

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES FOR
RIGHT-OF-WAY ACQUISITION WITH
H.W. LOCHNER, INC.**

THE STATE OF TEXAS

§

THE CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

THIS AGREEMENT for professional consulting services related to right-of-way acquisition for the RM 620 Project (the "Agreement") is made by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299, (the "City") and H.W. LOCHNER, INC., a Texas Corporation, located at 5767 Eagles Nest Boulevard, Tyler, Texas 75703 (the "Consultant").

RECITALS:

WHEREAS, City has determined that there is a need for relocation assistance services and related project management services in connection with right-of-way acquisition for the RM 620 Project; and

WHEREAS, City desires to contract for such professional services; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 EFFECTIVE DATE, DURATION, AND TERM

This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

The term of this Agreement shall be for a period of two (2) years from the effective date hereof or until all services are completed to the satisfaction of the City, whichever occurs first.

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2.01 CITY SERVICES

City agrees to provide the services delineated in Exhibit "A" titled "City Services," attached hereto and incorporated herein for all purposes.

3.01 SCOPE OF SERVICES

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "B," attached hereto and incorporated herein for all purposes. Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform services in accordance with this Agreement, in accordance with the appended proposal for services, and in a professional and workmanlike manner.

4.01 CONTRACT AMOUNT

Fee: In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant in accordance with Exhibit "C" entitled "Fee Schedule," which document is attached hereto and incorporated herein for all purposes, in payment for services and the Scope of Services deliverables as delineated in Exhibit "B."

Reimbursable Expenses: There shall be no payments for reimbursable expenses included in this Agreement.

Additional Work: In the event City desires changes to the Scope of Services attached hereto or to work previously completed to the satisfaction of the City, City shall make a written request to Consultant for the additional work and shall pay for the additional work in accordance with the fees set forth in Exhibit "C."

5.01 INVOICE REQUIREMENTS; TERMS OF PAYMENT

Invoices: To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by City. Such invoices shall conform to the schedule of services and costs in connection therewith.

Should additional backup material be requested by City relative to service deliverables, Consultant shall comply promptly. In this regard, should City determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

Payment of Invoices: City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, City shall endeavor to pay

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Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 6.01 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and City or because of amounts which City has a right to withhold under this Agreement or state law. City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant's net income.

6.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date the City receives a correct invoice for the goods or services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by the City in the event:

- (a) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or
- (b) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- (c) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or
- (d) The invoice is not mailed to the City in strict accordance with any instruction on the purchase order relating to the payment.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to purchase the services as determined by the City's budget for the fiscal year in question. The City may effect such termination by giving Consultant a written notice of termination at the end of its then-current fiscal year.

8.01 TERMINATION; DEFAULT

Termination: It is agreed and understood by Consultant that the City may terminate this Agreement for the convenience of the City, upon thirty (30) days' written notice to Consultant, with the understanding that immediately upon receipt of said notice all work being performed

under this Agreement shall cease. Consultant shall invoice the City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this project shall become the property of the City upon termination of this Agreement, and shall be promptly delivered to the City in a reasonably organized form without restriction on future use. Should the City subsequently contract with a new consultant for continuation of service on the project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of the City and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

Default: Either party may terminate this Agreement, in whole or in part, for default if the Party provides the other Party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the Parties).

If default results in termination of this Agreement, then the City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to the City, the cost to the City of employing another firm to complete the useable work, and other factors will affect the value to the City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating Party and the terminated Party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

9.01 NON-SOLICITATION

All parties agree that they shall not directly or indirectly solicit for employment, employ, or otherwise retain staff of the other during the term of this Agreement.

10.01 CITY'S RESPONSIBILITIES

Consultant's performance requires receipt of all requested information reasonably necessary to provision of services. Consultant agrees, in a timely manner, to provide City with a comprehensive and detailed information request list, if any.

11.01 INDEPENDENT CONTRACTOR STATUS

Consultant is an independent contractor, and is not the City's employee. Consultant's employees or subcontractors are not the City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No party has authority to enter into contracts as agent for the other party. Consultant and the City agree to the following rights consistent with an independent contractor relationship:

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.
- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

12.01 CONFIDENTIALITY; MATERIALS OWNERSHIP

Any and all programs, data, or other materials furnished by the City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

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The parties recognize and understand that the City is subject to the Texas Public Information Act and its duties run in accordance therewith.

All data relating specifically to the City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. The City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Any and all materials created and developed by Consultant in connection with services performed under this Agreement, including all trademark and copyright rights, shall be the sole property of City at the expiration of this Agreement.

13.01 WARRANTIES

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industry standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

14.01 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to the City's satisfaction at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by the City, its directors, employees or agents.

In no event shall Consultant be liable to the City, by reason of any act or omission relating to the services provided under this Agreement (including the negligence of Consultant), whether a claim be in tort, contract or otherwise, (a) for any consequential, indirect, lost profit, punitive, special or similar damages relating to or arising from the services, or (b) in any event, in the aggregate, for any amount in excess of the total professional fees paid by the City to Consultant under this Agreement, except to the extent determined to have resulted from

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Consultant's gross negligence, willful misconduct or fraudulent acts relating to the service provided hereunder.

15.01 INDEMNIFICATION

Consultant agrees to hold harmless, exempt, and indemnify City, its officers, agents, directors, servants, representatives and employees, from and against any and all suits, actions, legal proceedings, demands, costs, expenses, losses, damages, fines, penalties, liabilities and claims of any character, type, or description, including but not limited to any and all expenses of litigation, court costs, attorneys' fees and all other costs and fees incident to any work done as a result hereof.

