2016-2017 Negotiation Competition
Complete National Problem Set (Four Rounds)

Contains Confidential Information

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General Information for Both Parties

Michael Cromwell is a 36-year-old father living in the West Coast state of Calivada. Recently, using his background in computer science, he developed an educational game via a mobile app for his 4-year-old daughter to help her develop her reading skills. Cromwell launched his app by submitting it to a large, nationally known app store. The app, called Reading Rules!, was unexpectedly successful, with over 450,000 downloads in the first month.

Reading Rules! quickly got the attention of Vox Gaming, a software and gaming tech company located in Calivada that specializes in educational computer games, video games, and websites for children aged 12 and under. Brad Wilson, an executive at Vox, reached out to Cromwell to discuss Cromwell’s work in creating and developing the app. Wilson was especially impressed with the app’s user interface and simple, intuitive design for both kids and parents. After their first conversation, Wilson learned that Cromwell was essentially a stay-at-home dad who did some guest blogging on various websites and dabbled in technology and software to keep himself busy.

After several conversations, Wilson informed Cromwell that Vox was interested in offering Cromwell a position as a software and game developer. Cromwell was immediately flattered and intrigued, but said that he was pretty devoted to continuing his role as a stay-at-home dad and didn’t feel like he was ready to give that up. Wilson replied that maybe that was something they could talk about and that Vox could probably make Cromwell a generous offer.

Interested to see where things might go, Cromwell discussed his options with his wife. Together, they agreed that it would be worth it for Cromwell to continue discussions with Wilson and Vox to see what kind of final offer might come from it. Over the next few weeks, Wilson and Cromwell spoke several times on the phone, discussing salary, benefits, and other terms that would make up the job offer. After several conversations, the parties agreed on a few terms: if Cromwell did accept an offer to work at Vox, he would be a contracted employee with the title of Senior Software and Game Developer (based on Cromwell’s experience in the industry), and that he would receive full health benefits, a month of paid leave each year, and a 401(k) match of up to 5% of his annual salary. The parties have not reached a final agreement on certain other terms, including salary and the length of the contract term.

Even though the parties have not reached a final agreement on all of the terms of Cromwell’s potential employment with Vox, Cromwell asked if Wilson could provide a draft of the
employment contract, with the parties’ agreed-to terms included and, of course, blanks left for the terms that the parties had not reached a final agreement on yet, which Wilson was happy to do. Once Cromwell received the contract draft from Wilson, Cromwell was surprised to see a non-compete clause included in the contract. The non-compete clause stated that if the employee left his or her employment at Vox within the first two years of the contract, she or he was prohibited from seeking employment at “any other technology or software company” within a 300-mile radius in the state of Calivada for a period of one year.

Cromwell immediately called Wilson and asked to know why he hadn’t been informed that the contract would include a non-complete clause. Wilson said that Vox’s employment contracts always contained a non-compete clause and that Calivada law allowed them. Cromwell requested a meeting to discuss several issues between the parties, including specifically the employment terms that the parties had not agreed to yet, the contract as a whole, and especially the non-compete clause. Cromwell emphasized to Wilson that he wouldn’t sign a contract until he’d had a chance to discuss its various terms at arms-length. Wilson agreed and suggested that Cromwell send his attorneys to the negotiation, as Vox would have its in-house counsel present. Cromwell agreed to send legal counsel, and the parties arranged a time and place for the meeting.

Under relevant Calivada law allowing non-compete agreements, for the agreement to be enforceable, it must be in writing, signed by all parties, and supported by adequate consideration. A one-year restriction is presumptively reasonable, and the employee can offer a defense against the non-compete by showing an undue hardship.

**Confidential Information for Vox Gaming**

Vox Gaming is eager to bring Cromwell onto its team of game developers. Wilson and some of the other executives at Vox think that Cromwell’s Reading Rules! app shows real ingenuity in design and content, and they all agree that Cromwell’s kind of creative thinking is exactly what Vox is looking for in a developer. Additionally, Vox has experienced some high turnover in the past year. Four of its senior developers have left to either take care of family obligations or work for tech companies in other states. To stay competitive, Vox desperately wants to recruit talent like Cromwell and knows that it must offer him a generous and competitive contract.

Vox isn’t surprised that Cromwell is hesitant to agree to the non-compete clause of the contract—other prospective employees have had the same reaction. However, Vox insists that a non-compete clause be included in every employment contract that it offers for several reasons. Being a company in the tech industry, Vox has a special interest in protecting certain information from being leaked to or shared with competitors. The non-compete clause helps Vox protect trade secrets and other forms of intellectual property, client lists, vendor information, knowledge of business methods, and company profit information. The state of Calivada has one of the largest number of tech companies in the nation, and the possibility that a Vox employee could leave and go to work for a local competitor is very real.

The language of the non-compete originally included in Cromwell’s contract is essentially boilerplate non-compete language that Vox puts into its contracts. Vox has never faced a legal
challenge to this specific language, but thinks a Calivada court would uphold the validity of the clause. Several other employees have requested, as Cromwell has, to negotiate the terms of the non-compete, which Vox has been willing to do.

For instance, the distance to which the non-compete applies or the language restricting an employee from working for “any other software or technology company” are things that Vox thinks Cromwell may want to negotiate. The 300-mile radius includes the city that Vox is located in, Calivada City, as well as the neighboring city of Brownville. Vox wants Brownville to be covered by the non-compete because one of its biggest competitors in the education software industry, Edu-Tech Limited, is located in Brownville. Vox wants to be sure that its employees cannot leave and go to work immediately for Edu-Tech. Therefore, Vox will insist on keeping the 300-mile radius provision in the non-compete clause, but is willing to adjust the language of the restriction to make the non-compete apply more narrowly to education software companies, if necessary. Additionally, Vox would prefer to keep the non-compete restriction in place for one year, but is willing to drop the restriction to 6 months in exchange for more favorable terms regarding other provisions of the non-compete, such as the distance provision.

As to the other terms that the parties have not finalized, Vox would like to offer Cromwell a term of employment of 3 years, with the non-compete clause kicking in if Cromwell leaves within 2 years. However, Vox is willing to be flexible with the length of the term if necessary. Vox would be willing to offer Cromwell a term of employment of up to 6 years, but would not be willing to adjust the 2-year length of time within which the non-compete clause applies.

As far as salary, if Cromwell will agree to the non-compete as written in the original contract, Vox would be willing to make a salary offer of up to $120,000. Additionally, if Cromwell agrees to the non-compete as originally written, Vox would be willing to offer Cromwell a bonus package, as it has done with some of its developers in the past. Under the bonus package, Cromwell would receive a $20,000 bonus payment for each app or video game that he develops that is both approved to go to market and that sells at least 50,000 units (for apps, this would be the equivalent of 50,000 downloads). As far as Vox is concerned, if Cromwell insists that the non-compete terms be less restrictive, he has to be willing to accept a lower starting salary with either a less generous bonus package or none at all. Depending on how much Vox has to compromise on the terms of the non-compete to satisfy Cromwell, Vox has authorized its counsel to decrease the amount of the salary and adjust the amount and terms of the bonus package, with the lower end of an offered salary to Cromwell being $75,000 with no bonus package.

Finally, during their prior discussions, Cromwell had said something to Wilson about desiring an option to telecommute from home, rather than being required to work in the office. Vox understands that other tech companies sometimes offer their employees a telecommuting option, but Vox tried this approach a few years ago with bad results. The employees’ productivity dropped considerably and office morale nearly disappeared. At Vox, its employees do quite a bit of collaborative work in teams, and Vox sees it as essential that the employees be face-to-face most of the time. However, Vox is also keenly aware of its recent turnover rate with employees. Therefore, Vox is open to providing an option for Cromwell to do some telecommuting, while still requiring that Cromwell be in the office for important team work. Vox is leaving the final
arrangements for any telecommuting option in the hands of its counsel and will agree to anything that is in Vox’s best interest.

More generally, so long as your doing so will not interfere with its other priorities, Vox Gaming hopes you will be creative in thinking of other steps that Cromwell can take to advance the interests of Vox Gaming and in securing Cromwell’s agreement to take those steps. Vox Gaming is leaving the negotiation to your discretion and will agree to anything that is in Vox’s best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above and in the General Information.

**Confidential Information for Michael Cromwell**

Cromwell was shocked, but excited when he was first contacted by Brad Wilson about a potential employment offer from Vox Gaming. Cromwell had been one of the first employees at a small start-up tech company in his mid-twenties and worked there for eight years doing software design and development, but left the workforce four years ago when his daughter was born. Cromwell’s wife, who works as the Director of Admissions at a local university in Calivada City, where the couple lives, has been the family’s primary earner during this time. Cromwell loves the flexibility he has with being able to take care of his daughter at home while still doing fun side projects, such as blogging and independent app development.

The truth though is that Wilson’s initial phone call couldn’t have come at a more perfect time for Cromwell and his family. His wife recently discovered that she is pregnant with the couple’s second child and is due to have the baby in seven months. Though his wife loves her job at the university, she would like to have the chance to be a stay-at-home mom with the new baby, so she is fully supportive of Cromwell returning to work full time.

Therefore, Cromwell really wants to reach a favorable agreement with Vox. He does, however, have certain terms in mind that will enable him to best provide for his family in the long term. As an initial matter, Cromwell, though surprised to see the non-compete clause in the employment contract, can understand why Vox would include one. The state of Calivada has numerous tech companies, many of which Vox likely considers as big competition in the tech industry. In fact, the nearby town of Brownville is home to another large educational technology company called Edu-Tech Limited, which Cromwell knows to be one of Vox’s major competitors.

