

VILLAGE OF BRADLEY

RESOLUTION NO. R-7-18-2

A RESOLUTION ENTERING INTO AN AGREEMENT WITH AZAVAR AUDIT SOLUTIONS
FOR THE REVIEW AND AUDIT OF VILLAGE TAXES AND FEES.

ADOPTED BY THE
BOARD OF TRUSTEES OF THE
VILLAGE OF BRADLEY

THIS 23 DAY OF JULY, 2018

Published in pamphlet form by the authority of the Board of Trustees of the Village of Bradley,
Kankakee County, Illinois this 23 day of JULY, 2018

RESOLUTION NO. R-7-18-2

A RESOLUTION ENTERING INTO AN AGREEMENT WITH AZAVAR AUDIT SOLUTIONS FOR THE REVIEW AND AUDIT OF VILLAGE TAXES AND FEES.

WHEREAS, the President and Board of Trustees of the Village of Bradley, Kankakee County, Illinois, have the authority to adopt resolutions and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety, and welfare; and

WHEREAS, pursuant to Section 2-3-8 of the Illinois Municipal Code (65 ILCS 5/2-3-8), the Corporate Authorities of the Village have the power to authorize the execution of contracts in the name of the Village; and

WHEREAS, pursuant to Section 8-1-7 of the Illinois Municipal Code (65 ILCS 5/8-1-7), the Corporate Authorities of the Village have the authority to make contracts for a term exceeding one year and not exceeding the term of the Village President holding office at the time the contract is executed that relate to the employment of outside professional consultants, including auditors; and

WHEREAS, Azavar Audit Solutions, Inc. ("Azavar"), is an Illinois corporation having its principal place of business at 55 East Jackson Boulevard, Suite 2100, Chicago, Illinois 60604 that provides tax and fee audit services; and

WHEREAS, the Village and Azavar have negotiated a Professional Services Agreement, a copy of which is attached hereto as Exhibit A and fully incorporated herein (the "Agreement"); and

WHEREAS, the Corporate Authorities of the Village have determined that entering into the Agreement with Azavar is in the best interests of the Village and its citizens.

NOW THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS, PURSUANT TO ITS STATUTORY AUTHORITY, AS FOLLOWS:

SECTION 1. The President and Board of Trustees hereby find that all of the recitals contained in the preamble to this Resolution are true, correct, and complete and are hereby incorporated by reference hereto and made a part hereof.

SECTION 2. The Corporate Authorities of the Village hereby determine that the terms and provisions of the Agreement, attached hereto as Exhibit A and fully incorporated herein, are acceptable to the Village and further state that the Village desires to enter into said Agreement between the Village and Azavar.

SECTION 3. Brian Patoska, Finance Director and Treasurer of the Village of Bradley, is hereby authorized and directed, in his capacity as such Finance Director and Treasurer, to execute the Agreement attached hereto as Exhibit A, along with any other documents necessary for the Village to enter into said agreement.

SECTION 4. Brian Patoska, Finance Director and Treasurer of the Village of Bradley, is hereby authorized and directed, in his capacity as such Finance Director and Treasurer, to take any other action necessary for the Village to enter into the aforesaid Agreement.

SECTION 5. In the event that any provision or provisions, portion or portions, or clause or clauses of this Resolution shall be declared to be invalid or unenforceable by a Court of competent jurisdiction, such adjudication shall in no way affect or impair the validity or enforceability of any of the remaining provisions, portions, or clauses of this Resolution that may be given effect without such invalid or unenforceable provision or provisions, portion or portions, or clause or clauses.

SECTION 6. That all ordinances, resolutions, motions, or parts thereof, conflicting with any of the provisions of this Resolution, are hereby repealed to the extent of the conflict.

SECTION 7. That the Village Clerk is hereby directed to publish this Resolution in pamphlet form.

SECTION 8. That this Resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED by the Board of Trustees on a roll call vote on the 23 day of July, 2018.

