

CITY MANAGER EMPLOYMENT AGREEMENT

**Between the
City of Arroyo Grande
and
James Bergman**

1. Employment:

This City Manager Employment Agreement (Agreement) is entered into and effective this 1st day of May, 2017 by and between the CITY OF ARROYO GRANDE (City), a municipal corporation of the State of California, and James Bergman (Manager), an individual. Under this Agreement, the City offers, and Manager accepts, employment as City Manager of the City.

2. Duties:

Manager shall be the chief executive officer of the City and perform those duties as set forth in the Arroyo Grande Municipal Code (Municipal Code), Chapter 2.08 and those responsibilities that are commonly assigned to a city manager of a city in California. Manager shall perform such other legally permissible and proper duties and functions appropriate to and consistent with the professional role and responsibilities of City Manager, as the City Council shall from time to time assign.

A. Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies.

B. Direct the work of all appointive City Officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council.

C. Recommend to the City Council, from time to time, adoption of such measures as Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.

D. Evaluate administrative practices that may result in greater operational effectiveness or economy in City government, and develop and recommend to the City Council long range plans to improve City operations and prepare for the City's growth and development.

E. Provide for management, development and training, and develop leadership qualities as necessary to insure the highest standards of managerial practices.

F. The Manager shall act in the City's best interests at all times and perform Manager's duties in a competent and professional manner. Furthermore, as the City's highest officer, Manager

shall endeavor at all times to exercise the highest degree of integrity, committing to comply with the International City/County Managers Association (ICMA), Code of Ethics, and shall not engage in any conduct or activities, on- or off-duty, that reflect discredit or bring disrepute on the City or impair its efficient and effective operation.

G. The Manager is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Manager.

3. Devotion to City Business:

The Manager position is considered a full-time position. Therefore, the Manager shall not engage in any outside business, educational, professional, charitable, or other activities, whether for compensation or otherwise, that would conflict or materially interfere with performance of City Manager duties, without written prior approval by the City Council.

4. Hours of Work:

Manager's position is full-time with a work schedule generally consistent with the normal business hours adopted by the City and those necessary to fulfill the obligations of the City Manager, including being available to attend all necessary meetings during evenings and weekends. In recognition of the amount of work time required outside of regular business hours, it is agreed the Manager does not have a fixed schedule and the Manager will have the discretion to work as needed to accomplish the duties and responsibilities assigned to Manager.

5. Term:

Manager's employment will commence May 1, 2017 and shall continue until terminated as provided herein.

6. Compensation:

A. Manager's initial annual Base Salary shall be \$179,000. Said amount shall be payable in installments at the same time and in the same manner as other employees of the City are paid.

B. Manager shall be entitled to receive cost-of-living adjustments or any similar across-the-board increases that the City Council determines, in its discretion, to approve for all management employees.

C. Manager's Base Salary increases approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such

may be set forth in an annual salary resolution or minute action approved by the City Council and ratified by resolution.

D. If the City reduces the Base Salary or any other financial benefit of the Manager in a percentage that is greater than the average reduction of all department directors, without the approval of the Manager, such action shall constitute a termination of this Agreement without Cause under Section 19 of this Agreement, and Manager shall be entitled to Severance.

7. Annual Evaluation:

A. City shall initially review the performance of Manager within six months following the start date of Manager and shall thereafter meet annually in April to review the Manager's performance. The annual performance evaluation will include the preparation of a written evaluation, which will be provided to the Manager within thirty (30) days of the evaluation meeting.

B. Salary increases to the base salary will be considered, at the sole discretion of the City, as part of the annual evaluation.

8. Deferred Compensation and Additional Benefits:

As part of Manager's annual compensation, City agrees to provide a Section 457 deferred compensation program and to pay into such program for Manager's benefit, Two Thousand, Two Hundred dollars (\$2,200.00) annually, payments to be equally divided in each pay period. City shall further provide additional benefits at the Director level in accordance with the adopted annual Resolution establishing wages and benefits for management employees.

