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MEMORANDUM

TO: Central Florida Expressway Authority Board Members
FROM: David A. Shontz, Esq., Right-of-Way Counsel
DATE: August 25, 2014
RE: Agreement for Business Damage Claims Accounting Services for Wekiva Parkway
Project Numbers 429-203, 429-204, 429-205, and 429-206

A handwritten signature in blue ink is located to the right of the "FROM:" line, extending from the "FROM:" line up towards the "RE:" line.

Approval of an Agreement for Business Damage Claims Accounting Services by Gerson, Preston, Robinson, Klein, Lips & Eisenberg, P.A. ("Accountant") to provide consulting services related to evaluation of business owners' business damage claims for the Wekiva Parkway Project Numbers 429-203-, 429-204, 429-205, and 429-206 is sought from the Central Florida Expressway Authority Board ("Board"). A copy of the proposed Agreement for Business Damage Claims Accounting Services is attached for your review.

BACKGROUND/DESCRIPTION

The contract price is limited to \$100,000.00 or less. Services shall commence upon the execution of the Agreement and shall be provided on a continuous basis until each assigned parcel is completed. The services to be provided by the Accountant are evaluation of owners' business damage claims and advice to Shutts & Bowen regarding valuation of submitted business damage claims in the acquisition of properties for construction of the Wekiva Parkway project and any such other advice, as requested. If requested by Shutts & Bowen, litigation support services to be provided by the Accountant include testimony under oath as an expert witness on behalf of the Central Florida Expressway Authority in any judicial proceeding involving any work performed under the Agreement. All invoices submitted pursuant to the agreement shall be reviewed for accuracy by Shutts & Bowen LLP.

REQUESTED ACTION

It is respectfully requested that the Board approve the terms of the Agreement for Business Damage Claims Accounting Services and authorize execution of the Agreement. Agreement Value: \$100,000.00

ATTACHMENT

Agreement for Business Damage Claims Accounting Services for Wekiva Parkway Project Numbers 429-203, 429-204, 429-205, and 429-206.

**AGREEMENT FOR BUSINESS DAMAGE CLAIMS ACCOUNTING SERVICES
FOR WEKIVA PARKWAY PROJECTS 429-203, 429-204, 429-205, AND 429-206**

THIS AGREEMENT is effective this ____ day of September, 2014, by and between Shutts & Bowen LLP ("Client"), whose business address is 300 South Orange Avenue, Suite 1000, Orlando, Florida 32801 and Gerson, Preston, Robinson, Klein, Lips & Eisenberg, P.A. ("Accountant"), whose business address is 666 Seventy-First Street, Miami Beach, Florida 33141.

WITNESSETH:

WHEREAS, the Client, in its capacity as Right-of-Way Counsel to the Central Florida Expressway Authority, desires to employ the Accountant to provide business damage claims accounting services as described herein; and

WHEREAS, the Accountant is licensed, qualified, willing and able to perform the business damage claims accounting services required on the terms and conditions hereinafter set forth.

WHEREAS, the Central Florida Expressway Authority has given public notice of the business damage claims accounting services to be rendered pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Client and the Accountant do hereby agree as follows:

ARTICLE 1- SERVICES TO BE PROVIDED BY THE ACCOUNTANT

1.1 Pre-Condemnation Consultation Services

If requested by the Client, the Accountant agrees to provide pre-condemnation consultation services and advice regarding business damage claims resulting from any proposed taking and any such other advice, as requested. Payment for such pre-condemnation consultation services shall be made in accordance with the compensation schedule set forth in Exhibit A.

1.2 Accounting Services

The Accountant agrees to perform business damage claims accounting services for each parcel of property as assigned by the Client. Each assignment shall commenced with a notice to proceed letter to the Accounting which shall set forth the street address (or other description) of the property affected and the Due Date for each business damages report(s). It is understood and agreed that the Principal is Gary R. Gerson, CPA, MBA. It is further understood and agreed that the performance of the business damage claims requires the expertise of an individual accountant and the exercise of his or her independent judgment and that the continued and uninterrupted performance of the services is essential, and, therefore, if the Principal leaves the Accountant's employ, for

any reason, the Client shall have the option, in its sole discretion, of assigning this Agreement, and any Addenda hereto, to another Accountant within the firm so that the services shall be rendered without interruption or to appoint a different accounting firm. If the Agreement is assigned to another accounting firm, payment shall be made to the Accountant for all services rendered.

