

### Expert Witness Consultant Agreement

This agreement is entered into between Joseph W. Kowalski, P.E. herein referred to as the Consultant, and City of Broken Arrow, Oklahoma, herein referred to as the Client-Attorney.

The purpose of this agreement is to procure the services of the consultant in relation to case:

Case name: City of Broken Arrow v. Contech et al CJ-2017-295

The Consultant shall provide services for the Client-Attorney as an independent professional. Payment to the Consultant is not dependent upon the findings which the Consultant renders, or on the outcome of any legal action, mediation, arbitration, or the amount or terms of any settlement of the underlying legal cause, nor on any contractual arrangement between the client-attorney and any other person or party.

**Fees:** the fees for services provided by the consultant will be billed by the hour, not to exceed a total of \$25,000.00, rounded up to the nearest half-hour, as follows:

**Consultant Fee:** Except as outlined herein, the Client-Attorney shall compensate the Consultant at the following rates:

<u>Principal Professional Engineer:</u>	<u>\$160/hour</u>
<u>Registered Professional Engineer:</u>	<u>\$130/hour</u>
<u>Draftsperson:</u>	<u>\$90/hour</u>
<u>Senior Technician:</u>	<u>\$80/hour</u>
<u>Clerical Staff:</u>	<u>\$80/hour</u>

**Deposition Trial Fee:** For testimony at deposition or trial, the Client-Attorney shall compensate the Consultant at the rate of \$260.00 per hour, to be billed in hourly increments. This rate for testimony shall apply both while the Consultant is waiting to give testimony, whether at an office or court and for time taken for breaks or meals, as well as for time spent actually giving testimony. A minimum charge of \$2,000.00 (8 hours) will apply to any day for which a deposition or trial is scheduled, unless cancelled by noon of the day prior.

**Expenses:** Expenses incurred by the Consultant shall be reimbursed by the Client-Attorney as follows:

- **Mileage:** 50 cents per mile;
- **Travel by air or Train:** The actual cost of the round-trip ticket, plus a ten percent (10%) handling fee. Unless otherwise instructed by the Client-Attorney, or unless refundable tickets are not available, the Consultant will purchase refundable tickets for any necessary travel. Should the Client-Attorney request that the Consultant purchase non-refundable tickets in order to travel at a lower cost, or if refundable tickets are not available, the Client-Attorney shall

reimburse the Consultant for the cost of any non-refundable ticket at the rate outlined herein whether or not the ticket is used;

- **Lodging:** For any travel of more than sixty (60) miles from Cincinnati, OH the Consultant shall be reimbursed for the cost of meals and lodging, plus a ten percent (10%) handling fee;
- **Car Rental:** in the event of travel beyond the local area, the Consultant shall be reimbursed for the cost of a mid-sized rental car and any associated expenses, plus a ten percent (10%) handling fee;
- Expenses associated with photography, courier services, postage, reproduction of documents & photographs, preparation of exhibits, storage of materials or evidence, & other reasonable expenditures shall be reimbursed at cost plus ten percent (10%);

The Client-Attorney may avoid the ten percent handling fee associated with certain travel expenses by arranging to directly purchase round-trip travel tickets on behalf of the expert, and by arranging for the direct payment of any car rental expense, lodging, and meal expenses by the Client-Attorney's office.

**Qualifications:** The Client-Attorney has had the opportunity to investigate and verify the credentials of the Consultant, and agrees that the Consultant is qualified to perform the services described in this agreement.

**Terms of Engagement:** The Client-Attorney is responsible for payments to the Consultant as outlined in this agreement, regardless of any arrangement the Client-Attorney has with any party or parties he represents. The Consultant will issue bills on a monthly basis, or whatever other interval he deems appropriate. Bills are due on receipt, and shall be considered delinquent if unpaid more than thirty days after their date of issuance. Interest shall accrue to any delinquent balance at the maximum rate permitted by law, not to exceed 1.5 per cent per month. In the event that a bill remains unpaid for sixty or more days after the date of issuance, the Consultant shall have the unrestricted right to resign from performing additional services for the Client-Attorney on any and all cases that the Consultant is working on for the City of Broken Arrow, Oklahoma.

**Choice of Law and Jurisdiction:** this agreement shall be interpreted under the laws of the State of Oklahoma. Any litigation under this agreement shall be resolved in the trial courts of Tulsa County, State of Oklahoma.

**Acceptance:** I accept the terms of this agreement:

**City of Broken Arrow**

Represented by: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael L. Spurgeon, City Manager

Joseph W. Kowalski, P.E.

Represented by: Joseph W. K. Date: July 23, 2019  
Joseph W. Kowalski, P.E.

Approved as to form:

Heaven K.

Deputy City Attorney