

**Memorandum of Agreement**  
**between**  
**City of Portland Bureau of Environmental Services**  
**and**  
**Portland Public Schools, School District No. 1J, Multnomah County**

**PURPOSE**

The purpose of this Memorandum of Agreement (MOA) is to define terms and responsibilities of the City of Portland (City) Bureau of Environmental Services (**BES**) and Portland Public Schools, School District No. 1J, Multnomah County (**DISTRICT**) for the approval, construction, and maintenance of stormwater management facilities constructed as retrofits to existing development on Portland Public Schools property.

This MOA does not apply to the City of Portland Environmental Services Community Watershed Stewardship Grant Program, which funds citizen-initiated watershed enhancement projects. Projects funded under this program are required to obtain landowner permission prior to applying for funding.

**GENERAL TERMS**

1. MOA Representatives. Each party has designated a project manager to be the formal representative for this MOA. All reports, notices, and other communications required under or relating to this MOA shall be directed to the appropriate individual. Representatives for individual projects may be assigned during the stormwater facility approval process.

**BES**

Project Manager: Amber Marra  
Organization: City of Portland  
Address: 1120 SW Fifth Ave., Suite 1000  
Portland, OR 97204  
Phone: (503) 823-4356  
Fax: (503) 834-5344  
Email: amberm@bes.ci.portland.or.us

**DISTRICT**

Project Manager: Don Huld  
Organization: Portland Public Schools  
Address: 501 N Dixon St.  
Portland, OR 97227  
Phone: (503) 916-3586  
Fax: (503) 916-3253  
Email: dhuld@pps.k12.or.us

2. Effective Date and Duration. This MOA is effective from the date of execution by both parties. Unless earlier terminated or extended, this MOA shall expire on June 30<sup>th</sup>, 2009.
3. Amendments. The terms of this MOA shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
4. Termination.
  - A. The parties may agree to an immediate termination of this MOA or at a time certain upon mutual written consent.

- B. Either party may terminate this MOA effective not less than 30 days from delivery of written notice.
  - C. Either party may terminate this MOA effective not less than 10 days from written notice or at such other date as may be established by both parties under any of the following conditions:
    - 1) The City of Portland Bureau of Environmental Services may terminate this agreement upon written notice to the other party at any time for the public good.
    - 2) Either party may terminate this MOA in the event of a breach by the other party. Prior to such termination, however, the party seeking termination shall give the other party written notice of the party's intent to terminate. If the party has not cured the breach within 10 days or a longer period as granted in the cure notice, the party seeking compliance may terminate this MOA.
5. Governing Law and Venue. Oregon law shall govern this MOA and all rights, obligations and disputes arising out of the MOA. Venue for all disputes and litigation shall be in Multnomah County, Oregon.
6. Severability/Survival. If any of the provisions contained in this MOA are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this MOA for any cause.
7. Access to Records. Both parties and their duly authorized representatives shall have access to the books, documents, papers, photographs, and records which are directly pertinent to the specific MOA for the purpose of making audit, examination, excerpts, and transcript.
8. Compliance with Applicable Law. Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this MOA. Without limiting the generality of the foregoing, parties expressly agrees to comply with: (I) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Both party's performance under this MOA is conditioned upon either parties compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.
9. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each party agrees to indemnify and defend the other and its officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this MOA, including the cost of defense, attorney fees arising in favor of any person on account of personal injury, death or damage to property and

arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, subcontractors or representatives.

10. Merger Clause. This MOA constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this MOA shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this MOA.