The Principal shall personally review and analyze the business damage claims for each affected parcel assigned by the Client and prepare and deliver two (2) color copies of the business damage claims report(s) to David A. Shontz, Esq. at Shutts & Bowen LLP, 300 South Orange Avenue, Suite 1000, Orlando, Florida 32801, within the timeframe set forth by the Client.

The Accountant shall commence work on the business damage claims report(s) immediately upon assignment and receipt of the notice to proceed letter, shall perform the work in the most expeditious manner and shall complete the business damage claims report(s) within the timeframe set forth in the notice to proceed letter, which the Accountant acknowledges is reasonable. Upon the request from the Client, the Accountant shall provide a progress report which shall advise as to the status of the services to be performed by the Accountant. Any business damage claims report provided hereunder shall be considered a draft report until such time as all business damages claims documents are provided to the Client by the business owner and subsequently provided to the Accountant. The Accountant agrees and understands that it is to provide a draft business damage claims report by the Due Date set forth in the assignment, regardless of whether all requested documentation regarding the business damages claim has been provided.

It is agreed and understood that all services rendered under this Agreement and Addenda hereto are at the direction of the Client, and, as such, all communications and documents of any kind are privileged work product and shall not be provided to any person unless directed by the Client.

The Accountant shall consult with the Client regarding services to be performed by the Accountant, at such time(s) as may be mutually convenient for the parties to this agreement. The Accountant shall initiate such consultations whenever the Accountant legal advice on any aspect of the business damage claims services to be furnished under this Agreement.

1.3 Litigation Support Services

If requested by the Client, the Principal of the Accountant shall personally testify under oath as an expert witness on behalf of the Central Florida Expressway Authority in any judicial proceeding involving any business damage claims reviewed under this Agreement. Payment for such litigation support services shall be in accordance with the compensation schedule attached hereto as **Exhibit A** and shall include such reasonable time as may be required for re-analysis of the business damage claim, updating the

Accountant's report, participation in pretrial conferences with the Client, and preparation for and testifying at depositions, trial, or other judicial proceedings as requested.

1.4 Sub-consultants

The Accountant shall have the right, with the prior written consent of the Client, to employ other firms or individuals to serve as sub-consultants in connection with the Accountant's performance of any services. Upon the written request of the Client, which may be made with or without cause, the Accountant agrees to terminate promptly the services of any sub-consultant and to replace promptly each such terminated sub-consultant with a qualified firm or individual approved by the Client.

The Client shall have no liability or obligation to the sub-consultants hereunder. The Central Florida Expressway Authority shall have the right, but not the obligation, based upon sworn statements of accounts from the sub-consultants, to pay a specific amount directly to a sub-consultant. In such event, the Accountant agrees any such payments shall be treated as a direct payment to the Accountant's account. Sub-consultant fees shall be invoiced at cost with no additional markup applied by the Accountant.

1.5 Accountant's Standards of Performance

The Accountant shall follow all professional standards to the extent such standards are consistent with the rules on the admissibility of evidence of business damage claims value under the eminent domain laws of Florida. The Accountant shall use professional standards of performance to perform all services in such sequence, and in accordance with such reasonable time requirements and reasonable written instructions, as may be requested or provided by the Client. The Accountant has represented that it is possessed of that level of skill, knowledge, experience and expertise that is commensurate with firms of national repute and acknowledges that the Client has relied on such representations. By executing this Agreement, the Accountant agrees that the Accountant will exercise that degree of care, knowledge, skill and ability and agrees to perform the services in an efficient and economical manner.

1.6 Accountant's Obligation to Correct Errors or Omissions

The Accountant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion, and coordination of all data, designs, specifications, calculations, estimates, plans, drawings, photographs, reports, memoranda, other documents and instruments, and other services furnished by the Accountant. The Accountant shall, without additional cost or expense to the Client, correct or revise any errors, omissions, or other deficiencies in the services performed by the Accountant.