What worries Cromwell the most about the non-compete clause, however, is not its presence in the contract, but its breadth. Cromwell is nervous about agreeing to a restriction that would prevent him from working at “any other technology or software company” for an entire year if things don’t work out with Vox within the first two years of his employment. For starters, the language of the restriction seems awfully broad in covering “any other technology or software company.” Cromwell could understand Vox wanting to prevent its former employees from going to work with more direct competitors in the education technology field, but would Vox really suffer if Cromwell decided to leave and go work for a company that designed and sold medical
billing software, for example? With the number and variation of tech companies in Calivada City and neighboring towns, the original language of the non-compete could prevent Cromwell from working at all in the tech industry for an entire year, which would be financially devastating to his family if his wife has also quit her job.

Ideally, Cromwell would like to see the language of the clause’s restriction be written more narrowly so as to only cover tech companies that Vox would consider to be a more direct source of competition. Additionally, Cromwell thinks that a non-compete restriction of six months is more reasonable than a one-year restriction, as a shorter timeframe for the restriction impedes less on an employee’s ability to work, which is the primary concern in enforcing non-compete agreements. Therefore, Cromwell would like to see the timeframe for the restriction be for less than a year and ideally as low as 6 months, but Cromwell thinks it is more important to negotiate for less restrictive language in what types of companies are covered by the non-compete. Cromwell would agree to a full year’s restriction if it means that Vox will more narrowly describe the types of companies covered by the restriction. Finally, Cromwell isn’t worried about the distance provision in the non-compete, which covers a 300-mile radius. Cromwell and his wife have no plans to move to another city or state in the coming few years, and even the most narrow restriction in terms of distance would almost certainly cover the city he lives in.

As far as salary, Cromwell would like to at least replace his wife’s salary, which is $75,000 a year. Better though would be to get an offer for a higher salary. Cromwell and his wife are worried that their current house will be too small once the baby arrives and have been looking online at houses listed for sale in their city. Unfortunately, anything bigger than their current home is quite a ways out of their price range. If Cromwell could get a yearly salary of $100,000 or more, the family could afford to buy a bigger house and still be quite comfortable financially. Cromwell has instructed his counsel to strike a balance in negotiating both the terms of the non-compete clause and his salary: Cromwell wants less restrictive terms in the non-compete as instructed, and would also like to try and get the highest salary possible. Cromwell suspects that these two interests will be tied together in the negotiation, where better terms in the non-compete result in a slightly lower salary and vice versa, but he understands that reality.

Further, Cromwell would like to have some long-term job security as part of the package. With a new baby on the way and the prospect of his wife leaving work, Cromwell wants to feel comfortable that he will have a way to provide for his family for the next several years. He would like to have at least a four-year contract of employment with Vox, but would feel most secure with a six-year term. However, on the other side of things, he wants to retain his options should the job with Vox not work out, which is why the terms reached on the non-compete clause are of critical importance.

Finally, one additional thing that Cromwell would like to discuss with Vox is the possibility of a work-at-home or telecommuting arrangement. Cromwell knows that many tech companies offer telecommuting to their employees, at least on a partial basis, and Cromwell is interested to know
what Vox would think about that type of arrangement. If he could work from home at least part of the time, that would be ideal. Cromwell understands fully though if Vox would prefer him to come into the office to do his work. At the very least, Cromwell would like you to request an arrangement where, after the baby is born, he could work at home, either part or full time, for up to a year to make it easier on his wife with having both children at home.

More generally, so long as your doing so will not interfere with his other priorities, Cromwell hopes you will be creative in thinking of other steps that Vox Gaming can take to advance the interests of Cromwell and in securing Vox’s agreement to take those steps.

Cromwell is leaving the negotiation to your discretion and will agree to anything that is in Cromwell’s best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above and in the General Information.
These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas for potential agreement and disagreement.

### Issue #1: Language of the Non-Compete Clause

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<thead>
<tr>
<th>Vox Gaming</th>
<th>Michael Cromwell</th>
<th>Possible Outcome</th>
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<tbody>
<tr>
<td><strong>Wording of the Restriction:</strong> Vox is willing to change the language of the restriction from “any other software or technology company” to something less restrictive.</td>
<td><strong>Wording of the Restriction:</strong> Cromwell would like the wording of the restriction to be written more narrowly because he feels that being restricted from working at “any other software or technology company” is too broad of a restriction.</td>
<td><strong>Wording of the Restriction:</strong> Vox may try to hold out on changing the wording of the restriction, but the parties will probably agree to make this language more narrow</td>
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<tr>
<td><strong>Distance to Which the Restriction Applies:</strong> Vox wants to retain the 300-mile radius restriction in the clause to encompass at least one of its major competitors in a neighboring city.</td>
<td><strong>Distance to Which the Restriction Applies:</strong> Although Cromwell may decide to ask for the distance provision to be changed as a negotiation tactic, he is actually not concerned about this provision and therefore may not ask for it to be changed.</td>
<td><strong>Distance to Which the Restriction Applies:</strong> The distance provision will likely remain at 300 miles.</td>
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<tr>
<td><strong>Length of Time of the Restriction:</strong> Vox would like to keep the restriction in place for one-year after Cromwell leaves employment at Vox, but is willing to reduce the length of time of the restriction to 6 months if Vox can get more favorable terms regarding other provisions of the non-compete, such as the distance provision.</td>
<td><strong>Length of Time of the Restriction:</strong> Cromwell would like to lower the restriction to be in place for only 6 months after Cromwell leaves employment at Vox, but is willing to agree to a one-year restriction if Cromwell can get more favorable terms regarding other provisions of the non-compete, such as the language provision.</td>
<td><strong>Length of Time of the Restriction:</strong> Either one party will entirely give in on the length of time of the restriction in order to get the most favorable term possible to serve that party’s interests, or the parties will agree to a term somewhere between 6 months and one year.</td>
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### Issue #2: Length of the Employment Contract Term and When the Non-Compete Clause Applies

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<td>Vox wants to offer Cromwell a term of employment of 4 years, with the non-compete kicking in if Cromwell leaves within 2 years. But Vox is willing to offer a term of employment up to 6 years, but is not willing to adjust the 2 year length of time for when the non-compete kicks in.</td>
<td>Cromwell wants at least a 4-year term of employment, but would be more comfortable with a 6-year term. Cromwell is not opposed to the non-compete clause kicking in if he leaves within the first 2 years of his employment.</td>
<td>The parties will likely agree for Cromwell to have a term of employment with Vox for between 4 and 6 years, with the non-compete clause kicking in if Cromwell leaves within the first 2 years of his employment.</td>
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### Issue #3: Salary and Possible Bonus Package

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<td>If Cromwell agrees to the non-compete clause as it is originally written, Vox is willing to offer Cromwell a salary of up to $120,000 and a bonus package of up to $20,000 for each app or video game Cromwell develops if that is approved to go to market and sells at least 50,000 units. If Vox has to agree to less restrictive terms for the non-compete clause, its salary offer and any bonus offer will decrease to as low as $75,000 with no bonus package.</td>
<td>Cromwell wants a salary offer of at least $75,000, but hopes to get a salary offer of $100,000 or more. Cromwell is looking to strike a balance between favorable terms in the non-compete clause that serve his interests and as much salary as possible.</td>
<td>The parties will likely negotiate for at least some less restrictive terms in the non-compete clause, which means that the parties will likely end up agreeing to a salary and possibly a bonus package somewhere between $75,000 and $100,000.</td>
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### Issue #4: Telecommuting Work Arrangement

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<tr>
<td>Vox is hesitant to offer a telecommuting arrangement because of its negative past experiences with allowing employees to do this, but is willing to discuss telecommuting options with Cromwell in order to recruit him.</td>
<td>Cromwell would like to have a telecommuting arrangement for his work at Vox that allows him to work from home at least part of the time for up to a year after his baby is born. However, Cromwell does not insist on receiving telecommuting privileges as part of his work with Vox.</td>
<td>The parties will likely work out some type of telecommuting arrangement for Cromwell.</td>
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Professional Sports Club, LLC and the City of Springfield

CONFIDENTIAL SUMMARY FOR JUDGES

General Information for Both Parties

The City of Springfield in the state of Winnetoba has been home to a professional basketball team, the Winnetoba Wizards, for the past 20 years. Two years ago, the owners of the Wizards became insolvent and could no longer afford to pay the rent on Key Arena, where the Wizards played, to the City of Springfield, which owned the arena. In negotiations with the City on the issue of paying rent for the arena, the owners of the Wizards agreed to transfer ownership of the Wizards to the City so that the City could both recoup rent money through ticket sales and sell the Wizards to new, more financially stable owners. After the City took over temporary ownership of the Wizards, the city council proposed a penny sales tax to repair, renovate, and expand Key Arena, which was in dire need of updates and increased seating capacity so that the Wizards could continue to play there profitably. To the surprise of the City, the citizens of Springfield did not pass the sales tax, which meant that the Wizards would no longer be able to play at Key Arena after the Wizards’ original lease at the arena expired in three years because the venue simply was not suitable for the Wizards’ needs.