9. Pension:

City agrees to enroll Manager as a member of the Public Employees Retirement System (PERS). The Manager is responsible for paying the full employee portion of PERS.

10. Health and Medical Benefits Insurance:

City shall provide Manager with the same health plans (medical, dental, and vision) which are provided to other City employees, and shall pay that portion of the employee and dependent rate or premium as is determined by the City Council for all management employees.

11. Life Insurance:

The City agrees to pay for a term life insurance policy in the face amount of One Hundred Fifty Thousand Dollars (\$150,000.00) on Manager's life with a carrier selected by the City. Manager shall

designate the beneficiaries of the policy. Manager shall also be entitled to participate in any group life or disability insurance programs approved by the City Council for all management employees.

12. Physical Examination:

Each calendar year, City shall provide Manager with an executive physical examination, at a cost not to exceed One Thousand Dollars (\$1,000.00) by a qualified physician or medical facility, of Manager's choice, within reasonable proximity to City.

13. Car Allowance:

Manager's duties require Manager to be available and to respond to the demands of City business at all times and outside of regular business hours, including weekends. City shall pay Manager Four Hundred Dollars (\$400.00) monthly in compensation for the use and maintenance of Manager's personal vehicle on City business. The car allowance is subject to federal and state income tax provisions for salary purposes. Manager shall not receive further reimbursement for travel mileage within a fifty (50) mile radius of the City; for any required travel mileage outside the fifty (50) mile radius, Manager shall be reimbursed at the current allowable IRS rate.

14. Equipment:

A. City shall pay Manager a monthly cellular phone allowance in compliance with Administrative Policy # A-007.

B. City shall provide the Manager a portable note pad style computer, consistent with the City standard, in addition to the desk top computer installed in the Manager's office.

15. Business and Professional Expenses:

A. City recognizes that Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to Manager's service to City. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to City's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be set forth and approved by City Council in the City's budget, supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.

B. City agrees to pay the professional dues and subscriptions on behalf of Manager which are necessary for Manager's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Manager's continued professional

participation, growth and advancement, or for the good of the City, in an amount set forth and approved by City Council in the City's budget.

C. City agrees to pay Manager's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Manager's professional development, and for Manager's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which Manager serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year, and attendance at out-of-state conferences and meetings, shall be at the discretion of the City Council as set forth in the City's budget.

16. Annual Leave:

Manager shall accrue Annual Leave at the rate of thirty three (33) paid days each year, in addition to recognized City holidays. The maximum accrual and accumulation rates shall be in accordance with the Management Wage and Benefit Resolution. Upon termination or resignation, Manager shall be paid for all accrued and unused Annual Leave at an hourly rate equivalent to Manager's annual salary at the time of termination or resignation. In addition, the Manager will be granted 136 hours of leave bank upon employment, and an annual allotment of 80 hours of leave bank each year thereafter on July 1. Of the 136 hours, 56 hours will be considered an advance on hours accrued and 80 hours will be designated as a starting balance.

17. Other Benefits:

The Manager will receive all benefits as set forth in the Management Wage and Benefit Resolution.

18. Termination of Employment and this Agreement; General Release; Severance:

A. It is understood and agreed that this "at-will" employment relationship as provided in Government Code Section 36506 and Agreement may be terminated by the City Council at any time, with or without notice, as determined by the affirmative votes of a majority of the members of the City Council at a meeting of the City Council. In the event of such termination, the City agrees to pay Manager a severance payment equal to: (1) a lump sum benefit equal to six (6) months of Manager's then Base Salary at the time of separation, and (2) a lump sum benefit equal to six (6) months of health (medical, dental, and vision) benefits at the value of the City's contribution rate at the time of separation for the benefit plans in which Manager and Manager's dependents are then enrolled. This payment is subject to the following:

1. Upon Manager's execution of the "General Release Agreement" referenced in Exhibit A of this Agreement, Severance Pay shall be payable in lump sum pursuant to the terms of said Agreement.
2. Manager agrees and understands that acceptance of the City's offer of Severance Pay at the time Manager's at-will employment is terminated by the City Council is pursuant to the execution of the "General Release Agreement" identified in Exhibit A of this Agreement and shall constitute liquidated damages and Manager's sole and exclusive remedy for any termination of this Agreement by the City Council as noticed in said Agreement.
3. In the event Manager voluntarily terminates Manager's position with City, no severance pay shall be payable to Manager.
4. In the event City terminates Manager's at-will status after Manager engages in the following conduct, City shall have no obligation to pay the aggregate severance pay designated in the above paragraphs:
 - (a) A material breach of the terms of this agreement;
 - (b) Conviction of, or plea of guilty or nolo contendere to any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Manager's reputation;
 - (c) Proven failure of the Manager to observe or perform any of Manager's duties and obligations, if that failure continues for a period of thirty (30) business days from the date of Manager's receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
 - (d) Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
 - (e) Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting;
 - (f) Any grossly negligent action or inaction by Manager that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures; and
 - (g) Conduct unbecoming the position of City Manager or likely to bring discredit or embarrassment to the City.

B. In no event may Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council, except by a unanimous vote of the members of the City Council.

C. If, during the Term or any extended Term, Manager dies, Manager's estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

D. In the event Manager is permanently disabled or is otherwise unable to perform Manager's duties because of sickness, accident, injury, or mental incapacity for a period of six (6) consecutive months, the City may terminate Manager's employment and this Agreement. Manager shall receive Accrued Salary and Benefits, but shall not be entitled to additional compensation or payment, including severance.

E. Manager may resign from Manager's employment at any time, upon giving forty-five (45) days written notice to the City Council. If Manager resigns from employment, Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to Accrued Salary and Benefits.

19. California Joint Powers Insurance Authority Provisions

Manager hereby knowingly waives any and all rights Manager may have pursuant to the provisions of the California Joint Powers Insurance Authority (CJPIA) 2014-2015 Memorandum of Liability Coverage, titled "Chief Executive Separation Payment."

20. Abuse of Office or Position:

Notwithstanding anything to the contrary in this subsection, pursuant to the requirements set forth in Government Code Section 53243.2, if Manager is convicted of a crime involving an abuse of Manager's office or position, all of the following shall apply: (a) if Manager is provided with administrative leave pay pending an investigation, Manager shall be required to fully reimburse City such amounts paid; (b) if City pays for the criminal legal defense of Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Manager shall be required to fully reimburse City such amounts paid; and (c) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Manager may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Manager. For purposes of this Section, abuse of office or position means either: (i) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority; or (ii) a crime against public justice.

21. Enforcement of this Agreement:

The prevailing party in any action brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions shall be entitled to payment of reasonable attorneys' fees and costs.


22. Indemnification:

Consistent with the California Government Code, City shall defend, hold harmless, and indemnify Manager using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement. Legal representation, provided by City for City Manager, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened.

23. Notices:

Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change their address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY: City of Arroyo Grande
Attention: Mayor
300 E. Branch St.
Arroyo Grande, CA 93420

MANAGER: James Bergman

Arroyo Grande, CA 93420

24. Conflict With Municipal Code:

The City personnel ordinances, resolutions, rules and policies shall apply to Manager in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the Municipal Code, the Municipal Code shall prevail over this Agreement.

25. Entire Agreement:

This Agreement represents the entire and fully integrated agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Manager by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

26. Modifications:

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

27. Effect of Waiver:

The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

28. Partial Invalidity:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be deemed severable and continue in full force without being impaired or invalidated in any way.

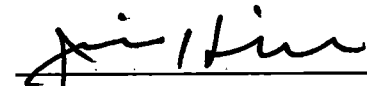
29. Governing Law:

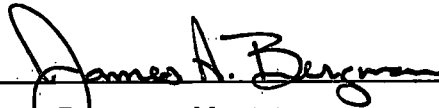
This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a

state court in San Luis Obispo County, California. Manager expressly waives any right to remove such action from San Luis Obispo County.