1.7 Non-Exclusive Rights

The rights granted to the Accountant hereunder are non-exclusive, and the Client reserves the right to enter into agreements with other Accountants to perform business damage claims services, including without limitation, any of the services provided for herein.

1.8 Accountant's Compliance with Laws and Regulations

The Accountant and its employees and sub-consultants shall promptly observe and comply with all applicable federal, state and local laws, regulations, rules and ordinances then in effect or as amended ("laws"). The Accountant shall procure and keep in force during the term of this Agreement all necessary licenses, registrations, certificates, permits and other authorizations as are required by law in order for the Accountant to render its services hereunder.

1.9 Accountant is not Client's Agent

The Accountant is not authorized to act as the Client's agent and shall have no authority, expressed or implied, to act for or bind the Client. The Accountant is not authorized to act as the agent of the Central Florida Expressway Authority and shall have no authority, expressed or implied, to act for or bind the Central Florida Expressway Authority.

1.10 Reduced Scope of Services

The Client shall have the right, by written notice to the Accountant, to reduce the scope of services to be rendered hereunder. If the Client reduces the services to be rendered, the Accountant will be paid in accordance with the compensation schedule set forth in the attached **Exhibit A** for any time spent in connection with the reduced services. The Accountant shall not be entitled to any anticipated profit as a result of the reduced scope of services.

ARTICLE 2 – TIME

2.1 The date for commencement of the Pre-condemnation Consultation Services (described in Article 1.1) is the effective date of this Agreement. The date for commencement of the Accounting Services (described in Article 1.2) is the effective date of each assignment for service. The date for commencement of the Litigation Support Services (described in Article 1.3) is the date such services are required by the Client.

2.2 The Due Date for the delivery of the business damage claims report(s) shall be included in the notice to proceed letter for each assignment. By accepting the assignment, the Accountant acknowledges that the Due Date is both realistic and achievable, and that the report(s) will be completed by that time.

2.3 If, at any time prior to completion of the services, the Accountant determines that the services are not progressing sufficiently to meet the Due Date, the Accountant shall immediately notify the Client's Representative in writing and shall provide a description of the cause of the delay, the effect on the scheduled Due Date and the recommended action to meet the Due Date.

2.4 No extensions of time shall be granted unless in writing and approved by the Client's Representative. Any requests for extensions shall be in writing explaining in detail why such extension is necessary and shall be made at least seven (7) days prior to the Due Date to be extended.

ARTICLE 3– PAYMENT

3.1 When Payment is to be made by the Client

All payments made pursuant to this Agreement will be paid to the Accountant by the Client only after payment by the Central Florida Expressway Authority is received by the Client. Payment for services rendered by any sub-consultants shall be paid to the Accountant and the Accountant shall be fully responsible for making payment to any sub-consultant retained by the Accountant. The Accountant acknowledges and understands that the Client shall not be responsible for making any payment for any services rendered hereunder unless reimbursed by the Central Florida Expressway Authority.

It is expressly agreed and understood that the Client is obtaining Accountant's services on behalf of the Central Florida Expressway Authority and, although the Client will direct the services hereunder, including making payment for the services, it shall assume no liability or responsibility for any payment due hereunder.

3.2 Compensation for Pre-Condemnation Consultation Services

It is expressly agreed and understood that the Accountant shall be paid for all pre-condemnation consultation services in accordance with the compensation schedule set forth in Exhibit A within thirty (30) days after receipt of each monthly invoice provided that the invoice is received by the third (3rd) of each month, and upon Client's receipt of funds from the Central Florida Expressway Authority. It is expressly agreed and understood that although the Client will direct the services hereunder, it shall assume no liability or responsibility for any payment due hereunder.

3.3 Compensation Business Damages Claim Services

It is expressly agreed and understood that the Accountant shall be paid for satisfactorily performed business damages claim services set forth in each assignment to this Agreement, for business damages claims for each parcel reviewed hereunder in accordance with the compensation schedule set forth on Exhibit A. No payment shall be made for business damages claims accounting services until after the receipt of the business damages report(s) by the Client. Once a final business damages report(s) has been provided to the Client, invoices for accounting services shall be paid within forty-

five (45) days after receipt of the invoice, upon receipt of funds from the Central Florida Expressway Authority.