Despite this setback, the City began efforts to find new ownership for the Wizards. After failing to find any local interest in buying the team, the City met with interested ownership groups from several different states before agreeing to sell the team to the Professional Sports Club, LLC, a group comprised of several individual investors, based out of Oakville in the state of New Dover. One of the terms of the sale required the Professional Sports Club to “use good faith best efforts” for a 12-month period from the date of the sale of the team to secure a new arena lease or venue in the Springfield metropolitan area. While the Professional Sports Club would pay the lease on Key Arena during the 12-month period that it sought an alternative playing venue, after the 12-month period, the City would release the Professional Sports Club from any further obligation on the Key Arena lease so long as the Professional Sports Club had satisfied its requirement to make a good faith effort to find an alternative venue in the Springfield area.
The Professional Sports Club immediately went to work to find or create a suitable new venue in the Springfield metro so that the Wizards could get a fresh start in a new arena and begin rebuilding their brand and fan base. Three months after the date of the Club’s purchase of the Wizards, one of the members of the Professional Sports Club, Scott Beckett, appealed to Winnetoba legislators to allocate money from a presently existing parks and recreation fund to pay for a new arena in Ratone, Winnetoba, a suburb of Springfield. Three months after beginning his appeal to the legislators, Beckett had failed to reach a deal with them for the construction of a new arena for the Wizards and gave up his attempt to find state or city funds to build a new playing facility for the team.

Thirteen months after the Club’s purchase of the Wizards, the Club publicly announced that the team would move to Oakville, New Dover as soon as it could get free of its Key Arena lease in Springfield. This announcement surprised and enraged both Springfield city officials and fans, as the Wizards had been in Springfield for 20 years and were considered part of the heart and identity of the city. Springfield’s mayor publicly stated in response that the Wizards were expected to stay in Springfield until their lease expired at Key Arena in two years and that the City did not intend to make it easy for the Professional Sports Club to move the team before that time. Subsequently, the Professional Sports Club released another statement that it felt it had satisfied the terms of the sale contract and was entitled to be released from the Key Arena lease and that it intended for the Wizards to play their next season in Oakville.

After several heated exchanges, both publicly and behind closed doors, the parties have agreed to meet to discuss the lease on Key Arena and the proposed relocation of the Wizards. The parties are sending their attorneys to a mutually agreed upon location to discuss the future of the Wizards and the parties’ respective obligations to each other.

**Confidential Information for Professional Sports Club, LLC**

The members of the Professional Sports Club are not surprised that the Club’s announcement of its intention to move the Wizards to Oakville incited anger and opposition from the City of Springfield. The truth is that the Club bought the Wizards not to maintain the team in Springfield, but rather hoping to ultimately move the team to Oakville, an up-and-coming city with a booming technology industry. In the last several years, Oakville has seen thousands of young professionals move into the city and its suburbs, and many neighborhoods, arts initiatives, and entertainment districts have been revitalized in the process. City leaders in Oakville have been dedicated to helping the city grow, and the members of the Professional Sports Club see Oakville as a city ripe with opportunity for a professional basketball team.
The Club feels that it satisfied its obligation to use good faith best efforts for 12 months to find a suitable alternative venue for the Wizards in the Springfield area. Scott Beckett went so far as to petition the Winnetoba legislature for funds to build a new arena, and it’s not the Club’s fault that the legislature rejected Beckett’s proposal. The building of a new arena was the only viable option for the Wizards to be able to stay in Springfield; the Key Arena was not a long-term solution because it needed very expensive, large-scale updates and renovations. Plus, the seating capacity in Key Arena is the smallest in the league. If the Wizards are expected to grow, thrive, and make money, they need to play in an arena that feels “big league.” Aside from Key Arena, no other venues in Springfield or its surrounding suburbs were even close to suitable. For several months after the Winnetoba legislature rejected Beckett’s proposal, the Professional Sports Club toured various venues in the Springfield area, such as large concert halls and college arenas, but none of them even matched the seating capacity of the Key Arena and were certainly not suited to host a professional basketball team for an entire season, year in and year out.

Because the Club feels it satisfied its 12-month obligation in looking at alternative venues in the Springfield metropolitan area, it feels strongly that the City of Springfield should immediately release the Club from its obligation to continue paying the lease at Key Arena, which would allow the Club to bring the Wizards to Oakville in time for the upcoming season in three months.

Unfortunately, the Club doesn’t think that the City of Springfield will be so quickly agreeable to releasing the Club from the Key Arena lease. Relationships between the two parties have grown quite tense over the past six months in light of statements made both by and between the various members of the Club. First, shortly after the Winnetoba legislature rejected Beckett’s proposal to use state funds to build a new arena, members of the Club exchanged emails in which they made statements expressing excitement about the rejection of the option for building a new arena, and stating their desire to move the team to Oakville for the upcoming season. Further, a few months after this email exchange, one of the members of the Club, Alan McCreary, gave an interview to an Oakville-based newspaper where he stated that the Club “didn’t buy the team to keep it in Springfield; we hoped it would come to Oakville.”

McCreary’s interview with the newspaper was of course immediately known to the City of Springfield. City leaders, furious that it appeared that the Club was trying to “steal” the Wizards in spite of the parties’ agreement that the Club would first pursue options in Springfield, began threatening a breach of contract claim against the Club. The email exchange between the members of the Club also came to the City’s attention after the Club announced that it was moving the team to Oakville, further souring the relationship between the parties.

Three weeks after the Club’s announcement that it intended to move the team to Oakville, the Club offered the City of Springfield a buyout of the Key Arena lease in an amount that equaled half of the remaining value of the lease. The Club hoped that this offer would smooth things over between the parties and give the City an incentive to allow the Club to move the Wizards to
Oakville without protracted litigation or settlement talks between the parties. The City, however, rejected the offer. Two weeks after the Club made the Key Arena buyout offer to the City, and before the City rejected the offer, the Club reached a preliminary agreement with the City of Oakville on a 10-year lease of the Chevelle Center, a large arena in Oakville, as the Wizards’ playing venue in Oakville. The Club, in addition to moving the team to Oakville, also wants to give the team a totally fresh start in a new city. Therefore, the Club would like to do a complete rebranding of the team after the move: a new team name and mascot, new uniforms and team colors, etc.

However, the Club now feels “stuck”: it doesn’t freely have the ability to pack the team up and move it to Oakville because the Club is still on the hook for the remaining two years of the Key Arena lease, an expense that the Club cannot afford while also paying a lease at the Chevelle Center. The Club knows that litigation over the Key Arena lease would not be a good idea—the litigation could take years to finish—and that its best option is negotiate a settlement with the City on what the Club will, or won’t, pay on the Key Arena lease. If worse comes to worst and the Club agrees to pay some or all of the remainder of the Key Arena lease, the Club strongly believes that it can delay the start of its lease obligation on the Chevelle Center, as the Club had to call in special favors to even get an immediate lease arrangement at the Chevelle Center.

The Club anticipates that the City of Springfield will insist that the Club at least pay out the remainder of the two-year lease on Key Arena. The Club also anticipates that the City will maintain that the intent of the contract was for the Wizards to remain in Springfield long term. Luckily, the contract didn’t address the point of where the Wizards should be located following the team’s sale. The members of the Club readily admit that the City made it clear during the parties’ negotiations on the sale of the team that it expected the Wizards to stay in the state of Winnetoba, somewhere near Springfield, hence the provision requiring the Club to make good faith efforts to secure an alternate playing venue in the Springfield metropolitan area. And the Club also admits that it never disclosed its intentions or desire to move the team to Oakville during the parties’ negotiations—in fact, during these talks, the Club members spoke in terms of the Wizards remaining in the Springfield area. Unfortunately, through the public exposure that the Club has received through both the emails between the members of the Club and McCreary’s statements to the media, the Club members know that it appears that they didn’t negotiate the sale with the City in good faith, at least as to the issue of the Wizards remaining in Winnetoba.

The members of the Club do not want to agree to keep the team in Springfield long term, and the contract doesn’t require them too. The only hurdle that would prevent the Club from moving the team to Oakville for the immediately upcoming season is the remainder of the Key Arena lease, which the Club is responsible for under the sale contract. The Club isn’t sure why the City rejected its buyout offer, but it suspects that the City will insist on receiving the full value of the remainder of the Key Arena lease. Because the Club wants to bring the team to Oakville for the immediately upcoming season, the Club would be willing to buy out the Key Arena lease at 80-
90% of the remaining amount owed in exchange for an immediate release from any further obligation on that lease.

If the City of Springfield will not agree to a buyout on the remainder of the lease, but instead insists on the Wizards playing in Key Arena for the next one or two seasons while the Club continues to pay out the lease, the Club will ask the City to reduce the monthly rent on Key Arena by at least 20%, but ideally up to 40%. After all, the Club did make efforts for the 12 months required in the contract to find a suitable venue in the Springfield metropolitan area, and none was available. If pressed, the Club thinks it could successfully sue to be released from its obligation on the Key Arena lease, based on the Club’s view that it satisfied this provision of the sale contract, but the Club is willing to work something out with the City to avoid litigation.

Because of the fact that the parties’ most recent dealings have been shrouded in bad press, especially with the revealing of the Club members’ emails and Alan McCreary’s statements to the press, the Club is anxious to resolve all remaining issues with the City of Springfield in a way that allows the Club to generate some good press and maintain a positive public image. Though there is a lot of excitement in Oakville about the prospect of a professional basketball team coming to town, the Club doesn’t want to start this new era in Oakville off under a cloud of suspicion and bad feelings. Thus, the Club members have instructed you to do what you can to create a positive image of the Club, the Wizards, and Oakville going forward.

More generally, so long as your doing so will not interfere with its other priorities, the Club hopes you will be creative in thinking of other steps that the City can take to advance the interests of the Club and in securing the City’s agreement to take those steps.

