



## **STANDARD AGREEMENT**

(version 4-26-2018)

This AGREEMENT ("Agreement") is entered by and between **LJA Engineering, Inc** ("Contractor"), located at **1904 W Grand Parkway North, Suite 100, Katy, TX 77449** and **City of League City** ("City"), a municipal corporation, located at 300 W. Walker, League City, Texas 77573 on the date set forth below.

### **Terms:**

1. **Scope of Services:** Contractor will perform the designated services and/or provided the designated products, as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Engineering services for the design and construction related to the relocation of the 24" water main along SH 96 Project is to relocate the waterline from the North side to the South side of SH 96**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall begin on **April 30, 2018** and shall terminate on **May 1, 2019**. This City reserves the right to terminate this Agreement for convenience upon seven (7) days-notice to the Contractor. Upon such termination, the City shall pay Contractor, at the rate set out in **Exhibit A**, for services satisfactorily performed or products satisfactorily provided up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, the City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor. This Agreement is eligible for **NA** renewal option(s) with a term of **NA** year.
3. **Compensation:** Contractor shall be paid for the services, as set forth in **Exhibit A**, attached and incorporated for all purposes. In no event shall the total compensation exceed **\$126,700.00** during the term of this Agreement. The City shall pay Contractor in accordance with the Texas Government Code 2251. Contractor must submit invoices for all services, which invoices must include dates of service and details of services provided. Payment for delivery of services rendered shall not be unreasonably withheld or delayed. If the City disapproves any amount submitted for payment by Contractor, the City shall give Contractor specific reasons for disapproval in writing. Upon resolution of any disputed charges, Contractor shall submit an amended invoice covering any remaining charges to the City.
4. **Insurance:** The Contractor **is** required to maintain insurance through the term of this Agreement.

If required by the City, Contractor shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence or medical malpractice insurance (whichever applies) throughout the entire term of the Agreement. If at any point during the Agreement, Contractor will enter City property, Contractor shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$5,000,000 per claim; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and

in the case of professional liability must not exceed \$150,000). Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work. To the fullest extent permitted by law, Contractor's total liability to City for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Contractor's negligence, errors, omissions, strict liability, or breach of contract and whether claimed directly or by way of contribution shall not exceed the proceeds of the applicable insurance policies required by Contractor under this Agreement.

5. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of the City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City of League City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by the City for such expenses except as otherwise provided in this Agreement.
6. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work for hire under federal copyright law. Upon payment in full for Contractor's services, ownership of the work shall belong to and remain the exclusive property of the City. The work may be edited at any time within the City's discretion. If the work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to City of League City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the work, the City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within the City's discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein. If the work is one to which the provisions of 17 U.S.C. § 106A apply, the Contractor hereby waives and appoints the City to assert on the Contractor's behalf the Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for the City's purposes. Any reuse by the City, without specific written verification or adaptation by Contractor, shall be at City's sole risk and without liability to Contractor. Any modification of the plans will be evidenced on the plans and be signed and sealed by a licensed professional prior to re-use of modified plans.
7. **Confidentiality:** During the course of the work and/or services to be provided under this Agreement, Contractor may come in contact with confidential information of the City. Confidential information shall not extend to: (a) information that at the time of disclosure or subsequently is published or otherwise generally available to the public other than through any act or omission on the part of Contractor; (b) information that Contractor can demonstrate by written records was lawfully in the possession of Contractor at the time of disclosure and not otherwise subject to a non-disclosure agreement; (c) information that Contractor can demonstrate by written records was acquired from a third party who had the lawful right to make such disclosure; (d) information that Contractor can demonstrate by written records was independently developed by Contractor without reference to the materials comprising the information disclosed under this Agreement; or (e) information that Contractor is required to disclose pursuant to applicable law, legally enforceable order, decree, regulation or rule, or by deposition or trial testimony pursuant to subpoena. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by the City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify the City of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to the City all confidential information in Contractor's possession or control. Contractor shall further comply with all information security policies of the City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of the City..

8. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by the City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
9. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.
10. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor represents that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards of care.
11. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the Services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and the City that could be construed as a conflict of interest with regard to this Agreement.
12. **INDEMNIFICATION: CONTRACTOR SHALL, INDEMNIFY AND HOLD HARMLESS THE CITY , AND EACH OF ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANOTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT.**
13. **Force Majeure:** Neither the City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.
14. **Notices:** Any notice given under this contract by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.

15. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
16. **State Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
17. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
18. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by the City and the Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of the City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Contract by the City nor any other conduct, action or inaction of any representative of the City relating to this contract constitutes or is intended to constitute a waiver of the City's or the state's sovereign immunity to suit; and (iii) the City has not waived its right to seek redress in the courts.
19. **Entire Agreement:** This Agreement contains the entire Agreement between the parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the parties executed subsequent to this Agreement.
20. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of State law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
21. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
22. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
23. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, such loss or damage will be Contractor's responsibility.
24. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.

25. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
26. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
27. **Sovereign Immunity:** Except as otherwise provided by Texas law, neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement is a waiver of sovereign immunity by City.
28. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of the City represents that he/she has authority to sign this Agreement on behalf of City.
29. **Non-Waiver:** No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
30. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
31. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.
32. **Mutual Waiver of Consequential Damages.** Notwithstanding any provision of this Agreement to the contrary, in no event shall either party be liable to the other for consequential, incidental, punitive, special, or exemplary damages, including lost revenues, profits, delays, or other economic loss arising from any cause including breach of warranty, breach of contract, tort, strict liability or any other cause whatsoever. To the extent permitted by law, any statutory remedies that are inconsistent with this provision of the agreement are waived.

*(signature block on next page)*

Executed on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. (date to be filled in by City Secretary)

LJA ENGINEERING, INC - "Contractor"

  
\_\_\_\_\_  
~~James E. Brown, PE, Vice President~~

**Jervold L. Graham, Jr., Sr. Vice President**  
CITY OF LEAGUE CITY - "City"

\_\_\_\_\_  
John Baumgartner, City Manager

Attest:

\_\_\_\_\_  
Diana Stapp, City Secretary

Approved as to Form:

\_\_\_\_\_  
Office of the City Attorney

# Exhibit A

**Scope of Services/Description of Products**  
(5 number of pages, including this page)

See Next 4 Pages

May 2, 2018

**PROPOSAL**

Mr. Anthony Talluto  
Project Manager  
City of League City  
300 W. Walker St.  
League City, Texas 77573

Re: Proposal for Engineering Services Related to the  
Design and Construction of the  
24-inch Water Main Relocation along SH 96  
between Meadowlark Lane and Leisure Lane  
League City, Galveston County, Texas  
LJA Proposal No. 18-01446

Dear Mr. Talluto:

LJA Engineering Inc. (LJA) is pleased to present this proposal for your review and approval for engineering services for the design and construction of the 24-inch Water Main relocation along State Highway 96 between Meadowlark Lane and Leisure Lane. We propose the following services and corresponding fees in accordance with the attached Professional Services Agreement (PSA).

**SCOPE OF SERVICES**

**A. Engineering – Preliminary Design Services**

1. Perform a Site Visit.
2. Prepare, review and analyze available r/w, easement, parcel, etc. data through our in-house global information system (G.I.S.) group.
3. Prepare preliminary design (plan view only) of 24-inch water line along southerly right-of-way in an easement to be purchased by City. Typical cross section(s) will be included with this preliminary design.
4. Prepare a preliminary construction cost estimate.
5. Attend a meeting with City Engineers to discuss findings of preliminary design.

**B. Engineering – Basic Design Services**

1. Attend conferences with the Client and other interested parties regarding the facilities proposed.
2. Prepare detailed plans, specifications, and contract drawings on mylar for the project. Additional topographical survey and geotechnical studies may be requested if deemed necessary for the design and would be submitted under separate proposal.
3. Prepare detailed estimates of probable construction cost. LJA shall not be required to guarantee the accuracy of these estimates.
4. Furnish to the Client all necessary copies of plans, specifications, notices to bidders, and proposal forms.



5. Use best efforts to assist the Client to obtain necessary approvals from the appropriate city, county, state, and federal agencies having jurisdiction over the project. In the event the plans and specifications are not approved by any agency because they do not conform to the agency's criteria which was in effect at the time the design started, LJA shall redesign the plans and specifications to conform to such criteria at no cost to the Client. If LJA is unable to obtain approval of the plans due to recording of easements, subordinates, payment of taxes, special nonstandard features requested by the Client, or other factors beyond LJA's control, then the plans shall be deemed complete and approved.

**C. Construction Phase Services**

1. Construction Phase Services will include attendance at the pre-construction meeting, pay estimate review, construction schedule review, coordination with contractor, owner and governmental agencies.
2. Review samples, catalog data schedules, and shop drawings. This review does not relieve contractors of any responsibilities such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity of constructing a complete and workable facility in accordance with the construction contract documents.

**D. Engineering - Project Representation Services**

1. On-Site Resident Project Representation will include periodic site visits (typically 10-15 hours a week) to review progress of contractor's work. These visits will be performed on an as needed basis during certain phases of construction. The Resident Project Representative will make his best effort to be on-site during critical phases of work. It is agreed that LJA does not underwrite, guarantee or ensure the work done by the contractor(s). Since it is the contractor's responsibility to perform the work in accordance with the Contract Documents, LJA is not responsible or liable for the contractor's failure to do so. Failure by any Resident Project Representative or other personnel engaged in on the site observation to discover defects or deficiencies in the work of the contractor(s) shall never relieve the contractor(s) for liability or subject LJA to any liability for any such defect or deficiencies.
2. Should the contractor exceed contract time, as a result of delays caused by the Client, contractor, or regulatory agencies, LJA shall bill the Client for the additional time spent on the job on the basis of time and materials.
3. All fees are based on typical time frames and normal submittal. Typical time frame means work can be accomplished without requiring overtime. These fees do not include costs related to wet sand construction (e.g., monitoring, consultation with geo-tech firm, etc). Fees will be proposed separately on a time and materials basis.