## **RESPONSIBILITIES**

### **City of Portland Bureau of Environmental Services (BES):**

1. **BES**, its officers, employees, agents, contractors and subcontractors will submit a Project Application Form (Exhibit A) to **DISTRICT** through its MOA Representative for approval of each stormwater management facility proposed on Portland Public Schools property. The Project Application Form will include a project specific scope of work, design plan, anticipated construction schedule, description of anticipated activities, including but not limited to classroom education programs and volunteer activities. When possible and applicable, **BES**, its officers, employees, agents, contractors and subcontractors will work with school staff and community members to provide related public information, education programs, and activities to students, staff and community members.
2. **BES**, its officers, employees, agents, contractors and subcontractors will design, obtain permits for, and construct the project as described in the project specific scope of work and design plan.
3. **BES**, its officers, employees, agents, contractors and subcontractors will notify the **DISTRICT** MOA representative in writing or email within 5 business days of any major changes to the design or function of the facility that results from circumstances that arise during construction.
4. **BES**, its officers, employees, agents, contractors and subcontractors will develop and submit to the **DISTRICT** MOA representative for approval an Operations and Maintenance (O&M) Plan that is consistent with the O&M requirements specified in the BES Stormwater Management Manual. After approval, **BES** will record the O&M plan as required in the BES Stormwater Management Manual (Exhibit B). **BES**, its officers, employees, agents, contractors and subcontractors will perform project specific maintenance through the 2-year warranty period for vegetation establishment as required by the BES Stormwater Management Manual. Other project specific maintenance activities will be agreed upon during the project approval process on a site-by-site basis.

## Portland Public Schools (DISTRICT)

1. After receiving project materials (Project Application Form, O&M Plan) from **BES**, **DISTRICT** will provide written or emailed design comments and approval status to **BES** within ten working days.
2. If **DISTRICT** approves a stormwater facility, **DISTRICT** will provide **BES**, its officers, employees, agents, contractors and subcontractors with a Permit for Donated Improvements (Exhibit C) and Hold Harmless (Exhibit D) agreements for entry and construction.
3. **DISTRICT** agrees that it owns the approved stormwater management system. All maintenance activities normally associated with school sites (e.g. mowing, trash removal) shall be the sole responsibility of **DISTRICT**. Beginning after construction is complete and/or the facility specific plant establishment period, **DISTRICT** will be responsible for routine maintenance of the system, including maintenance as described in the Operations and Maintenance (O&M) Plan. **DISTRICT** will be solely responsible for repairing all vandalism to installed facilities.
4. **DISTRICT** agrees that if any future site changes come under the authority of the BES Stormwater Management Manual, applicable requirements in the current version of the adopted Manual will apply. The Manual requires stormwater management measures at new and redeveloping properties.
5. **DISTRICT** will allow **BES** workers, or their representatives, access to the site to make observations and conduct monitoring of the performance of the stormwater management facility. This right of access will continue for a period of five years. **BES** workers, or their representatives, will have no unsupervised contact with students and in all instances schedule times for access and notify the school principal of their presence on the school grounds. City will accept full and sole responsibility for Contractor(s) being in uniform, properly identified, and assurance that there is no unsupervised contact with students.
6. **DISTRICT** will allow **BES** employees to publicize the nature and location of the facility upon the authorization of the District Superintendent. **DISTRICT** will allow **BES** staff to post an interpretive sign at the facility describing the project and contributors. This opportunity will be provided for a period of five years following project completion.
7. By request to and at the discretion of the school principal, **DISTRICT** will allow scheduled visits by citizens to learn more about the stormwater system and provide educational opportunities. This opportunity will be provided for a period of five years.

**CITY OF PORTLAND**

**PORTLAND PUBLIC SCHOOLS**

\_\_\_\_\_  
Elected Official or Delegate Date

\_\_\_\_\_  
Deputy Clerk Date

\_\_\_\_\_  
Bureau Director Date

\_\_\_\_\_  
Approved as to form by Date  
General Counsel

\_\_\_\_\_  
City Auditor Date

\_\_\_\_\_  
Approved as to form Date  
by City Attorney:

**Exhibit A**



# PROJECT APPLICATION

FACILITIES AND ASSET MANAGEMENT  
(Short Form)

## Describe Project

- **School or Facility:** \_\_\_\_\_ **Principal/Administrator:** \_\_\_\_\_  
\_\_\_\_\_
- **Individuals or Organizations Proposing Project:**  
\_\_\_\_\_
- **Contact Person:** \_\_\_\_\_
  - Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_ E-mail Address: \_\_\_\_\_
  - Address: \_\_\_\_\_
- **Project Coordinator:** \_\_\_\_\_
  - Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_ E-mail Address: \_\_\_\_\_
  - Address: \_\_\_\_\_
- **Describe the scope of the proposed project**, which should include the site and/or building plans as applicable.  
Additional pages may be needed.