The Club is leaving the negotiation to your discretion and will agree to anything that is in the Club’s best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above and in the General Information.

**Confidential Information for City of Springfield**

The City of Springfield is starting to regret its decision to sell the team to the Professional Sports Club. The Wizards have meant so much to the City over the past 20 years, and it would be devastating to see the team leave. People in Springfield have grown up rooting for the Wizards, and many families have continued the tradition of being Wizards fans with their children, as many of the Wizards’ season ticket holders are families. Therefore, the City feels that it must do whatever it can to retain the Wizards in Springfield, even if it is only for a year or two longer.
Unfortunately, the City knows that it has several factors working against it in its pursuit to save the Wizards from relocating to Oakville. First, there aren’t really any suitable venues in the City or its surrounding metropolitan area that could house the Wizards for the seasons to come. The Key Arena is old and lacks many needed amenities. The expense to renovate and expand Key Arena would be cost-prohibitive and it would likely take several years to complete. Springfield had really felt that its citizens would approve the penny sales tax to update the Arena, but since the measure didn’t pass, the money just isn’t there make Key Arena a long-term option for the Wizards.

Second, the City acknowledges that the Professional Sports Club, as the owners of the Wizards, are free to make whatever decisions it wants on behalf of the team, including decisions about where the Wizards will be located. The Club didn’t make its announcement to move the team until after the expiration of the 12-month period in the sale contract, during which time the Club was required to make good faith efforts to find an alternative venue in the Springfield area. The City is thinking about bringing a breach of contract claim against the Club because the City doesn’t think that the Club did enough to pursue available venue options in the Springfield metropolitan area after the Winnetoba legislature rejected Scott Beckett’s proposal of using existing state funds to build a new arena. However, the City acknowledges that this may be a weak claim, and besides, the City wants to avoid litigation on this deal if possible.

Three weeks after the Club’s announcement that it intended to move the team to Oakville, the Club offered the City of Springfield a buyout of the Key Arena lease in an amount that equaled half of the remaining value of the lease. The City rejected this offer, insisting that the Club pay the full value of the remaining lease on Key Arena. Now, however, because the City feels that it has a weak chance of enforcing the Club’s obligation on the remaining two years of the Key Arena lease, the City wonders if it should have taken the Club’s buyout offer on the lease. Though the City hopes, and in fact needs, to get as much money as possible on the remainder of the Club’s lease, the City now worries that the Club may refuse to make any more payments on the lease by citing the fact that the Club did make what it will likely claim were “good faith best efforts” for 12 months to find an alternative venue in the Springfield area.

In the best case scenario, the City would like to have the Club agree to keep the Wizards in Springfield at Key Arena for the next two years until the lease expires. This would enable the City to collect all of the remaining lease payments on Key Arena from the Club, while also keeping the Wizards in town for at least two more years. The City optimistically hopes that this scenario would make the Club see how loyal the Wizards’ fans are and how important the team is to both the City of Springfield and the State of Winnetoba, thus creating a chance that at the end of the two-year period, the Club would choose to keep the team in Springfield or a nearby area permanently.
However, if, as the City fears, the Club insists that it will move the team to Oakville for the upcoming season, the City must be prepared to strike a deal that allows this to happen. The Club is, after all, the owner of the Wizards, and there likely isn’t much that the City can do at this point to prevent the Club from moving the team. If the Club would agree to pay up front the remainder of the lease on Key Arena in full, the City would agree to release the Club from any further obligations on the Key Arena lease, which would allow the Club to move the team to Oakville immediately. This isn’t the City’s first choice—the City would prefer an option that keeps the Wizards in Springfield for at least one more season in exchange for a reduced monthly rental payment on the lease. The City would be willing to reduce the monthly rental payment up to 30%, but no more.

In addition to the tension between the parties on the Key Arena lease, relationships between the two parties have grown quite tense over the past six months in light of statements made both by and between the various members of the Club. First, shortly after the Winnetoba legislature rejected Beckett’s proposal to use state funds to build a new arena, members of the Club exchanged emails in which they made statements expressing excitement about the rejection of the option for building a new arena and stating their desire to move the team to Oakville for the upcoming season. Further, a few months after this email exchange, one of the members of the Club, Alan McCreary, gave an interview to an Oakville-based newspaper where he stated that the Club “didn’t buy the team to keep it in Springfield; we hoped it would come to Oakville.”

McCreary’s interview with the newspaper was of course immediately known to the City of Springfield. City leaders, furious that it appeared that the Club was trying to “steal” the Wizards in spite of the parties’ agreement that the Club would first pursue options in Springfield, began threatening a breach of contract or rescission claim against the Club. The email exchange between the members of the Club also came to the City’s attention after the Club announced that it was moving the team to Oakville, further souring the relationship between the parties.

The City was outraged when it learned of the Club’s email exchange and McCreary’s statements to the press stating the Club’s intent to move the team to Oakville—statements that were all made before the end of the 12-month time period in which the Club was supposed to be finding an alternative venue in the Springfield area! Unfortunately, the sale contract didn’t address the point of where the Wizards should be located following the team’s sale. Nonetheless, the City made it clear during the parties’ negotiations on the sale of the team that it expected the Wizards to stay in the state of Winnetoba, somewhere near Springfield, hence the provision requiring the Club to make good faith efforts to secure an alternate playing venue in the Springfield metropolitan area. And, to make matters more insulting, during negotiations over the sale of the team, the Club never disclosed its intentions or desire to move the team to Oakville—in fact, during these talks, the Club members spoke in terms of the Wizards remaining in the Springfield area. Therefore, as far as the City is concerned, the Club didn’t negotiate its purchase of the Wizards in good faith, at least as to the issue of the Wizards remaining in Winnetoba. However,
the City is not considering a claim for rescission of the contract—the litigation would just be too expensive and time-consuming.

Unfortunately, what’s done is done. The Club now owns the Wizards, and the City has to concede that the Club can do with the Wizards what it pleases—so long as it satisfies all of the obligations it has to the City under the contract for the sale of the team. In light of the bad faith appearance of the Club’s recent statements, the City would like to request that the Club maintain some reference or homage to the Wizards’ long-time presence in Winnetoba by perhaps keeping the team’s name the same or having part of the team’s logo represent the team’s history in Winnetoba. And at the very least, the City would like an apology from the Club for its failure to be up front with the City about its true intentions to move the team.

More generally, so long as your doing so will not interfere with its other priorities, the City hopes you will be creative in thinking of other steps that the Club can take to advance the interests of the City and in securing the Club’s agreement to take those steps.

The City is leaving the negotiation to your discretion and will agree to anything that is in the City’s best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above and in the General Information.

**These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas for potential agreement and disagreement.**
**Issue #1: Lease on Key Arena**

<table>
<thead>
<tr>
<th><strong>Professional Sports Club, LLC</strong></th>
<th><strong>City of Springfield</strong></th>
<th><strong>Possible Outcome</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Club feels like it satisfied its obligation to use good faith best efforts for a period of 12 months to find a suitable alternative venue in the Springfield area. Therefore, the Club thinks it is entitled to be released from any further obligation to pay rent on the Key Arena lease.</td>
<td>The City of Springfield knows that it will be difficult to enforce the remainder of the Club’s lease on Key Arena and now hopes to get as much money on the remainder of the lease as possible. At best, the City would like to reach an agreement that requires the Club to keep the team in Springfield for another one or two seasons until the Key Arena lease expires to both collect all or some of the money on the lease and keep the team in town for another one or two years. In this scenario, the City is willing to reduce the monthly rent on the lease by 20-30% to entice the Club to keep the team in town. However, the City is prepared to make a deal that allows the Club to move the team to Oakville immediately, though this is not the City’s first choice. If the Club will pay up front the remainder of the lease on Key Arena, the City will release the Club from any further obligations on the Key Arena lease, allowing the Club to move the team to Oakville immediately.</td>
<td>The outcomes on this issue will likely vary quite a bit from round to round. Both parties will likely agree that it is best for the parties not to pursue litigation over the enforceability of the remainder of the Key Arena lease and instead will reach a settlement on how much of the remainder of the lease will be paid and when the Club will be released from its obligation on the lease and allowed to move the team to Oakville.</td>
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</tbody>
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The Club believes that the City will make it difficult for the Club to get out of the remaining lease on Key Arena. The Club offered the City of Springfield a buyout for half the value on the remainder of the lease, which the City rejected. Additionally, the Club is now in a preliminary agreement on a 10-year lease on a new arena in the city of Oakville in a different state.

The Club wants to move the team to Oakville immediately and thus, wants to get out of its obligation on Key Arena. The Club is willing to offer a buyout on the Key Arena lease in full in exchange for an immediate release.