The Accountant shall receive compensation in accordance with Exhibit A for services performed in connection with the modification or preparation of any supplement or update to any business damages report furnished under this agreement if requested by the Client for any other reason not the fault of the Accountant.

The Accountant shall not receive compensation for services performed in connection with the modification or preparation of any supplement or update to any business damages report furnished under this agreement if (1) applicable principles of law with respect to the valuation of the business damages claim require the modification on or supplementing of such business damages report, (2) material omissions, inaccuracies, or defects in the business damages report are discovered, or (3) the Accountant receives or becomes aware of relevant additional business damages claim information in existence prior to the date the Accountant signed the report.

3.4 Compensation for Litigation/Consultation Services

It is expressly agreed and understood that the Accountant shall be paid for all litigation support services in accordance with the compensation schedule set forth in Exhibit A within thirty (30) days after receipt of each monthly invoice, provided that the invoice is received by the third (3rd) of each month, and funds are received by the Client from the Central Florida Expressway Authority. It is expressly agreed and understood that although the Client will direct the services hereunder, it shall assume no liability or responsibility for any payment due hereunder.

3.5 Invoices

The Accountant shall submit detailed invoices to the Client for all services rendered. The Accountant represents and warrants that all billable hours and rates furnished by the Accountant to the Client shall be accurate, complete and current as of the date of this Agreement or any Addendum. The Client shall forward such invoices to the Central Florida Expressway Authority for payment to the Client, and then Client shall forward the payment to the Accountant as provided herein.

The Client shall notify the Accountant in writing of any objection to the amount of such invoice, together with the Client's determination of the proper amount of such invoice. Any dispute over the proper amount of such monthly invoice shall be resolved by mutual agreement of the parties, and after final resolution of such dispute, the Central Florida Expressway Authority shall promptly pay the Client for the Accountant the amount so determined, less any amounts previously paid with respect to such monthly invoice.

3.6 Right to Withhold Payment

The Client or the Central Florida Expressway Authority shall have the right to withhold payment on any invoice in the event that the Accountant is in default under any provision of this Agreement (including any Addenda) or if liquidated damages are assessed against the Accountant.

3.7 Total Payments not to Exceed

All payments made pursuant to this Agreement shall not exceed a total of One Hundred Thousand Dollars (\$100,000.00), without an Addendum to this Agreement that shall be approved by the Central Florida Expressway Authority. It shall be the responsibility of the Accountant to monitor the total of all payments made pursuant to this Agreement and notify the client prior to reaching the One Hundred Thousand Dollars (\$100,000.00) upset limit so that Client may timely present the necessary Addendum to the Central Florida Expressway Authority.

ARTICLE 4 – LIQUIDATED DAMAGES

4.1 Business Damages Claim Reports

If the Accountant fails to submit any business damages report by the Due Date, the Accountant will be assessed one percent (1%) of the lump sum amount for such report per calendar day for the first seven (7) calendar days the business damages report is delayed. If the Accountant submits the draft or final business damages report more than seven (7) calendar days after the Due Date, the Accountant will be assessed two percent (2%) of the lump sum for such report per calendar day thereafter, until the business damages report is received by the Client.

4.2 Responses, Modifications, or Corrections

The Client will notify the Accountant of any modifications, corrections or additional services that, in the sole discretion of the Client, are determined to be necessary. All modifications, corrections, or additional services shall be completed within five (5) calendar days after the request is made by the Client. Once the Accountant completes the requested modifications, corrections or additional services, the Accountant shall submit a revised business damages report to the Client.

The revised business damages report shall be reviewed within five (5) calendar days for compliance with the requested modifications, corrections or additional services and a final business damages report submitted to the Client within three (3) calendar days of such review.

ARTICLE 5 - RECORDS

5.1 Maintenance of Records

The Accountant shall maintain complete and accurate records relating to all services rendered by Accountant and any sub-consultants pursuant to this Agreement.

Records shall be kept in a form reasonably acceptable to the Client. Records and invoices for services shall include all of the information required in order to determine the Accountant's monthly hours for each employee rendering services hereunder, and shall identify the services rendered by each employee in a manner acceptable to the Client.