TRUSTEES:


| | | | |
|------------------|---|--------------------------------|-----------------------------------|
| GERALD BALTHAZOR | Aye - <input checked="" type="checkbox"/> | Nay - <input type="checkbox"/> | Absent - <input type="checkbox"/> |
| ROBERT REDMOND | Aye - <input checked="" type="checkbox"/> | Nay - <input type="checkbox"/> | Absent - <input type="checkbox"/> |
| LORI GADBOIS | Aye - <input checked="" type="checkbox"/> | Nay - <input type="checkbox"/> | Absent - <input type="checkbox"/> |
| MICHAEL WATSON | Aye - <input checked="" type="checkbox"/> | Nay - <input type="checkbox"/> | Absent - <input type="checkbox"/> |
| DON BARBER | Aye - <input checked="" type="checkbox"/> | Nay - <input type="checkbox"/> | Absent - <input type="checkbox"/> |
| NICK ALLEN | Aye - <input checked="" type="checkbox"/> | Nay - <input type="checkbox"/> | Absent - <input type="checkbox"/> |

VILLAGE PRESIDENT:

| | | | |
|-------------|--------------------------------|--------------------------------|-----------------------------------|
| BRUCE ADAMS | Aye - <input type="checkbox"/> | Nay - <input type="checkbox"/> | Absent - <input type="checkbox"/> |
|-------------|--------------------------------|--------------------------------|-----------------------------------|

| | | | |
|----------------|----------------|----------------|-------------------|
| TOTALS: | Aye - <u>6</u> | Nay - <u>0</u> | Absent - <u>0</u> |
|----------------|----------------|----------------|-------------------|

ATTEST:



MICHAEL J. LAGESSE, VILLAGE CLERK

APPROVED this 23 day of July, 2018.

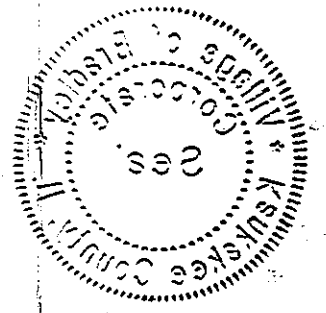


Bruce Adams MPT
BRUCE ADAMS, VILLAGE PRESIDENT

Michael J. Lagesse

MICHAEL J. LAGESSE, VILLAGE CLERK

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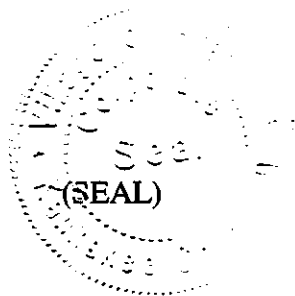
STATE OF ILLINOIS)
) §§
COUNTY OF KANKAKEE)

I, Michael J. LaGesse, Village Clerk of the Village of Bradley, County of Kankakee and State of Illinois, DO HEREBY CERTIFY that the attached is a true, perfect, and complete copy of Resolution number R-7-18-2, "A RESOLUTION ENTERING INTO AN AGREEMENT WITH AZAVAR AUDIT SOLUTIONS FOR THE REVIEW AND AUDIT OF VILLAGE TAXES AND FEES" which was adopted by the Village President and Board of Trustees at a meeting held on the 23 day of July, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand in the Village of Bradley, County of Kankakee and State of Illinois, on this 23 day of July, 2018.



MICHAEL J. LAGESSE, VILLAGE CLERK



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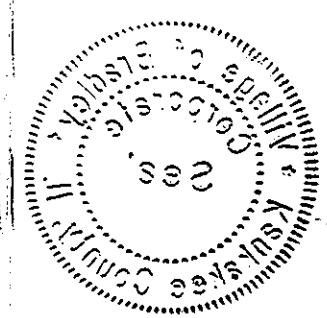


EXHIBIT A

CONTINGENT FEE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into by and between Azavar Audit Solutions, Incorporated, an Illinois corporation having its principal place of business at 55 East Jackson Boulevard, Suite 2100, Chicago, Illinois 60604 ("Azavar"), and the Village of Bradley an Illinois municipal corporation having its principal place of business at 147 South Michigan Avenue Bradley, Illinois 60915 ("Customer").