Alternatively, if the City insists that the team stay in Springfield for another one or two seasons because of the Club’s obligation on the Key Arena lease, the Club will ask for a reduction in rent owed on the lease by 25-35%.
### Issue #2: Public Relations/Good will between the parties

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>The Club would like to generate a positive image for itself, the team, and the City of Oakville to eliminate any bad feelings or negative PR from the revelation of the some of the statements made by members of the Club that they had wanted to bring the team to Oakville all along, rather than wanting to keep the team in Springfield.</td>
<td>The City would at least like an apology from the Club for the Club’s failure to be honest about its true intentions in moving the team to Oakville, rather than keeping the team in Springfield, as was portrayed during the parties’ negotiations during the sale of the team.</td>
<td>Here also, the possible outcomes will likely vary in each round. The parties may agree to make a joint public statement or issue a press release about the future of the team and the relationship between the parties. Or the parties may agree for the Club to make a private apology to the City and for the parties to sign a non-disparagement agreement.</td>
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</table>

### Issue #3: Using Wizards’ name, team logo

<table>
<thead>
<tr>
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<th>City of Springfield</th>
<th>Possible Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Club would like to give the team a fresh start in Oakville by completely rebranding the team, giving it a new name, mascot, uniform, and colors.</td>
<td>The City would like the Club to maintain some reference or homage to the team’s longtime presence in Springfield by keep the team’s name the same or having part of the team’s logo represent the team’s history in Winnetoba.</td>
<td>The resolution of this issue will likely be tied to the issue of public relations and good will between the parties. The parties may agree that the Club’s “apology” to the City includes maintain homage to the team’s presence in Springfield, or the parties may agree that the resolution to Issue #2 satisfies any potential obligation by the Club to use the team’s old logo, name, etc.</td>
</tr>
</tbody>
</table>
Is the Reading Rules! application free, or does Michael Cromwell make an income from the downloads? The Reading Rules! app is free.

What is the distance between Springfield, Winnnetoba and Oakville, New Dover?
No additional information available

We are uncertain about why the company would only want the non-compete to apply only to the first two years of employment. Our question is whether Vox can propose that the non-compete applies if the employee leaves employment at any time during the term of the contract, instead within the first two years of the contract?
No additional information available

The confidential facts read "Depending on how much Vox has to compromise on the terms of the non-compete to satisfy Cromwell, Vox has authorized its counsel to decrease the amount of salary and adjust the amount and terms of the bonus package, with the lower end of an offered salary to Cromwell being $75,000 with no bonus package." Does the language "with the lower end of an offered salary" mean that Vox does not want in-house counsel to offer less than a $75,000 salary?
No additional information available

We see that Vox can “adjust the amount and terms of the bonus package.” Our question is: Can the team offer a lower bonus without the condition that the bonus is for an app that goes to market and sells at least 50,000 units?
No additional information available

Can we offer an employment contract term of less than 3 years?
No additional information available
American Bar Association
Law Student Division
2016-17 Negotiation Competition
Business Law
National Competition
Semi-final Round

Mary Andrews and Troy Stauffer
CONFIDENTIAL SUMMARY FOR JUDGES

General Information for Both Parties

Over the past 10 years, Mary Andrews has developed a successful practice as a software and IT consultant for small to medium-sized businesses, and she views her “specialty” as providing consulting services for businesses that are growing, thriving, and looking to invest in smart and efficient business practices. As a consultant, Mary learns about a business’s methodologies, services, and workflow, in addition to asking about the business’s long-term growth goals. Mary then designs and recommends software, hardware, and workspace set-ups to accommodate the business’s technological needs and goals. Though Mary is well-versed in many aspects of software and hardware technology, she simply designs the systems for her clients; she does not herself do any of the work in implementing, maintaining, or providing technical support for the workplace systems after the client has decided to use her recommendations. For the installation, maintenance, and support aspects of the systems that Mary designs, Mary refers her clients to various other computer and IT companies, with her referral often depending on the type of industry that the client is in.

Mary has found that after designing a system for a client, she will often receive repeat consulting business from the client in later years as the client’s business continues to grow and/or the client experiences a need for changes or additions to its current workplace technology system. However, many of Mary’s clients are growing large enough that they may begin to consider adding an in-house IT department, and Mary worries that her current client base may shrink in the coming years. In anticipation of a potential declining client base in coming years, and as a means of offering a more “full-service” consulting package to her clients, Mary has been thinking about bringing a software and hardware installation and maintenance professional into her practice. Mary is confident that her clients would continue to send her a substantial amount of their ongoing IT maintenance and support needs, rather than creating an in-house IT department (at least for the short-term) if she offered a more complete form of service beyond just consulting. She estimates that by adding an IT specialist to her practice (with the possibility of adding more IT specialists in the years to come), she could get at least $125,000 of such business within a year and up to $300,000 annually after a few years of adding the IT services.
Gross revenues from her consulting practice currently average about $400,000 each year; expenses run about 40% of this amount. There are three years remaining on Mary’s current office lease, which is quite small as she does not need office space for much beyond hosting clients to walk them through her design proposals. Although her offices are not large enough to accommodate another professional, space adjacent to her offices has recently become available. A lease on this additional space would be approximately $25,000 annually. If Mary hires an IT professional, she would need to lease the additional space so that her new colleague would have an office base to work from. The additional space would be able to accommodate up to three additional IT professionals if Mary chose to continue expanding in that area. Mary estimates that her ongoing business expenses, not including the salary for an IT professional, would increase by at least $50,000 if she brings an IT professional into her practice (including salary and benefits for a second secretary/receptionist to handle the IT professional’s needs, additional insurance, supplies, etc.). She calculates first-year capital expenditures for office renovation, decoration, additional furniture and equipment, etc. for the new office space at approximately $25,000.

Approximately 60% of the consulting work that Mary does is with companies in the medical industry. When her clients in the medical industry need a referral for an IT company to install, maintain, and support the technology system that Mary has designed, Mary often refers her clients to Walters and Phillips Technology (W&P), a mid-sized computer engineering firm that has a group of computer engineers that specialize in medical software systems. One of Mary’s medical-industry clients is MedPay, LLC, a medical billing company that has been one of Mary’s consulting clients since the company opened five years ago. Though Mary continues to do any necessary system design work for MedPay, the company has used W&P for all of its software and hardware maintenance and support needs. One associate at W&P that has worked extensively on MedPay’s computer systems is Troy Stauffer. Through their connection with MedPay, Mary and Troy have known each other for several years and each respects and admires the professional capabilities of the other.

Because they enjoy each other’s company as professionals in similar fields, and because they share a common client, Mary and Troy sometimes meet for lunch. In recent months, Troy confided in Mary that he was thinking about leaving his position at W&P. Though Troy had good job security there and earned a good salary, he said that he is ready to be in a professional position that gave him more personal autonomy and flexibility. Mary, who knows that Troy is a hardworking, efficient, and effective computer engineer, suggested the possibility that Troy join her in her business to do the work on installing, maintaining, and supporting the systems that she designs for her clients, and that Troy could particularly focus on doing this work for her medical-industry clients. Mary originally suggested that Troy work as her associate under a one-year employment contract with a salary of $100,000, with the understanding that they would discuss a potential partnership arrangement if “things worked out.” Tory immediately rebuffed this offer, stating adamantly that with his level of professional experience, he would expect to be more than just “someone’s employee” and that he would only consider joining forces with Mary if they
formed a true partnership. This awkward exchange ended the conversation, and the parties parted ways without further discussing their options.

Recently, Mary and Troy have begun communicating again and have reopened their conversation about Troy joining Mary in her business. The parties have both retained legal counsel and have scheduled a meeting to begin serious negotiations on the terms of the potential collaboration.

**Confidential Information for Mary Andrews**

Mary has been quite successful over the last ten years, but is concerned about the future of her current client base. A number of her clients are approaching the size at which it would make sense for them to create in-house IT departments for all of their technology needs, which would mean that Mary could lose quite a bit of business in the coming years. In fact, MedPay, LLC recently offered her a position as an in-house technology specialist, where she would serve as the head of MedPay’s IT department at an annual salary of $100,000. Mary refused the offer because she enjoys her consulting business and values her independence; she would not be interested in an in-house IT position unless the compensation were much higher. MedPay’s offer, however, made her aware that MedPay is making tangible plans to develop an in-house IT department, and Mary suspects that some of her other clients may be making similar plans. Mary estimates that, should MedPay decide to create its own IT department, she will lose about $25,000 of consulting work annually. Of course, Mary wants to maintain her current revenue from her consulting work with MedPay and her other clients, but additionally, Mary has estimated that adding an IT services professional to her business would bring in approximately $125,000 in revenue from IT services work.

Because of the real possibility of losing revenue from her consulting work in the coming years, Mary is serious about trying to find a way to bring Troy into business with her. Mary has invested a substantial amount of time into her professional relationship with Troy over the years and knows that he is a good computer engineer. She thinks that they would get along well as work colleagues and that a joint practice would benefit them both. Hiring Troy would also certainly be an incentive in retaining her consulting work with MedPay. The CEO of MedPay has mentioned to Mary that Troy does excellent IT work, and Mary expects that if Troy joined her in her business, MedPay would very likely bring a substantial amount, if not most, of its IT work to Troy. Mary doesn’t know how much MedPay currently pays W&P annually for IT services, but she has estimated that she thinks the amount might account for a large portion of her anticipated $125,000 in additional revenue from Troy’s IT work.

For now, Mary would prefer to hire Troy as an associate of her business for the first year and decide about partnership later. Mary realizes that she will take a larger reduction in income by hiring Troy as an associate instead of offering him a partnership, but she is willing to accept such a reduction for several reasons. Putting together a partnership is time-consuming and expensive, and if things do not work out, a dissolution and wind-up would be disruptive and costly.
Therefore, she wants to first reoffer Troy the associate position with an annual salary of $100,000, with a promise to discuss partnership options at the end of Troy’s first year of employment.

However, in light of her possible impending loss of clients and subsequent need for a competent and well-connected IT professional, Mary will discuss partnership options with Troy if he insists that partnership is what he wants. Mary understands the importance of partnership status to Troy. She is willing to work out a partnership arrangement if Troy is reasonable about financial matters and if she can get out of the partnership whenever she wants with her assets and book of business intact.