5.2 Records Availability and Audit

All of the Accountant's records relating to services shall, upon reasonable notice by the Client, be made available to the Client, and the Client shall have the right from time to time, through its respective duly authorized representatives, at all reasonable times, to review, inspect, audit or copy the Accountant's records. Production of such records by the Accountant shall not constitute promulgation and shall retain in the Accountant all rights and privileges of workmanship, confidentiality and any other vested interests. If, as a result of an audit, it is established that the Accountant has overstated its hours of service, per diem or hourly rates for any month, the amount of any overcharge paid as a result of an overstatement shall forthwith be refunded by the Accountant to the Central Florida Expressway Authority with interest thereon, if any, at a rate of six percent (6%) per annum on the overstated amount accrued from forty-five (45) days after the Client's notice to the Accountant of the overstatement. If the amount of an overstatement in any month exceeds five percent (5%) of the amount of the Accountant's statement for that month, the entire reasonable expense of the audit shall be borne by the Accountant. The Accountant shall retain all records and shall make same available to the requesting party for a period of five (5) years from the date of payment by the Client of the final invoice for the services to which the records relate.

ARTICLE 6 – TERM OF AGREEMENT AND TERMINATION

6.1 Term of Agreement

Services shall commence upon the execution of the Agreement and shall be provided on a continuous basis until each assignment is completed. No Addenda shall be issued after two (2) years from the effective date of this Agreement. The Client can elect to extend the Agreement by exercising up to three additional extensions of one year each.

6.2 Termination

This Agreement and/or any exhibit hereto may be terminated in whole or in part by either party by written notification at any time. Upon notification, Accountant will immediately discontinue all services and submit a final invoice to the Client within thirty (30) days of Client's notice of termination to Accountant. The Accountant shall be paid for the services satisfactorily performed by the Accountant if the business damages report(s) has been provided to the Client. If the business damages report(s) has not been provided to the Client, the Accountant shall receive no compensation for any services rendered under this agreement or any Addenda hereto.

Upon termination, the Accountant shall deliver or otherwise make available to the Client all data, designs, specifications, calculations, estimates, plans, drawings, photographs, reports, memoranda, other documents and instruments, and such other information and materials as may have been prepared or accumulated by the Accountant or its sub-consultants in performing services under this Agreement, whether completed or in process. The Accountant shall have no entitlement to recover anticipated profit for services or other work not performed.

ARTICLE 7 - CONFIDENTIALITY

Unless otherwise required by law, the Accountant shall not, without the prior written consent of the Client, knowingly divulge, furnish or make available to any third person, firm or organization, any information generated by the Accountant or received from the Client, concerning the services rendered by the Accountant or any sub-consultant pursuant to this Agreement.

ARTICLE 8 - MISCELLANEOUS PROVISIONS

8.1 Notices

All notices required to be given hereunder shall be in writing and shall be given by United States mail, postage prepaid addressed to the parties' representatives at the address set forth in Exhibit A. Electronic mail, instant messaging or facsimile shall not be considered notice as required hereunder.

8.2 Change of Address

Any party may change its address for purposes of this Article by written notice to the other party given in accordance with the requirements of this Article.

8.3 Jurisdiction

Any claim, dispute or other matter in question arising out of or relating to this Agreement or the breach thereof, except for claims which have been waived pursuant to this Agreement, shall be brought only in the Circuit Court of the Ninth Judicial District in and for Orange County, Florida. Such claims, disputes or other matters shall not be subject to arbitration without the prior written consent of both the Client and the Accountant. The parties hereby agree that process may be served by United States Mail, postage prepaid, addressed to the Client's Representative, with a copy to the Client, or the Accountant's Representative as defined in Exhibit A. The parties hereby consent to the jurisdiction the Circuit Court of the Ninth Judicial District in and for Orange County, Florida.

8.4 Governing Law

The Agreement shall be governed by the laws of Florida.

8.5 Transfers and Assignments

The Accountant shall not transfer or assign any of its rights hereunder (except for transfers that result from the merger or consolidation of the Accountant with a third party) or (except as otherwise authorized in this Agreement or in an exhibit hereto) subcontract any of its obligations hereunder to third parties without the prior written approval of the Client. The Client shall be entitled to withhold such approval for any reason or for no reason. Except as limited by the provisions of this paragraph, this Agreement shall inure to the benefit of and be binding upon the Client and the Accountant, and their respective successors and assigns.