**Application Approved by:** \_\_\_\_\_  
Site Administrator & Title

**Date:** \_\_\_\_\_

**Approval to Proceed:** \_\_\_\_\_  
Project Management

**Date:** \_\_\_\_\_





## **Exhibit B**

Portland's Stormwater Management Manual

<http://www.portlandonline.com/bes/index.cfm?c=35117>

**Exhibit C**



**PERMIT  
For Donated Improvements**

Portland School District No. 1J (the "District") grants this revocable permit (the "Permit") to,

\_\_\_\_\_  
Donor Group Name Here

a \_\_\_\_\_ ("Permitee")  
Donor Group Description

to construct certain improvements pursuant to the following terms and conditions:

**I. Premises**

A. Permitee wishes to construct and donate to the District improvements for

\_\_\_\_\_  
Project Description Here

(the "Project") at

\_\_\_\_\_  
Project Location Here

(the "Premises") indicated on **Exhibit A.**

*(Attach an aerial photograph or site plan, showing the delineated location of project)*

B. Permitee has independently raised or agreed to contribute funds for the construction and completion of the Project.

C. The District has determined that the proposed improvements would be a valuable addition to the District; that the granting of the Permit to construct the Project, with conditions, is in the public interest; and that the District will accept the gift of Permitee on the terms and conditions of this Permit.

**II. Revocable Permit**

District hereby grants to Permitee license to enter the Premises and install and construct the Project, on the following conditions:

**A. Scope of access.**

1. This Permit will become effective upon acceptance as stated in paragraph M, below, and will continue until the earliest of (a) the date of final completion of the Project, (b) the date on which Permitee ceases to exist as a legal entity, (c) the date of revocation of this Permit pursuant to paragraph L, below, or (d) 15 days after the last work performed by Permitee or under its direction when there is reasonable evidence that Permitee has abandoned the Project.
2. Permitee will have access to and control of the Premises during the period of this Permit, except that the District may use those portions of the Premises necessary for scheduled school and community functions and athletic classes and events. Permitee will maintain reasonable and safe access to those portions of the Premises used by the District for those purposes. Permitee will cooperate in avoiding conflicts with other activities at or near the Premises.



## PERMIT For Donated Improvements

3. The District will determine and designate routes of entry and access to the Premises and the availability and use of off-site utilities and sanitary facilities. Permittee will be responsible for locating and protecting utility lines and easements, for making connections to utilities; and for maintaining routes of entry and access to the Premises.
  4. Permittee will at all times be primarily responsible for order at and the policing of the Premises. The District, however, reserves the right to maintain order on and may temporarily restrict access to the property of the District, including without limitation the Premises, as necessary to ensure the safety of students, employees, patrons, and the public.
- B. **Construction authority.** Permittee will prepare plans and specifications for the Project, which will be submitted to and approved in writing by the District before construction commences. Permittee will be responsible for the means and methods used to construct the Project, but the District's Director of Facilities and Asset Management ("Director") will have final authority to approve or disapprove any changes in design or materials during construction. The construction of the Project may take place in discrete and rational phases subject to the Director's prior approval.
- C. **Ownership.** The Project will be the property of Permittee until it has been completed by Permittee and accepted by the Director. Upon final completion of the entire Project Permittee will donate and transfer all ownership, right, title, and interest in the Project to the District at no cost to the District. The District will thereafter wholly own and control the Project, and will be responsible for all maintenance and operation of the phase or Project
1. Permittee accepts the Premises as being suitable for construction of the Project and expressly assumes all risk of conditions on the Premises.
  2. Permittee will be responsible to third parties for all conditions on the Premises, including without limitation those that existed before construction of the Project, until acceptance of the Project-by the District.
- D. **Security for Completion.**
1. At the time Permittee is prepared to begin construction of a phase of the Project, Permittee will (a) place in trust money equal to the total amount of the construction contract for that phase of the Project; (b) submit the surety of individuals or entities to guarantee the availability of sufficient funds to complete that phase of the Project; or (c) provide a combination of moneys held in trust and sureties from individuals or entities, or some alternative form of security satisfactory to the District, that provides assurance of sufficient funds to complete that phase of the Project.
    - a. Moneys held in trust may be held by a financial institution in an interest bearing account. Moneys held in trust will be used only for payment for the design and construction of the Project.