Under either option of bringing Troy into her practice as an IT professional, Mary expects gross revenues for the first year would be about $525,000: $400,000 from her consulting practice (assuming that she maintains MedPay as a client by bringing Troy into her practice as an IT professional), and $125,000 from additional IT business she expects to get by bringing Troy into her practice. She thinks expenses for the first year should run about $260,000. This is based on her average expenses for prior years of $160,000, plus her estimates of the capital expenditures necessary, which includes the new office lease expense of $25,000, the additional annual expenses for the partnership of $50,000, and the cost of renovating, decorating, and furnishing the new office space, set at $25,000.

Under the partnership, Mary wants to allocate profits and losses on a fixed percentage basis. Of course, she expects to get a high allocation and most of the business’s profits as she will be the one putting up most, if not all, of the money for the capital expenditures, and putting in the long hours to promote Troy’s services to her existing clients. Therefore, Mary would like to get at least 65% of the profits from the partnership during the first year, but really thinks that she would deserve 70% of the profits. Even with a high percentage of the profits, she will be taking a reduction in income with the additional expenses, which fortunately she can afford for a few years. Additionally, Mary has a cash operating account for her business with a current balance of $35,000. If Troy becomes a partner, she would like him to make a $10,000 capital contribution upon the creation of their partnership; she thinks this would both demonstrate and reinforce his commitment to the partnership. It would also help pay for first-year capital expenditures. However, depending on his financial situation, she is willing to accept $5,000.

She does not think Troy will be very busy during the first year of the partnership; the $125,000 of IT installation, maintenance, and support business she anticipates bringing into the business should not take up more than about 1400 hours of Troy’s time. Given this light work load and his talent for organization and computer engineering, Mary wants Troy to take over some of the administrative duties of the partnership and handle the computer and other technology issues involved in setting up the new office space—at the most, she figures these duties will require about 250 hours during the first year. She realizes that Troy may not make much money for the first few years with a low profit allocation, but she figures that is the trade-off for the partnership opportunity and the first year’s light workload. When he contributes more to the firm in work hours and billed business for his IT work, they can renegotiate the allocations. In fact, Mary is willing to provide in the partnership agreement that they will review allocations on an annual
basis. If Troy thinks he needs more income than a reasonable allocation of partnership profits will provide, he can accept her original offer to work as an associate of her consulting business for an annual salary of $100,000, and they can consider a partnership arrangement later. Although an employment arrangement would probably cost Mary more than giving Troy a small percentage of the partnership profits, it would certainly make life easier if practicing together does not work out.

More generally, so long as your doing so will not interfere with her other priorities, Mary hopes you will be creative in thinking of other steps that Troy can take to advance the interests of Mary and in securing Troy’s agreement to take those steps.

Mary is leaving the negotiation to your discretion and will agree to anything that is in Mary’s best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above and in the General Information.

Confidential Information for Troy Stauffer

Troy enjoys his IT work at W&P and has spent the last 12 years of his career there. He has enjoyed his colleagues immensely and finds the work to be continually challenging and engaging. However, Troy has reached a point in his life where he is ready to have personal autonomy and independence in his work, particularly in his work schedule. Troy and his wife are in their early 50s, and their youngest daughter has recently left for college. He and his wife have longed planned to travel more now that their children are grown, and Troy wants to find a position that will enable him to make his own work schedule to allow him to travel with his wife. Additionally, Troy’s oldest son has been married for a few years, and Troy and his wife think it is very possible that their son and his wife may be having a baby soon. A flexible work schedule would allow Troy and his wife to frequently visit their son and a new baby, once one comes, in the neighboring state where their son lives. Although Troy has begun to consider his career options, he is in no hurry to find another position. He is considered an excellent and productive computer engineer, and he has 20 years of experience in his field. Therefore, he thinks he will have several opportunities to choose from once he makes it known that he is looking for a change.

He is very interested in the possibility of going into partnership with Mary. She has an excellent reputation as a consultant and an impressive established client base, and he thinks they would have a good working relationship. Most importantly, he would be the only computer engineer in her business. This would be an opportunity for him to build his name as an independent IT professional and establish strong connections with many clients in need of IT services. Although Mary suggested hiring him as an associate for a one-year trial period with a salary of $100,000, Troy wants a partnership. He believes this is the best way to insure Mary’s commitment to the development of an IT services branch of her consulting business. Besides, many of his friends and acquaintances are partners or high-level executives at their companies, and he has his pride.

He does have some concerns about how to survive financially through the first few years of developing the partnership’s business, as he is aware that he will likely be taking a pay cut when he leaves W&P. Currently, Troy earns a salary of $95,000. With his daughter beginning college,
Troy has spent a sizable portion of his savings on her tuition. Also, he and his wife recently bought a cabin in the mountains, which they can afford, but not comfortably for very long if Troy’s income drops significantly. Unfortunately, if asked, Troy will not be able to make large a capital contribution to the partnership as the down payment for the cabin and his daughter’s tuition used up most of his savings. Right now, he could afford to contribute up to $7,500 as a capital contribution to the partnership, but he would prefer to keep any upfront contribution he makes to $5,000 or less. However, he figures that any administrative work he could provide to the partnership, such as installing and maintaining a computer network for the firm and providing other forms of tech support to help save costs initially and facilitate the partnership’s development, should be considered a contribution to the firm.

He has reviewed Mary’s estimates for revenue and expenses, and knows that she does not expect substantial profits for the first year of the partnership relative to later years in the partnership. One of the things that he and Mary will have to negotiate to form a partnership is how they will allocate profits and losses between them. Troy knows that Mary would prefer to allocate profits and losses on a fixed percentage basis, and Troy agrees that this method is acceptable. Troy understands that Mary will likely expect to receive a higher percentage of profits from the partnership in the early years because a majority of the revenue will come from her established consulting business. Therefore, at least on a short-term basis, Troy is willing to accept a lower percentage of profits. In the best case, he would like to receive a 35% allocation of profits, but he thinks that Mary will push for him to accept an even lower percentage than that. He is willing to accept no less than a 30% allocation for the first year only, but, if he agrees to a profit allocation percentage of 30%, Troy would insist on the profit allocation increasing in the second year of the partnership.

Although it will probably be a hard sell, he additionally wants to negotiate for a minimum compensation guarantee for the first year in case the IT business that Mary anticipates bringing into the partnership is less than she expects during the first year. He can justify a compensation guarantee for a number of reasons. For one thing, he expects that he can bring in a substantial amount of IT-services work from MedPay. Troy has been the primary computer engineer and IT technician for MedPay on the systems that Mary has designed and has an excellent relationship with MedPay’s CEO. In fact, Troy had a meeting with MedPay’s CEO last week and mentioned that he might soon be looking for opportunities outside of W&P. MedPay’s CEO responded that Troy “has been a lifesaver” for the them and that Troy should be sure to keep MedPay informed of his whereabouts. Therefore, Troy believes that MedPay will send many, if not all, of its IT needs to Troy even when he leaves W&P. Annual billings for Troy’s work on MedPay’s IT matters have averaged $100,000, which would be enough to cover Mary’s estimates for first year capital expenditures of adding an IT professional to her practice. All in all, he thinks a minimum compensation guarantee of $85,000 would be fair, along with any excess of his profit share over this amount.

More generally, so long as your doing so will not interfere with his other priorities, Troy hopes you will be creative in thinking of other steps that Mary can take to advance the interests of Troy and in securing Mary’s agreement to take those steps.

Troy is leaving the negotiation to your discretion and will agree to anything that is in Troy’s best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above and in the General Information.
These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas for potential agreement and disagreement.

**Issue #1: Whether the parties will enter into an employment relationship or a partnership**

<table>
<thead>
<tr>
<th>Mary Andrews</th>
<th>Troy Stauffer</th>
<th>Possible Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mary would prefer to enter into employment relationship with Troy being her associate for at least one year before discussing partnership in order to be able to get out of the relationship more easily in the event that it does not work out. If Troy becomes Mary’s associate, she will offer him a starting salary of $100,000 annually, with a promise to discuss partnership at the end of Troy’s first year of employment. However, Mary is willing to discuss partnership with Troy immediately because she knows that she needs to bring an IT services professional into her practice to avoid losing key clients and business.</td>
<td>Troy is much more interested in a partnership arrangement with Mary, rather than accepting an employment position as her associate. He feels that a partnership agreement between himself and Mary would more strongly indicate her commitment to developing an IT services branch of her business. Also, for purposes of pride, Troy wants to be in a partnership at this point in his life, rather than just being an employee.</td>
<td>The parties will likely agree to discuss partnership options. Although Mary would prefer to hire Troy as her associate rather than entering a partnership right away, Troy will be quite insistent on discussing partnership options, and Mary is open to that discussion.</td>
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**Issue #2: If the parties enter into a partnership, allocation of profits and losses**