1. SCOPE OF SERVICES

- 1.1 Subject to the following terms and conditions, Azavar shall provide professional computer, data audit, compliance management, and management consulting services ("Services") in accordance with the below statement of work. Azavar will render the services provided under this Agreement in a workmanlike manner in accordance with industry standards. The services and work provided shall be provided in substantial accordance with the below statements:
- (a) Azavar shall undertake a Municipal Audit Program on behalf of the Customer. As part of the Municipal Audit Program Azavar shall, on behalf of the Customer, separately review and audit each fee, ordinance, contract, franchise agreement, utility tax, locally administered taxes or fees, locally imposed occupation tax, ad valorem tax, excise tax, taxpayer, franchise fee, utility service fee, intergovernmental or other remittances to the Customer, and expense imposed by or upon the Customer within the Customer's corporate boundaries ("Audits") including, but not limited to local businesses, electric, gas, cable, telecommunications, refuse, and water providers ("Providers") on behalf of the Customer. Azavar shall review during the course of its work for the Customer, Customer ordinances, contracts, receipts, addresses and databases, including any of the aforementioned items, whether administered locally, by the state or federal government, by any other government or non-government organization, or by any other third-party, revenues relating to state and local sales/use/occupation taxes, including amusement taxes, business license/registration databases and revenue, and any other locally authorized fees and/or licenses, including liquor licenses. Azavar shall review and audit food, beverage, and/or liquor taxes and/or fees and hotel, motel, bed, and/or transient occupancy taxes where applicable to the Customer. Azavar shall review and consult Customer on areas to enhance, increase, or maximize Customer revenues including, but not limited to, previous, existing, or new ordinances, agreements, or third-party contracts. Should the Customer own or operate its own utilities including electric, natural gas, water or other utilities, Azavar shall also review and audit the revenues and expenses of those Customer owned or operated utilities.
 - (b) The purpose of each audit is to determine past, present, and future taxes, franchise fees, service fees, or any other recoveries, refunds, monies or revenue owed to the Customer that were not properly attributed to the Customer or were not properly paid or collected and to determine future taxes, franchise fees, and other monies owed to the Customer not previously counted so that Customer can collect these past, present, and future monies. Federal and Illinois state law, the Customer's own local ordinances and databases, and the franchise agreements, contracts or bills between Customer and Providers are used by Azavar to conduct the Audits and Azavar will present to Customer in writing during the course of the Audits findings of monies paid, due, or potentially due to the Customer for review by the Customer ("Findings"). Where already allowable by existing Customer contracts or agreements or Federal, State, or local laws or ordinances, this Agreement authorizes Azavar to correct any prospective errors and make a reasonable effort to collect monies due to the Customer under such applicable laws, local ordinances, or contracts. Azavar shall review Customer ordinances and shall present Findings to Customer to maximize Customer revenues as part of the Audits, and where such Findings requires a change into the future, Azavar will only implement such change after Customer has reviewed and agreed to in writing any such change. Customer understands that Findings may include, but are not limited to, changes to technology, organizational processes, process automation, Customer communication practices, Customer governing practices, and/or updates to local ordinances or the codification thereof. Customer agrees that any Findings, whether implemented in whole or in part by Azavar or the Customer, shall be fully compensable under Section 3 of this Agreement, including wherein the Findings require any amendments to an ordinance and wherein the ordinance is changed. Customer agrees to review any Findings within thirty (30) days.
 - (c) Customer hereby represents that it is not engaged in any Audits as contemplated under this Agreement and shall therefore pay Azavar the fees set forth in this Agreement for any Findings made by Azavar. Customer agrees that it shall not initiate or engage in any Audits, changes to any ordinances related to any Audits, or execution or renewal of any contracts or franchise agreements related to any Audits as contemplated under this Agreement without Azavar's prior written consent.
 - (d) In order to perform the Audits, Azavar shall require full access to Customer records and Provider records. Customer shall use its authority as necessary to assist in acquiring information and procure data from Providers. Customer agrees that it shall cooperate with Azavar, provide any documentation and records requested by Azavar, and provide continued access (prior to, during, and following any Audits) to documentation and records, and shall engage in meetings with Providers when requested by Azavar. Customer shall notify Azavar of any Provider requested meetings with Customer and shall include Azavar in said meetings.
 - (e) During the course of each audit, Azavar may find that rather than being owed past due funds, the Customer owes funds erroneously paid to the Customer. In this case, Azavar will immediately terminate its participation for that specific Provider audit at no cost to the Customer and will document the error and provide the Customer with information necessary to correct the error. Azavar shall have no liability to Customer for these errors or actions arising from Azavar's or Customer's knowledge thereof.
 - (f) Customer acknowledges that each Provider is a separate entity that is not controlled by Azavar and therefore Azavar cannot predict all the steps or actions that a Provider will take to limit its responsibility or liability during the audit. Should Customer negotiate, abate, cancel, amend, delay, or waive by any means all or a portion of funds identified as payable to Customer during an audit, Customer shall pay all Azavar expenses and fees on a time and materials basis for that audit in addition to any applicable contingency fees for any Findings that were identified by Azavar or by its Audits;
 - (g) The first audit start date is expected to be within no later than thirty (30) days from the date of this Agreement unless