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- b. If money remains in the construction trust account after the entire. Project has been completed and accepted and all expenses of construction have been paid, the remaining money and any interest earned by the money held in trust are to be returned to Permittee free of trust.
2. Prior to the commencement of construction, Permittee will obtain performance and payment bonds in the full amount of the estimated and agreed-upon cost of the completed Project or any approved phase of the Project. Sureties authorized to do business in Oregon will issue the bonds.

**E. Construction and code compliance.** Permittee will, at its expense:

1. Before beginning construction, obtain approval of its plans, drawings, and specifications for the Project by an architect or engineer, as appropriate, who is actively registered to practice in Oregon.
2. Before beginning construction, obtain any permits or approvals for the Project required by the City of Portland, Multnomah County, and any other government entity whose approval is required. For purposes of obtaining building permits, Permittee will submit application to the Director, who will cooperate in applying for and obtaining the permits as the District's and Premises owner's representative.
3. Employ a general contractor currently registered with the Oregon Construction Contractors Board to perform and direct the construction, alteration, repair improvement, movement, or demolition of any excavation, building, structure, or other physical improvement on the Premises.
4. Require that any work that by law, regulation, or code must be performed by a licensed registered trade contractor be performed by such a contractor. All contractors must be continuously registered with the Oregon Construction Contractors Board throughout the Project.
5. Ensure that all work performed on the Project complies with the building or trade codes applicable to the work, including without limitation all codes and regulations of local, county, state, or federal governmental agencies.
6. Obtain final approvals from governmental inspectors with jurisdiction over the Project as a condition of final completion of the Project.
7. During the course of construction, comply with all health and safety requirements, standards, regulations, and statutes applicable to the Project and the Premises, including without limitation controlling access to the Premises; maintaining safe working conditions on the Premises; and requiring the safe storage, movement, and use of tools, equipment, and materials on the Premises.
8. Keep the Premises free from any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local environmental statute, regulation, or ordinance presently in effect or subsequently enacted ("Hazardous Materials"). To the extent that the plans for the Project call for the use of Hazardous Materials, Permittee will so notify the District and obtain the District's written consent to use those materials. Permittee will ensure the safe storage, use, and transportation of all Hazardous Materials, including without limitation the preparation and execution of a written Hazardous Materials plan, a copy of which will be provided to the District. Permittee will immediately notify the District of any unauthorized or



## PERMIT For Donated Improvements

uncontrolled release of Hazardous Materials. All damages, fines, and costs resulting from any release of Hazardous Materials by Permittee or its contractors or agents shall be paid by and be the responsibility of Permittee.

9. Require the general contractor to certify, before beginning construction, that it and its subcontractors (a) are fully informed of all local, state, and federal ordinances, regulations, codes, and statutes that affect the Project in any manner, (b) agree to comply with all such requirements at all times during construction of the Project, and (c) agree to indemnify the District and its directors, staff, employees, and agents against any claim or liability arising from the violation of any such requirements.
10. Require all persons and entities working on the Premises, whether as contractors, volunteers, or otherwise:
  - a. To comply with District policies for conduct on District property, including without limitation prohibitions on the possession or consumption of alcohol, tobacco, or illegal drugs, or the possession of weapons.
  - b. To execute agreements provided by the District holding the District harmless from liability for their activities *on* the Project or the Premises.