<table>
<thead>
<tr>
<th>Mary Andrews</th>
<th>Troy Stauffer</th>
<th>Possible Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>If Mary and Troy decide to enter into a partnership, Mary wants to allocate profits and losses for the partnership on a fixed percentage basis. Mary thinks she should get a much higher percentage of the profits since she will provide most of the capital expenditures for forming the partnership and will put in a lot of work to promote Troy’s IT services. Mary will expect to receive 65-70% of the profits. Additionally, Mary is willing to agree to review and renegotiate profit/loss allocation on an annual basis. Mary also thinks her receiving a higher percentage of the profits is fair because Troy’s consulting work in the first year will only take up about 1400 hours. Because he will have a light work load initially, Mary would like for Troy to handle some of the administrative duties of the partnership. If Troy is worried about not making enough money under the fixed percentage basis of allocating profits and losses, Mary will reoffer him an associate position at a salary of $100,000, and the parties can consider a partnership later.</td>
<td>Troy is willing to agree to allocate profits and losses on a fixed percentage basis if he and Mary form a partnership. He is also willing to accept a lower percentage of profits initially because most of the revenue in the first year will come from her established consulting business. Troy would like to receive at least a 35% allocation of the profits, but will not accept less than a 30% allocation. If Troy accepts a 30% allocation of the profits, he is willing to do so only for the first year and will insist on a guarantee that his profit allocation increase in the second year of the partnership. Additionally, Troy would like to negotiate for a minimum compensation guarantee for the first year of the partnership in case the profits are lower than Mary expects. Troy would like to receive a guarantee of $85,000 in compensation for the first year.</td>
<td>The parties will likely agree to divide profits and losses on a fixed percentage basis, with Mary receiving somewhere between 65-70% of the profits and Troy receiving 30-35% of the profits. The parties may also agree to re-evaluate the fixed percentage given to each party at a future date. Troy will likely ask for a guarantee of $85,000 in minimum compensation. Mary has instructed her counsel to agree to anything that is in her best interest, so her counsel may be willing to provide this guarantee to Troy. However, it is more likely that Mary’s counsel will tell Troy that, if he needs a minimum compensation guarantee, he should take the offer to be Mary’s associate for a salary of $100,000.</td>
</tr>
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</table>
**Issue #3: Capital Contribution to Partnership, if one is formed**

<table>
<thead>
<tr>
<th>Mary Andrews</th>
<th>Troy Stauffer</th>
<th>Possible Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mary will be fronting most of the capital expenditures for the partnership, but she would like for Troy to make a capital contribution of $5,000-$10,000 to help cover these expenses.</td>
<td>Troy expects that Mary will ask him to make a capital contribution to the partnership to help pay for expenses. He could contribute up to $7,500, but would prefer to keep any upfront contribution he makes to $5,000 or less.</td>
<td>The parties will likely agree that Troy will make a capital contribution of between $5,000 and $7,500.</td>
</tr>
</tbody>
</table>
Progressive Hotels, Inc. and Willco Construction Co.

CONFIDENTIAL SUMMARY FOR JUDGES

General Information for Both Parties

Approximately six months ago, Progressive Hotels, Inc. entered into two separate contracts with Willco Construction Co. for the construction of two hotels in the state of Winnetoba. The hotels were to be built in two different cities, Paris Springs and Brownville, which are 90 miles apart. Construction was to begin on each hotel at approximately the same time. Each hotel was designed to have 150 rooms, an indoor swimming pool and hot tub, a fitness facility, and two large conference rooms. The contracts between the parties for the construction of the hotels provided that each hotel should be complete within one year of the commencement of construction at the hotel site.

For each hotel, the contract provided that Willco Construction was to serve as the general contractor of the construction and that Willco would hire subcontractors to perform various jobs necessary to the construction of the hotels. Danny Williams, Willco's owner, assured the owners of Progressive Hotels, Bill and Pete Patterson, that his company was both large and experienced enough to handle the general contracting work for both hotels in different locations simultaneously. The Pattersons, both assured by Williams and reassured by a handful of references provided by Williams, agreed to begin building both hotels at the same time, though the Pattersons initially pushed for staggered start dates for the construction of each hotel. Under each contract, Progressive Hotels was required to pay Willco Construction $4,000,000 up front in order for Willco Construction to begin construction work. The contract further required that additional sums of $4,000,000 be paid from Progressive Hotels to Willco Construction for each hotel at 50% completion of construction and 100% completion of construction, for a total payment from Progressive Hotels to Willco Construction of $12,000,000 for each hotel.
After the parties signed the contracts, Progressive Hotels electronically transferred to Willco Construction two separate payments of $4,000,000, one payment for each hotel. As agreed, Willco began construction on each hotel within two weeks of receiving the payments from Progressive Hotels. The construction on each hotel progressed as expected for the first 5 months, with each hotel reaching approximately 40% completion.

Five and a half months after the parties signed the contracts, knowing that another set of payments was coming due soon to Willco Construction, Bill and Pete Patterson went to their bank to secure a loan for the next payments of $4,000,000 for each hotel. To their shock, the agent at the bank, after running a standard lien check on the two properties, informed the Pattersons that multiple Mechanic’s and Materialman’s (M&M) liens had been filed against both of the properties by various subcontractors that had done work as part of the construction, and that the bank would not loan Progressive Hotels any more money until the liens were resolved and removed from the properties. Bill Patterson immediately called Danny Williams and demanded to know why liens were being filed against the properties. Williams responded indignantly that some of the subcontractors had been sending him invoices for labor that hadn’t been done and/or materials that hadn’t been used, or for work that had already been paid. Williams insisted that he had no idea that the subcontractors were filing liens against the property. As far as he was aware, he was dealing with each subcontractor individually to work out any disputes.

Bill Patterson angrily informed Williams that “this mess had better get straightened out immediately” because construction would not be able to continue for very long if Progressive Hotels was unable to receive any more funds from the bank because of the presence of the liens. Later that day, the Pattersons called their attorney to have him run title reports on the hotel properties. The title reports showed that the hotel in Brownville had a total of five M&M liens filed against it, all filed in the past month. The Paris Springs hotel had a total of two M&M liens filed against it, all also filed in the past month. The Pattersons’ real estate attorney sent copies of the title reports for both hotels, showing all of the liens filed, to Willco Construction, with attention to Danny Williams, the same day.

The M&M liens for each hotel property are as follows:

**Brownville property**: (1) lien for dirt work in preparing the construction site, $19,250; (2) lien for gravel work in preparing the construction site, $31,500; (3) lien for work by a plumbing company for re-routing a gas line, $7,780; (4) lien from a concrete company for concrete poured and work done on the foundation, $63,180; (5) lien from a roofing company, $26,300.
**Paris Springs property**: (1) lien for dirt work in preparing the construction site, $20,400; (2) lien for gravel work in preparing the construction site, $30,900.

The Pattersons, furious at both the number and recency of the filing of the liens with no communication from Willco Construction that there were any potential problems with the progression of the construction, instructed their attorney to schedule a face-to-face meeting with Willco Construction’s attorney to sort out all of the problems with the subcontractors and to account for all of the money spent to date by Willco Construction. Willco Construction’s attorney agreed that an urgent meeting was best, and the parties’ attorneys have arranged a meeting.

**Confidential Information for Progressive Hotels, Inc.**

Progressive Hotels’ owners are furious that the construction sites for both hotels have multiple liens filed against them. They know that the liens will essentially bring construction on the hotels to a dead halt until the liens are resolved because the bank won’t lend Progressive Hotels any more money with the liens on the properties, and Willco won’t continue construction without getting paid. In addition, the Pattersons don’t want to continue moving forward with construction of the hotels and making payments to Willco until they are reassured that Willco is appropriately handling the money it is receiving from Progressive. Bill and Pete Patterson are anxious to hear what Danny Williams has to say about how and why the liens came to exist on the properties because obviously Willco has not been paying the subcontractors as it should have, or liens would never have been filed against the properties in the first place.

About two months after the beginning of the construction on the hotels, Bill Patterson had visited each hotel site to visually observe the progression of the construction at each site. At that time, the construction seemed to be progressing normally, and Bill didn’t detect any problems with the construction at either hotel. In the time since the Pattersons learned about the liens, Bill Patterson made another visit to each hotel site, just to see if anything unusual was happening with the construction. The Paris Springs site appeared to be completely fine in terms of the construction work, but at the Brownville property, Bill observed what looked like significant damage to the framing of one of the back corner walls of the hotel. The Pattersons suspect that this damage is probably linked to at least one of the
liens filed at the Brownville hotel site, but they would like to hear Williams’ explanation of what that damage is all about and how Willco intends to correct it.

One minor bright spot in the situation is that Progressive Hotels’ attorney has examined the lien filings on both properties and found that the liens for dirt work and gravel work that were filed at each hotel were filed incorrectly and do not comply with the Winnetoiba statutes for filing M&M liens. This means that, if necessary, Progressive Hotels could bring a quiet title action against the subcontractors who filed those liens and seek to have the liens removed from the properties on the basis of the liens’ failure to comply with the proper Winnetoiba statutory requirements. However, this solution to removing the dirt work and gravel liens is one that Progressive Hotels hopes to avoid. Progressive is not interested in suing the subcontractors in order to forcibly remove the liens and that process would be slow and expensive. Progressive would much rather get Willco to immediately pay the subcontractors what they’re owed so that the subcontractors voluntarily remove the liens from the property.

As things currently stand, the parties are 5 ½ months into the one-year period during which construction is to be completed. The last the Pattersons knew, construction had reached 40% completion on both hotels, but they would like to receive an update from Williams as to the current status of the construction at both sites. In order for construction on both hotels to continue without a major interruption, the liens will need to be resolved by the time the construction on both hotels reaches the 50% mark, which is when the next payments of $4,000,000 are due for each hotel. The Pattersons would like to receive adequate assurance from Willco that the current liens against the property will be removed at or before the time when construction reaches 50% on each hotel. Additionally, the Pattersons would like an update on whether Willco believes it can still complete both hotels by the one-year deadline. The Pattersons are worried that either the presence of the liens or the damage at the Brownville property will cause a delay in the completion of one or both hotels, and the Pattersons would like the projects to finish at the one-year deadline. If, however, Willco cannot complete either or both of the hotels on time, for the sake of compromise, the Pattersons would be willing to extend the deadline up to 2 months past its original date, but no more.