- changed and approved by the Customer's Audit Primary Contact and Liaison;
- (h) Each audit is expected to last at least six (6) months. Each subsequent audit will begin after payment terms and obligations have been satisfactorily met from previously completed Audits however overlapping audit work may take place at the discretion of Azavar. Audit timelines are set at the discretion of Azavar;
 - (i) Audit status meetings will be held regularly via phone, email, or in person throughout the course of the Audits between Azavar and the Customer's Primary Contact and Liaison and will occur approximately every quarter;
 - (j) Jason Perry, Municipal Audit Program Manager, and Azavar specialists will be auditors under this agreement. All Azavar staff or subcontractors shall be supervised by the Azavar Program Manager.

1.2 Customer agrees to provide reasonable facilities, space, desks, chairs, telephone and reasonably necessary office supplies for Consultants working on Customer's premises as may be reasonably required for the performance of the Services set forth in this Agreement and in any Exhibit hereto. Customer will assign and designate an employee to be the Audit Primary Contact and Liaison. The Customer's Audit Primary Contact and Liaison will be the final decision maker for the Customer as it relates to this audit and will meet with Azavar staff on a regular basis as necessary. Lack of participation of Customer staff, especially at critical milestones during an audit, will adversely affect the audit timeline and successful recovery of funds. Customer's staff shall be available for meetings and participation with Providers to properly verify records and recover funds.

1.3 The Parties further agree that under no circumstances shall the scope of the Services, as described in this Section 1, extend to the collection of any debt owed to the Customer that is in any way related to (i) ambulance services, (ii) citations arising from the Customer's ordinances, (iii) sewer billing, and/or (iv) any other similar debt.

2. **INDEPENDENT CONTRACTOR.** Azavar acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither Azavar nor its employees shall be deemed to be an employee of Customer for any reason whatsoever. Neither Azavar nor Azavar's employees shall be entitled to any Customer employment rights or benefits whatsoever. Customer shall designate Azavar as Power of Attorney with the Illinois Department of Revenue solely for the purpose of reviewing data provided by the Illinois Department of Revenue.