This Agreement is entered into this 28th day of March, 2017,

CITY OF ARROYO GRANDE

By: 
Jim Hill, Mayor


James Bergman, Manager

Attest:


Kelly Wetmore, City Clerk

Approved as to Form:

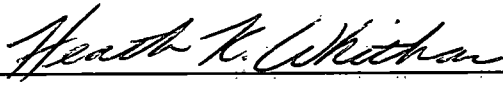

Heather K. Whitham, City Attorney

EXHIBIT A

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Release Agreement") is entered into by and between _____ ("Employee") and CITY OF ARROYO GRANDE ("City"), in light of the following facts:

A. **Separation of Employment.** The parties acknowledge that pursuant to Section 19 ("Severance Pay") of the Employment Agreement for Employee, ("Employment Agreement"), the City terminated Employee from Employee's at-will employment as of _____ ("Separation Date"). Pursuant to Sections 18 and 19 of the Employment Agreement, Employee has voluntarily agreed to accept the following severance payment from the City in consideration of the terms of this Agreement.

B. **Severance Payment.** Employee acknowledges that the City has no prior obligation to provide Employee with any severance benefits. However, pursuant to Sections 19 and 20 of the Employment Agreement, and as consideration for this Agreement and the conditions set forth herein, the City agrees to provide the Employee the following benefits (collectively, "the Severance Payment"):

1. **[insert Number]** months' severance pay at Employee's current rate of pay in the amount of **[insert written dollar amount]** dollars and **[insert written cents amount]** cents (~~\$XX,XXX.XX~~), less applicable payroll tax withholdings and deductions, in one lump sum payment; and

The Separation Payment shall be made within ten (10) days after Employee executes this Agreement or on the Separation Date, whichever is later, and only if Employee has not exercised Employee's right of revocation under section K.

C. **Payment for Earned Compensation.** Regardless of whether Employee executes this Agreement, Employee acknowledges that Employee has been paid for all salary, unused vacation or other benefits, if any, earned by Employee up to and including the Separation Date.

D. **Release of Claims and Parties.** As consideration for the Separation Payment and agreements described above, Employee on behalf of Employee, Employee's heirs, representatives, successors, and assigns, hereby irrevocably and unconditionally waives, releases and forever discharges the City and/or any of its members of the City Council, officers, deputies, employees, agents, servants, representatives, successors, assigns, predecessors, divisions, branches, or attorneys, and all persons acting by, through, under or in concert with the City, past or present (collectively "Released Parties"), and each and all of them, from any and all charges, complaints, lawsuits, claims, liabilities, claims for relief, obligations, promises, agreements, contracts, interests, controversies, injuries, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, liens, judgments, indebtedness, and expenses (including attorneys' fees, interest, expenses, and costs actually incurred), of any nature whatsoever, whether in law or in equity, **KNOWN OR UNKNOWN**, suspected or unsuspected, actual or potential (hereinafter referred to as "claim" or "claims") which Employee at any time had or claimed to have, or which Employee may have or claim to have regarding any and all facts and circumstances that have occurred as of the date of this Agreement, including, without limitation, any and all claims related or in any manner incidental to Employee's employment with the City and Employee's separation from employment with the City. It is expressly understood by

Employee that among the various rights and claims being waived by Employee in this release are those arising under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621, et. seq.).

E. **Section 1542 Waiver.** The matters specifically released and dismissed by this Agreement shall include, but are not necessarily limited to, all claims and causes of action which Employee has against the City and/or any of the Released Parties arising on or before the date that this Agreement is executed, and **ANY OTHER CLAIM OF ANY TYPE WHATSOEVER AGAINST THE CITY, AND/OR ANY OTHER RELEASED PARTY, WHETHER SUCH CLAIM IS KNOWN OR UNKNOWN TO EMPLOYEE AND/OR EMPLOYEE'S REPRESENTATIVES AND ATTORNEYS** arising on or before the date that this Agreement is executed. As a further consideration and inducement for this Agreement, to the extent permitted by law, Employee hereby waives and releases any and all rights under Section 1542 of the California Civil Code or any analogous state, local, or federal law, statute, rule, order or regulation, Employee has or may have with respect to any claims against the City. California Civil Code Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Employee hereby expressly agrees that this Agreement shall extend and apply to all unknown, unsuspected, and unanticipated claims, injuries, losses and damages as well as those that are now known and/or disclosed.