To the extent allowable by law, City agrees to hold harmless, exempt, and indemnify Consultant, its officers, agents, directors, servants, representatives and employees, from and against any and all suits, actions, legal proceedings, demands, costs, expenses, losses, damages, fines, penalties, liabilities and claims of any character, type, or description, including but not limited to any and all expenses of litigation, court costs, attorneys' fees and all other costs and fees incident to any work done as a result hereof.

16.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party may assign any rights or delegate any duties under this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld.

17.01 LOCAL, STATE AND FEDERAL TAXES

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. The City will not do the following:

- (1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;
- (2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or
- (3) Withhold state or federal income tax from any of Consultant's payments.

If requested, the City shall provide Consultant with a certificate from the Texas State Comptroller indicating that the City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the

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City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights, if required in the performance of the services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.

B. Services Provider acknowledges and understands that City has adopted a Storm Water Management Program (SWMP) and an Illicit Discharge Ordinance, Sections 14-139 through 14-152 of the City's Code of Ordinances, to manage the quality of the discharges from its Municipal Separate Storm Sewer System (MS4) and to be in compliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollutant Discharge Elimination System (TPDES). The Services Provider agrees to perform all operations on City-owned facilities in compliance with the City's Illicit Discharge Ordinance to minimize the release of pollutants into the MS4. The Services Provider agrees to comply with of the City's stormwater control measures, good housekeeping practices and any facility specific stormwater management operating procedures specific to a certain City facility. In addition, the Services Provider agrees to comply with any applicable TCEQ Total Maximum Daily Load (TMDL) Requirements and/or I-Plan requirements.

19.01 FINANCIAL INTEREST PROHIBITED

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required hereunder.

20.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- (1) When delivered personally to recipient's address as stated herein; or
- (2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Consultant:

H.W. Lochner, Inc.
5767 Eagles Nest Boulevard
Tyler, Texas 75703

Notice to City:

City Manager, City of Round Rock
221 East Main Street
Round Rock, TX 78664

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AND TO:

Stephan L. Sheets, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and Consultant.

21.01 INSURANCE

Consultant shall meet all City of Round Rock Insurance Requirements set forth at: http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf

22.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

23.01 EXCLUSIVE AGREEMENT

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

24.01 DISPUTE RESOLUTION

The City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

25.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement to replace any

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stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

26.01 STANDARD OF CARE

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to the City and according to generally accepted business practices.

27.01 GRATUITIES AND BRIBES

City, may by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City Officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

28.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure an anticipatory repudiation of this Agreement.

29.01 MISCELLANEOUS PROVISIONS

Time is of the Essence. Consultant agrees that time is of the essence and that any failure of Consultant to complete the services for each phase of this Agreement within the agreed project schedule may constitute a material breach of this Agreement. Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

Force Majeure. Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default

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or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.

Section Numbers. The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

Waiver. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, which taken together shall be considered one original. The City agrees to provide Consultant with one fully executed original.

[Signatures on the following page.]

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

H.W. Lochner, Inc.

By: Sheila M. Mills
Printed Name: SHEILA M. MILLS
Title: VICE-PRESIDENT
Date Signed: 6-20-16

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

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EXHIBIT "A"
CITY SERVICES

1. Provide an approved Right of Way Map and Property Descriptions when received.
2. Provide timely reviews and approval of submissions.
3. Provide all necessary standard forms.
4. Provide a parcel owner list for all parcels including names, addresses and phone numbers.
5. Provide final approval for all appraisals.

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EXHIBIT "B"
SCOPE OF SERVICES

The following services will be undertaken by Consultant on the parcels directed by City for the RM 620 Project from Deepwood Drive to IH 35:

1. Relocation Services

a. Personal Property, Residential & Business

- (1) Notify all property owners and potential displacees of eligibility for relocation assistance and provide them with a Relocation Assistance Brochure at time of initial contact. If possible, advise displacee of preliminary relocation benefits at this time.
- (2) Contract and provide relocation assistance to property owners and tenants affected by acquisition of right of way.
- (3) For residential relocation, locate, evaluate, and maintain files on comparable available housing.
- (4) Calculate replacement housing supplement benefits.
- (5) Compute and submit request for relocation housing/rental supplement to City with supporting documentation attached.
- (6) Provide 90-day notice to vacate simultaneous with the delivery of relocation benefits package.
- (7) Sixty days later if displacees have not vacated and if the parcel has been acquired, issue a 30 day letter.
- (8) Notify City immediately if displacee does not move after 30-day notice expires.
- (9) Perform a decent, safe, and sanitary inspection of the replacement housing.
- (10) Prepare moving plan with appropriate photos and sketches along with inventory of personal property to be moved for non-residential moves.
- (11) Request moving estimates from moving companies as needed.
- (12) Coordinate moves with displaced homeowners, business owners, and tenants and with moving companies in accordance with City procedures.
- (13) Maintain relocation contact logs.
- (14) Attend closings on replacement property if requested by any party involved, and assure supplemental payment is properly distributed.
- (15) Process and compute increased interest payments as required.
- (16) Relocation agent shall be available for any appeals or hearings.
- (17) Prepare all relocation payment claim submissions for all displacees on parcel.
- (18) Deliver payments in accordance with City guidelines.

2. Project Administration

- a. Maintain current status reports of all parcel and project activities and provide monthly or as requested to City.
- b. Participate in project review meetings as determined by City.
- c. Provide copies of all incoming and outgoing correspondence as generated if requested.
- d. Maintain copies of all correspondence and contacts with property owners.

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EXHIBIT "C"
HOURLY FEE SCHEDULE

Project Team Members	Hourly Rate
Principal-Project Manager	\$ 215
Relocation Agent	\$ 130
Administrative Support	\$ 90

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