3. **PAYMENT TERMS.**

3.1 Customer shall compensate Azavar the fees set forth in this agreement on a contingency basis. If applicable, Azavar shall submit an invoice to Customer on a monthly basis detailing the amounts charged to Customer pursuant to the terms of this Agreement. Any invoice not disputed in writing by Customer within thirty (30) days after the receipt of such invoice shall be considered approved by the Customer. Customer shall remit payment to Azavar in accordance with the Local Government Prompt Payment Act. If Customer defaults on payment of any invoice that is not disputed in writing by Customer within thirty (30) days after the receipt of such invoice Azavar, at its discretion, may accelerate all payments due under this Agreement and seek recovery of all estimated fees due to Azavar based on Findings. Azavar shall be entitled to recover all costs of collection including, but not limited to, finance charges, interest at the rate of one percent (1%) per month, reasonable attorney's fees, court costs, and collection service fees and costs for any efforts to collect fees from the customer. Contingency payment terms are outlined below. If Customer negotiates, abates, cancels, amends, delays, or waives, without Azavar's written consent, any tax determination or Findings that were identified by Azavar or by its Audits where such Findings were allowed under the law at the time the tax determination or Findings were made, Customer shall pay to Azavar applicable contingency fees for the total said tax determination or Findings at the rates set forth below and for the following thirty-six (36) months. If Customer later implements during the subsequent thirty-six (36) months any Findings Customer initially declined based on Azavar programs or recommendations, Azavar shall be paid by Customer its portion of the savings and/or recoveries over the following thirty-six (36) months at the contingency fee rates set forth below.

3.2 Customer shall pay Azavar an amount equal to forty-five (45) percent of any new revenues or prospective funds recovered per account or per Provider for thirty-six (36) months following when funds begin to be properly remitted to the Customer. In the event Azavar is able to recover any retroactive funds, any additional savings or revenue increases for any time period, or any credits at any time, Customer will pay Azavar an amount equal to forty-five (45) percent of any retroactive funds, savings, and fair market value for any other special consideration or compensation recovered for or received by the Customer from any Provider. All contingency fees paid to Azavar are based on determinations of recovery by Azavar including Provider data and regulatory filings. All revenue after the subsequent thirty-six (36) month period for each account individually will accrue to the sole benefit of the Customer.

3.3 As it pertains to Customer expenses, utility service bill and cost Audits, Customer shall pay Azavar an amount equal to forty-five (45) percent of prospective savings approved by Customer for thirty-six (36) months following the date savings per Provider is implemented by Azavar or Customer. In the event Azavar is able to recover any refunds or any credits at any time, Customer will pay Azavar an amount equal to forty-five (45) percent of any such retroactive funds, savings, revenue increases and/or credits recovered for or received by the Customer from any provider. All contingency fees paid to Azavar are based on determinations of savings by Azavar including Provider data and regulatory filings. All savings after the subsequent thirty-six (36) month period for each service provider individually will accrue to the sole benefit of the Customer.

3.4 To the extent that any payment is due to Company after April 30, 2021, this Section 3.4 shall apply:

- (a) Azavar shall estimate the total amount due after April 30, 2021 and shall bill Customer for this amount on or before March 31, 2021, with a due date of April 30, 2021.
- (b) Notwithstanding the due date of April 30, 2021, Azavar shall toll all contractual and statutory remedies (including the Local Government Prompt Payment Act.) for nonpayment until June 30, 2021.
- (c) If Customer signs a new contract (or contract amendment) with Azavar on or before June 30, 2021, payment terms shall revert those that would have applied in the absence of this Section 3.4.

- (d) If Customer does not sign a new contract (or contract amendment) with Azavar on or before June 30, 2021 and has not paid the bill due on April 30, 2021 by June 30, 2021, Customer shall be in default, retroactive to April 30, 2021 and agrees that the Local Government Prompt Payment Act is applicable and has not been waived by Azavar.
- (e) The Parties expressly agree that the termination of this Agreement at any time and for any reason shall not prejudice or impact Azavar's right to receive any payment hereunder to the extent that such right to payment has vested as of the date of termination of this Agreement.

4. **CONFIDENTIAL INFORMATION**

- 4.1 Each party acknowledges that in the performance of its obligations hereunder, either party may have access to information belonging to the other which is proprietary, private and highly confidential ("Confidential Information"). Each party, on behalf of itself and its employees, agrees not to disclose to any third party any Confidential Information to which it may have access while performing its obligations hereunder without the written consent of the disclosing party which shall be executed by an officer of such disclosing party. Confidential Information does not include: (i) written information legally acquired by either party prior to the negotiation of this Agreement, (ii) information which is or becomes a matter of public knowledge, (iii) information which is or becomes available to the recipient party from third parties where such third parties have no confidentiality obligations to the disclosing party; and (iv) information subject to disclosure under Illinois' Freedom of Information Act (5 ILCS 140/1 *et seq.*).
- 4.2 Azavar agrees that any work product or any other data or information that is provided by Customer in connection with the Services shall remain the property of Customer, and shall be returned promptly upon demand by Customer, or if not earlier demanded, upon expiration of the Services provided under the Statement of Work hereto.