F. **Restoration of Premises.** Except to the extent required by the design for the Project, Permittee may not damage the existing Premises or its improvements. Within 45 days after completion of construction, Permittee will remove all remaining construction materials not incorporated in the Project and restore the property not affected by the Project to substantially the same condition it was in at the time this Permit was granted, as modified by the approved plans for the Project, all to the reasonable satisfaction of the District and all at Permittee's sole expense.

G. **Indemnities and warranties.**

1. The District will not be responsible for any injury or damage to Permittee or any contractor, architect, engineer, employer, principal, agent, employee, volunteer, or other person or entity working on behalf of Permittee, either (a) as an owner of the Premises or (b) as a result of Permittee's exercise of this Permit, presence on the Premises, or activities while on the Premises or in conjunction with the Project. Permittee waives all claims, whether *in* tort, contract, or strict liability, or pursuant to statute, including without limitation premises liability and negligence, that Permittee may have or acquire against the District arising from or relating to Permittee's activities under this Permit, Permittee's presence on the Premises, or Permittee's activities on the Premises.
2. Permittee will protect, indemnify, and defend the District and its directors, agents, and employees and hold them harmless from and against all claims, actions, damages, injuries, costs, financial losses, or expenses incidental to the investigation and defense thereof, based in whole or in part on or arising out of the acts or omissions of Permittee or the use of or presence on the Premises by Permittee or those acting on Permittee's behalf or under its control (including without limitation volunteers) for (a) personal injury, bodily injury, property damage, or death or (b) loss of damage to, alteration of; or custody of the Premises, except to the extent that liability arises solely out of the willful misconduct of the District.



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3. Permittee will obtain from its general contractor, subcontractors, suppliers, and manufacturers written warranties against defects in materials and workmanship of at least one year's duration (commencing no later than the date that ownership of the Project is transferred to the District). Concurrently with transfer of ownership of the Project to the District, Permittee and its contractors will assign to the District all warranties relating to any of the work. Permittee agrees to cooperate with the District in obtaining and enforcing any such warranties.
  4. Permittee's general contractor will warrant to Permittee and to the District that upon substantial completion, the work will substantially conform to the approved project plans and specifications and construction will be free of defects in materials and workmanship.
- H. **Insurance.** Permittee will provide or cause its general contractor to provide continuous, uninterrupted commercial general liability or "all risk" insurance throughout the course of the Project in average amounts specified by the District, *but* in any event no less than \$1 million per occurrence and \$2 million annual aggregate for bodily injury, personal injury, and property damage. The insurance shall include business automobile liability coverage in the amount of \$1 million per accident for damages or injuries arising out of the use of automobiles or other motor vehicles. The insurance will name as additional insureds Permittee and the District and will protect them from any and all claims, demands, actions, and suits for damage to property or personal injury (including without limitation death) arising from the work of Permittee, the general contractor, the architect, subcontractors, and engineers, and their respective officers, agents, volunteers, or employees on the Project.
- I. **Workers' compensation.** Permittee will provide or cause its general contractor to provide workers' compensation insurance for workers and employees continuously throughout the duration of the Project.
- J. **Payment.** Permittee will pay in a timely manner all contractors, suppliers, workers, lessors, and subcontractors providing services, materials, or equipment for carrying out work under this Permit, except for volunteer contributions. Permittee will indemnify the District and its directors, employees, and agents and hold them harmless from and against any claims for payment for labor, materials, equipment, or other construction services related to the Project.
- K. **Laws and specifications.**
1. Permittee will comply with all applicable federal, state, and local laws and regulations pertaining to the Project or the Premises.
  2. The Project is funded entirely with private funds and no District funds or resources may be expended on the Project. *The* District has no authority to represent or control Permittee, nor does Permittee have any authority to represent or control the District. The District has not contracted for and will not carry on any portion of the construction of the Project.
- L. **Revocation.** This Permit shall be revoked automatically if the Project has not been completed and, accepted by the Director on or before \_\_\_\_\_ Agreed Date for Final Completion Here  
The failure of Permittee or its architect or contractors or other agents, employees, or volunteers to comply with the requirements or limitations imposed on them by this Permit will be cause for revocation of the