8.6 Member Protection

No recourse shall be had against any member, officer, employee or agent, as such, past, present or future, of the Client or the Central Florida Expressway Authority, either directly or indirectly, for any claim arising out of this Agreement or the services rendered pursuant to it, or for any sum that may be due and unpaid. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Client or the Central Florida Expressway Authority member, officer, employee or agent as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement for the services rendered pursuant to it, or for the payment for or to the Client or the or the Central Florida Expressway Authority, or any receiver therefore or otherwise, of any sum that may remain due and unpaid, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

8.7 Conflict of Interest

Except with the Client's knowledge and consent, the Accountant and Sub-consultants shall not undertake services when it would reasonably appear that such services could compromise the Accountant's judgment or prevent the Accountant from serving the best interests of the Client. Except with the Client's knowledge and consent, the Accountant shall not perform any services for any property-owners from whom property has been, will be, or is contemplated to be condemned by the Central Florida Expressway Authority for the projects which are collectively known as the S.R. 429 Wekiva Parkway Project, which for the purpose of this Agreement shall be defined by the Client at a later date and as such roadway is modified from time to time. Client reserves the right to raise such conflict unless that right is specifically waived by the Central Florida Expressway Authority.

8.8 Entire Agreement

This Agreement, including the exhibits hereto, constitutes the entire agreement between the parties and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth herein.

8.9 Amendment

This Agreement and its exhibits shall not be amended, supplemented or modified other than in writing signed by the parties hereto. Neither electronic mail nor instant messaging shall be considered a "writing" for purposes of amending, supplementing or modifying this Agreement. No services shall be performed until such services are provided for in an Amendment or Addenda and executed by both parties.

8.10 No Third-Party Beneficiaries

No person, except for the Central Florida Expressway Authority, shall be deemed to possess any third-party beneficiary rights pursuant to this Agreement. It is the intent of the parties hereto that no direct benefit to any third party, other than the Central Florida Expressway Authority, is intended or implied by the execution of this Agreement. It is agreed and understood between the services rendered hereunder shall be for the benefit of the Central Florida Expressway Authority and the Central Florida Expressway Authority is entitled to rely upon the business damages report(s) prepared hereunder.

8.11 Accountant Contractual Authorization

Accountant represents and warrants that the execution and delivery of the Agreement and the performance of the acts and obligations to be performed have been duly authorized by all necessary corporate (or if appropriate, partnership) resolutions or actions and the Agreement does not conflict with or violate any agreements to which Accountant is bound, or any judgment, decree or order of any court.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement, effective as of the date set forth above.

SHUTTS & BOWEN LLP

Attest:

Witness Signature

Printed Name

Witness Signature

Printed Name

Witness Signature

Printed Name

Witness Signature

Printed Name

By: _____

David A. Shontz, Esq.
Legal Counsel to the Central Florida
Expressway Authority

**GERSON, PRESTON, ROBINSON,
KLEIN, LIPS & EISENBERG, P.A.**

By: _____

Gary R. Gerson, CPA, MBA

EXHIBIT A

Client's Representative

David A. Shontz, Esq.
Shutts & Bowen LLP
300 South Orange Avenue, Suite 1000
Orlando, Florida 32801

Accountant's Representative

Gary R. Gerson, CPA, MBA
Gerson, Preston, Robinson, Klein, Lips &
Eisenberg, P.A.
666 Seventy-First Street
Miami Beach, Florida 33141

This **Exhibit A** includes the following which shall be made a part hereof:

- ☐ Accountant's Compensation Schedule including all Billable Rates is as follows. (The rates shall include allowance for salaries, overhead, operating margin and direct expenses.)

Name	Position/Expertise	Labor Rate
Gary R. Gerson, CPA, MBA	Principal	\$225.00 per hour
Ed Deppmen, CPA/ABV, CFF	Director	\$170.00 per hour
Jorge L. Moreno Z.	Manager	\$150.00 per hour
Experienced Staff	Staff Accountants	\$135.00 per hour

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