5. **INTELLECTUAL PROPERTY**

- 5.1 No work performed by Azavar or any Consultant with respect to the Services or any supporting or related documentation therefor shall be considered to be a Work Made for Hire (as defined under U.S. copyright law) and, as such, shall be owned by and for the benefit of Azavar. In the event that it should be determined that any of such Services or supporting documentation qualifies as a "Work Made for Hire" under U.S. copyright law, then Customer will and hereby does assign to Azavar, for no additional consideration, all right, title, and interest that it may possess in such Services and related documentation including, but not limited to, all copyright and proprietary rights relating thereto. Upon request, Customer will take such steps as are reasonably necessary to enable Azavar to record such assignment. Customer will sign, upon request, any documents needed to confirm that the Services or any portion thereof is not a Work Made for Hire and/or to effectuate the assignment of its rights to Azavar.
- 5.2 Under no circumstance shall Customer have the right to distribute any software containing, or based upon, Confidential Information of Azavar to any third party without the prior written consent of Azavar which must be executed by a senior officer of Azavar.

6. **DISCLAIMER**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AZAVAR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED UNDER THIS AGREEMENT OR THE RESULTS OBTAINED FROM AZAVAR'S WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

7. **TERMINATION**

- 7.1 Unless earlier terminated in accordance with Section 7.2 below, this Agreement shall be effective from the date first written above and shall continue thereafter until terminated upon 90 days written notice by Customer or Azavar.
- 7.2 Unless otherwise terminated as provided in Section 7.1, above, this Agreement shall terminate automatically on April 30, 2021
- 7.3 Termination for any cause or under any provision of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 7.4 The provisions set forth above in Section 3 (Payment Terms), Section 4 (Confidential Information), and Section 5 (Intellectual Property) and below in Section 9 (Assignment), and Section 10 (Use of Customer Name) shall survive termination of this Agreement.

8. **NOTICES.** Any notice made in accordance with this Agreement shall be sent by certified mail or by overnight express mail:

If to Azavar
General Counsel
Azavar Audit Solutions, Inc.
55 East Jackson Boulevard, Suite 2100
Chicago, Illinois 60604

If to Customer
Village Attorney
Village of Bradley
147 South Michigan Avenue
Bradley, Illinois 60915

9. **ASSIGNMENT.** Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other party hereto, except Azavar shall be entitled to assign its rights and obligations under this Agreement in connection with a sale of all or substantially all of Azavar's assets.
10. **USE OF CUSTOMER NAME.** Customer hereby consents to Azavar's use of Customer's name in Azavar's marketing materials; provided, however, that Customer's name shall not be so used in such a fashion that could reasonably be deemed to be an endorsement by Customer of Azavar unless such an endorsement is provided by customer.
11. **COMPLETE AGREEMENT.** This Agreement, along with each Statement of Work attached hereto from time to time, contains the entire Agreement between the parties hereto with respect to the matters specified herein. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. This Agreement shall not be amended except by a written amendment executed by the parties hereto. No delay, neglect or forbearance on the part of either party in enforcing against the other any term or condition of this Agreement shall either be, or be deemed to be, a waiver or in any way prejudice any right of that party under this Agreement. This Agreement shall be construed in accordance with the laws of the State of Illinois and the parties hereby consent to the jurisdiction of the courts of the State of Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the date set forth below.

AZAVAR AUDIT SOLUTIONS, INC.

CUSTOMER VILLAGE OF BRADLEY, ILLINOIS

By _____

By _____

Title _____

Title _____

Date _____

Date _____