Having done commercial construction projects before, the Pattersons are aware that sometimes certain parts of construction will cost more than originally estimated. Knowing this, Progressive Hotels has $100,000 that can be allocated toward either of the construction projects, if necessary. Progressive Hotels is willing to tap into this money to help remove the liens from the property only under the condition that
there have been additional, necessary expenses that are part of the construction of either hotel. If Willco can show that more funds are needed for a certain project, the Pattersons are willing to pay the difference. Also, in addition to getting an explanation from Williams about why the liens exist, the Pattersons think that it would be wise to consider whether any revisions or additions to the contracts is are warranted to ensure that Willco does not allow any more liens to be filed against the properties as construction moves forward. Specifically, the Pattersons would like to have a contractual provision that requires Willco to submit monthly accountings of what work has been done on the construction, the cost of that work, and proof of payment of that work. The Pattersons are open to any additional provisions that would be in the best interest of Progressive Hotels to ensure no more M&M liens are filed against the property as the construction continues.

More generally, so long as your doing so will not interfere with its other priorities, Progressive Hotels hopes you will be creative in thinking of other steps that Willco can take to advance the interests of Progressive Hotels and in securing Willco’s agreement to take those steps.

Progressive Hotels is leaving the negotiation to your discretion and will agree to anything that is in Progressive Hotels’ best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above and in the General Information.

Confidential Information for Willco Construction Co.

Willco’s owner is disappointed, though not fully surprised, to learn that multiple liens have been filed against both hotel properties. Danny Williams has been in contact with some of the subcontractors who have filed liens, and he knew there were some existing disputes between Willco and those subcontractors, but he was not aware that any of the subcontractors were intending to file liens. Williams knows that all of the liens have to be resolved in order for the construction on both hotels to continue. Willco won’t be able to continue building and hiring subcontractors without the next payment from Progressive Hotels, and Progressive’s bank won’t loan Progressive any more money for the construction projects until the liens are removed from the properties.

Regarding each specific lien, Williams is confident that he knows why the subcontractors filed the liens. On the liens for the gravel and dirt work that were filed on both properties, Williams knows exactly why the liens were filed. An oversight in Willco’s accounts payable department caused those invoices, four in total, to not get paid for over two months. The subcontractor who did that work and
filed those liens, which was the same company for all four liens, sent the invoices twice with no payment from Willco before filing the liens. Immediately upon Williams’ receipt from Progressive of the title reports showing the liens on both properties, he went straight to his accounts payable manager, and together they discovered that the dirt and gravel work subcontractor had simply not been paid. Williams called that subcontractor, apologized several times for the oversight, and sent payment in full for all four of the invoices the same day. Therefore, those four liens, two at each hotel property, should be removed by the subcontractor within the next few days.

At the Brownville property, Williams knows that there have been some issues with the plumbing company, concrete company, and roofing company. With the plumbing company, Willco had been disputing the amount of an invoice submitted to reroute a gas line that had previously existed at the construction site. Willco believes that the plumbing company’s bill for materials used for that work is more than twice what it should be, and Willco has been requesting an itemized invoice showing the cost of all materials used for the work, but the plumbing company has been refusing to supply one. With the concrete company, the amount of labor and materials needed to complete the work had been more than what was initially estimated, which increased the total cost for that work by $28,000. Finally, with the roofing company, in perhaps the most complicated of all of the liens, Williams is angry that the company would even file a lien. The roofing company had submitted a total invoice of $165,000 for roofing work done at the hotel site, but Willco had refused to pay a portion of the invoice because the roofers, while installing the roof, did serious damage to some of the framing work on one of the back walls of the hotel. Willco, which did all of the framing work itself, refused to pay $26,300 of the total invoice from the roofing company, which is the amount of the damage done to the framing.

In terms of resolving the three liens on the Brownville property involving the plumbing company, roofing company, and concrete company, Williams has some ideas about how to proceed. With the plumbing company, Willco will likely just pay the invoice in order to get the lien removed and keep construction moving forward. The amount of the plumbing invoice, which is $7,780, is within the budgeted amount for rerouting the gas line, and Williams isn’t sure it’s worth it to keep fighting over the amount of the invoice. On the lien for the concrete work, Willco will likely have to explain to the Pattersons that the concrete work simply went over budget by $28,000 and request an additional payment from Progressive Hotels in that amount to cover the additional expense. Williams hopes that this won’t create a problem for Progressive. Constructions projects often involve unforeseen, additional expenses in the construction process, and unfortunately one such additional expense has arisen on the Brownville property. Finally, as to the lien with the roofing company, Williams expects that Willco will ultimately be responsible for negotiating some kind of settlement on the amount of the damage to the framing caused by the roofing company. Progressive Hotels had nothing to do with the damage to the framing, and Williams can’t expect them to pay for its
repair, or to bear the brunt of construction being held up while Willco and the roofing company work out who is going to pay for the repair work. Williams suspects that Willco will have to just repair the framing, pay the roofing company the final $26,300 for the roof work so that the roofing company will remove the lien, and then Willco will have to pursue a private settlement with, or perhaps even a lawsuit against, the roofing company for the amount of the damage to the framing.

As things currently stand, the parties are 5 ½ months into the one-year period during which construction is to be completed. The construction at the Paris Springs property is on track to be 50% complete within the next 2 weeks, and everything is running smoothly at that location. Williams expects that the Paris Springs hotel will be complete within the one-year deadline required by the contract. At the Brownville property, however, construction is still at only 40% completion, mainly because of the damage to the framing and the dispute with the roofing company. Construction at the Brownville site should be picking back up soon though, as Willco will repair the framing and continue on with the construction. Unfortunately, it looks as though the entire project in Brownville is going to be behind. The construction in Brownville will likely reach 50% completion in about 6 weeks, which will delay completion of the construction of the entire project by about one month. Therefore, Williams needs Progressive Hotels to agree to a one-month extension of the completion period for the construction at the Brownville property. Finally, Williams suspects that the Pattersons may ask for Willco to provide documentation of its payments to all subcontractors as the construction moves forward. Williams is willing to agree to a provision such as this on Willco’s behalf for the remainder of the construction projects on both hotels, so long as the terms of any such provision are reasonable and in Willco’s best interest.

More generally, so long as your doing so will not interfere with its other priorities, Progressive Hotels hopes you will be creative in thinking of other steps that Willco can take to advance the interests of Progressive Hotels and in securing Willco’s agreement to take those steps.

Progressive Hotels is leaving the negotiation to your discretion and will agree to anything that is in Progressive Hotels’ best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above and in the General Information.
These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas for potential agreement and disagreement.

**Issue #1: Resolution of the Liens on the Hotel Properties**

<table>
<thead>
<tr>
<th>Progressive Hotels, Inc.</th>
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<tr>
<td>The owners of Progressive Hotels want to get all of the liens removed from the properties as soon as possible to allow construction to continue on the hotels without delay. The Pattersons expect Willco’s owner to explain what has caused the liens to be filed and to provide assurances that liens will not continue to be filed against the properties as construction continues. The Pattersons have up to $100,000 to spend to help resolve the liens quickly, but would prefer not to spend additional money beyond what was initially budgeted, if possible.</td>
<td>Willco’s owner, Danny Williams, should be prepared to provide an explanation as to why each individual lien has been filed on each hotel property. Williams should also be prepared to explain what needs to be done to remove each individual lien from the properties and to possibly provide a timeframe for when the liens will likely be removed. Willco will need to ask Progressive Hotels to provide an additional payment to resolve the lien with the concrete company.</td>
<td>The parties should discuss each individual lien on both properties so that Willco can explain to Progressive why the liens are present and what can be done to resolve each lien. The parties should discuss a strategy to have each lien removed and the potential timeframe for having each lien removed. The parties will need to decide how to handle the concrete lien that requires additional funds beyond the initial budgeted amount, and Progressive Hotels will probably agree to pay for all or part of that additional amount.</td>
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### Issue #2: Extension of the Deadline to Complete Hotel Construction

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<tr>
<td>Progressive Hotels needs Willco to explain the status of the construction at each of the hotels and whether each hotel is on track to be finished within the one-year time frame. Progressive wants to see both hotels finished on time, but has the discretion to extend the completion deadline by up to 2 months.</td>
<td>Willco will explain that the Paris Springs property should be able to finish on time, but that the Brownsville property is approximately 6 weeks behind schedule right now. Willco will need to ask for at least a one month extension for the completion of the Brownsville property.</td>
<td>The parties will discuss the status of the construction at both hotel properties and will likely agree to a one-month extension for the completion of the Brownsville property.</td>
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### Issue #3: Addition or Revisions to Construction Contracts

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<td>Progressive Hotels should consider and ask for any additional or revised provisions to the contract that will prevent liens from being filed against the hotel properties through the completion of the construction. Specifically, Progressive Hotels will likely ask Willco to provide an accounting each month of what work has been done on the construction, the cost of that work, and proof of payment of that work.</td>
<td>Willco is willing to agree to any additional or revised provisions to the contracts that require Willco to provide documentation of its payments to all subcontractors as the construction moves forward.</td>
<td>The outcome for this issue will likely vary depending on how the teams decide to structure the parties’ respective obligations for the remainder of the construction. At the very least, the parties should agree for Willco to provide monthly accountings of the work done and monies paid to the subcontractors for the remainder of the construction.</td>
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