**PERMIT**  
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Permit. Otherwise, this Permit may be revoked by the District only for cause as determined in the District's sole discretion. No expenditure of funds nor construction of improvements nor any other reliance on this Permit, nor any lapse of time, nor any other act or thing shall act as an estoppel against the District, nor shall it alter or diminish the District's right to revoke this Permit.

M. **Acceptance.** This Permit will not become effective until Permittee (1) accepts its terms by executing the acceptance below and (2) files with the District evidence of the security required under Section D(1) and the insurance required herein.

**PORTLAND SCHOOL  
DISTRICT NO. 1J**

**APPROVED BY DISTRICT  
BOARD OF DIRECTORS**

By: \_\_\_\_\_  
*District Use*

Date: \_\_\_\_\_  
*District Use*

Title: \_\_\_\_\_  
*District Use*

Resolution No. \_\_\_\_\_  
*District Use*

Date: \_\_\_\_\_  
*District Use*

Signature \_\_\_\_\_  
*District Use*

**ACCEPTANCE**

I, \_\_\_\_\_, *Print Your Name Here*, certify that I am the Permittee or the Permittee's duly appointed representative of and have authority from that entity to represent it in this matter, that the Permittee approves and accepts the terms of the foregoing Permit, and that the Permittee hereby agrees to be bound by the terms of this Permit as of the date shown below.

By \_\_\_\_\_  
*Sign Name Here*

Title: \_\_\_\_\_  
*Print Title Here*

Date: \_\_\_\_\_  
*Print Date Here*



**Exhibit D**



**(FORM C)**  
**PERMISSION TO USE SPACE AND HOLD HARMLESS AGREEMENT**  
**(Contractor)**

*Portland Public Schools (District) grants a license to:*

**NAME:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_  
**PHONE:** \_\_\_\_\_

*to use the following space:*

**SCHOOL SITE:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_  
**SPACE:** \_\_\_\_\_  
*(Describe space, list room numbers, etc)*

*on:*  
**DATES & TIMES:** \_\_\_\_\_

*for the purpose of:*  
**ACTIVITY:** \_\_\_\_\_

**PERMITTEE AND EACH OF THEM DOES HEREBY PROMISE TO:**

1. Inspect the whole of the activity area, the equipment used and all supplies and not permit the use of any area or thing which is not fit and in good order for its intended use of activity.
2. Comply with state and federal regulations applicable to the work being done.
3. Discuss fully each aspect of the work with school staff before starting work
4. Do not use any herbicides or pesticides.
5. Permit only those persons to be upon School District premises in connection with above-stated activities who are competent and physically capable of safely performing their particular assigned tasks
6. Supervise all volunteer activities on School District premises to prevent injury to persons and property for it activities.
7. Prior to commencing the activities, Permittee shall file with, and obtain approval of, the Office of Risk Management:
  - a. A general liability and auto liability policy covering ail aspects of the activities with a combined single limit in an amount of not less than \$1,000,000; and
  - b. A certificate evidencing that all workers will covered by Oregon workers' compensation insurance.
8. Maintain the area during Organization's activities as well as leave the area all in a condition which is safe and healthful for others.
9. Defend and hold harmless District, its officers, employees and agents against any and all claims, including claims of Permittee and officers, employees and agents of Permittee and District, which arise out of or because of Permittee's activities.

**PERMITTEE:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**DISTRICT AUTHORIZATION:**

By: \_\_\_\_\_ Date: \_\_\_\_\_