F. **Entire Agreement and Admissibility.** This Agreement constitutes the complete understanding between or among Employee on the one hand, and the City and any other Released Party on the other hand, and supersedes any and all prior agreements, promises, representations, or inducements, no matter their form, concerning the subject matter of this Agreement. The parties desire that this Agreement represents a single integrated contract expressing the entire agreement of the parties with respect to matters set forth herein. No promises, agreements, or modifications to this Agreement made subsequent to the execution of this Agreement by these parties shall be binding unless reduced to writing and signed by authorized representatives of these parties. The parties to this Agreement represent that this Agreement may be used as evidence in any subsequent proceeding in which any of the parties alleges a breach of this Agreement or seeks to enforce its terms, provisions or obligations.

G. **Representation by Counsel.** Employee acknowledges that Employee is fully aware of Employee's right to discuss any and all aspects of this matter with an attorney of Employee's choice, that the City has advised Employee of that right, that Employee has carefully read and fully understands the provisions of this Agreement and that Employee is voluntarily entering into this Agreement.

H. **Severability.** Should any of the provisions or terms of this Agreement be determined illegal, invalid, or unenforceable by any court or governmental agency of competent jurisdiction, validity of the remaining parts, terms, or provisions, shall not be affected thereby and said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

I. **Governing Law.** This Agreement is made and entered into in the State of California, and shall be governed, interpreted, and enforced under the laws of the State of California. The parties agree that jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of

this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court or government agency located within the County of San Luis Obispo, State of California. The parties further agree that this Agreement may be used as evidence in any subsequent proceeding in which any of the parties allege a breach of this Agreement or seeks to enforce its terms, conditions, provisions, or obligations.

J. **Time for Acceptance of Agreement.** Employee may accept this offer by signing below no later than twenty-one (21) days from the day Employee receives it and by returning the signed and dated Agreement to the City no later than the close of business on the twenty-first (21st) day after the date Employee receives this offer.

K. **Right of Revocation.** This Agreement contains a waiver and release of all claims that Employee may currently have under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621-634). Employee understands and agrees that Employee:

1. Has reviewed all aspects of this Agreement;
2. Has carefully read and fully understands all of the provisions of this Agreement;
3. Has had a full twenty-one (21) days within which to consider this Agreement before executing it;
4. Is, through this Agreement, releasing the City from any and all claims Employee may have;
5. Knowingly and voluntarily agrees to all of the terms set forth in this Agreement;
6. Knowingly and voluntarily intends to be legally bound by the terms set forth in this Agreement;
7. Was advised, and by this Agreement is advised in writing, to consider the terms of this Agreement and consult with Employee's attorney prior to executing this Agreement;
8. Has a full seven (7) days following the execution of this Agreement to revoke this Agreement and has been and is hereby advised in writing that this Agreement shall not become effective or enforceable until the revocation period has expired; and
9. Understands that rights or claims including those under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621-634) that may arise after the date of this Agreement is executed are not waived.

PLEASE READ CAREFULLY. THIS SEPARATION AGREEMENT AND RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

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L. **Fees and Costs.** Manager and City agree that in the event of litigation relating to this Release Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

M. **California Joint Powers Insurance Authority.** Employee hereby knowingly waives any and all rights Employee may have pursuant to the provisions of the California Joint Powers Insurance Authority (CJPIA) 2014-2015 Memorandum of Liability Coverage, titled "Chief Executive Separation Payment."

Dated _____, 20__

CITY OF _____

By: _____

Dated: _____, 20__

Manager

APPROVED AS TO FORM:

By: _____

Date: _____

ATTEST:

By: _____

City Clerk

Date: _____