**E. Engineering – TxDOT Permit**

1. We will prepare and submit the permit applications for the proposed water line crossings on State Highway 96. We will complete the permit application and necessary revisions to the application, as required, during the permitting process under this phase. We will also attend coordination meetings, as required, with TxDOT regarding the permit application.

#### **F. Surveying Services (Sub-consultant)**

1. Surveying services will consist of the following:
  - Field staking a Base Line defining the proposed route (+/- 2,500 LF) at 100' intervals.
  - Topographic cross sections along the base line and 20' each way.
  - Identify and locate all storm sewer outlets from adjacent developments.
  - Locate all drives, parking, structures, fences, and other above ground features which could affect the route or construction.
  - Include all curb lines, driveway cuts, sidewalks, creek crossings, and all trees within the defined project limits subject to protection under the City of League City Tree Protection and Preservation Ordinance
  - Prior to commencement of construction re-setting of alignment stakes
2. Control Staking
3. The scope of services does not include the preparation of easements or exhibits at this time. If such services are requested, fees associated with these services shall be provided as the scope of services is defined.

#### **Project Schedule**

The proposed schedule anticipates coordination only with the City of League City and TxDOT for items A through C. We estimate the following:

- |  |              |
|--|--------------|
| A. Preliminary Design  | 4 Weeks      |
| a. Schedule includes Design Survey                             |              |
| <br>B. Design  | <br>16 Weeks |
| a. Includes TxDOT Permit Coordination                          |              |
| b. Includes TxDOT and City of League City Review and Approvals |              |
| c. Includes advertising and bidding the project                |              |
| <br>C. Project Representation                                  | <br>16 week  |
| a. Includes an estimated construction time of 120 days         |              |

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Total Estimate

36 weeks

#### **COMPENSATION**

The compensation for the previously defined scope of work is based on the following fees in accordance with the attached PSA.

### **ENGINEERING SERVICES**

<b>Phase</b>	<b>Description</b>	<b>Fees</b>
401	Preliminary Design Services (Lump Sum)	\$12,000
402	Design Services (Lump Sum)	\$46,000
426A	Miscellaneous Engineering Services (Time and Materials not to exceed \$2,500 w/o written approval from client)	\$2,500
426B	TxDOT Permit (Lump Sum)	\$3,500
901	Construction Phase Services (Lump Sum)	\$9,900
902	Project Representation Services (Time and Materials)	<u>\$20,000</u>
<b><i>ENGINEERING SERVICES SUBTOTAL</i></b>		<b><i>\$93,900</i></b>

### **SURVEYING SERVICES (SUB-CONSULTANT)**

201	Design Topography Survey (Lump Sum)	\$23,100
208	Control Staking (Lump Sum)	<u>\$3,200</u>
<b><i>SUB-CONSULTANT (SURVEYING SERVICES) SUBTOTAL</i></b>		<b><i>\$26,300</i></b>

### **PROJECT TOTALS**

<b>ENGINEERING SERVICES</b>	<b>\$93,900</b>
<b>SURVEYING SERVICES (SUB-CONSULTANT)</b>	<b>\$26,300</b>
<b>REIMBURSABLE EXPENSES (TIME &amp; MATERIALS – ESTIMATED)</b>	<b><u>\$6,500</u></b>
<b>GRAND TOTAL</b>	<b>\$126,700</b>

Reimbursable expenses include, but are not limited to advertising, reproduction, deliveries, travel/mileage, GPS equipment, printing, plan review and permit fees, filing fees, recording fees, and long distance phone charges. An estimated budget is shown above. There is no separate pay for reimbursable costs for environmental, geotechnical, subsurface utility engineering, appraisal and surveying services.

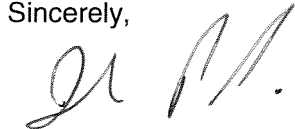
These fees do not include reimbursable expenses (advertising, reproduction, deliveries, travel/mileage, GPS equipment, printing, plan review and permit fees, filing fees, recording fees, and long distance phone charges). We recommend a budget of \$6,500.00 be set for the actual reimbursable expenses incurred on the project.

## TERMS OF PAYMENT

Payment for the above-mentioned services will be made on a monthly basis in accordance with the attached PSA. We will be able to start work on the project upon your written authorization. If this proposal is acceptable to you, please sign this proposal and attached PSA and return one (1) original to us.

Should you have any questions or need any additional information concerning this proposal, please feel free to give me a call at 713.358.8817.

Sincerely,



John Pickens, PE  
Project Manager



Edmund D. Rucker, PE  
Senior Project Manager

JP/EDR/dl

## ACCEPTED BY CITY OF LEAGUE CITY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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