, Client shall be responsible for all fees and expenses arising up and through the date of termination.

### 2.15 Change in Services

No change in the services or scope of work shall be binding on Walden unless in writing, and email shall not create a binding obligation or be sufficient to change the services unless from Joseph M. Heaney, III.

### 2.16 Confidentiality

Walden agrees to keep confidential and to not disclose to any person or entity (other than Walden's employees and subcontractors), without the prior consent of Client, all data and information not previously known to and generated by Walden, or furnished to Walden and marked "Confidential" by Client; provided, however, that these provisions shall not apply to data that: are in the public domain; were previously known to Walden; or were independently acquired by Walden from third parties under no obligation to Client to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of Walden, nor shall they be interpreted to in any way restrict Walden from complying with a legally enforceable order to provide information or data. Client agrees that Walden may use and publish Client's name and a general description of Walden's services with respect to the project in describing Walden's experience and qualifications to others. Client also agrees that any patentable or copyrightable concepts developed by Walden in the course of Walden's services hereunder are the sole and exclusive property of Walden.



**3.0 MISCELLANEOUS**

**3.1 Relationship**

Notwithstanding any provision hereof, for all purposes of these Terms and Conditions, each party shall be and act as an independent contractor and not as partner, joint venturer, employer, employee, or agent of the other and shall not bind nor attempt to bind the other to any contract.

**3.2 Force Majeure**

Walden shall not be responsible for any failure to perform its obligations hereunder due to any cause or event beyond its reasonable control, including, without limitation, acts of God, war, terrorism, riots, fires, floods, earthquakes, quarantines, strikes, lockouts, or other labor difficulties. Walden shall give Client prompt notice of such cause or event and in no case any later than five (5) calendar days after such cause or event. The notice shall describe the nature of the cause or event, including an estimation of its expected duration and probable impact on the ultimate performance of Walden's obligations hereunder.

**3.3 Governing Law/Venue**

These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of law provisions. Exclusive jurisdiction and venue for any action arising under these Terms and Conditions is in the federal and state courts located in Nassau County, New York, and both parties hereby consent to such jurisdiction and venue for this purpose.

**3.4 Notice**

Any notice required or permitted to be given hereunder will be effective upon receipt and shall be given in writing, via established express courier service (with confirmation of receipt), confirmed facsimile or registered or certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses given herein or at such other address designated by written notice.

**3.5 Additional Provisions**

- (a) These Terms and Conditions along with the Scope of services or proposal/work Authorization constitute the entire agreement and supersede all prior negotiations, understandings, or agreements (oral or written), between the parties concerning the subject matter of these Terms and Conditions (and all past dealing or industry custom).
- (b) Headings are for convenience of reference only and shall in no way affect the interpretation of these Terms and Conditions.
- (c) No change, consent, or waiver to these Terms and Conditions will be effective unless in writing and signed by the party against which enforcement is sought.
- (d) The failure of a party to enforce its rights under these Terms and Conditions at any time for any period will not be construed as a waiver of such rights.
- (e) Unless expressly provided otherwise, each right and remedy in these Terms and Conditions is in addition to any other right or remedy, at law or in equity, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.
- (f) In the event that any provision of these Terms and Conditions is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that these Terms and Conditions will otherwise remain in full force and effect and enforceable.
- (g) A facsimile copy of an executed proposal/work authorization is binding and enforceable as an original instrument.

Revised 01/2023 WEE