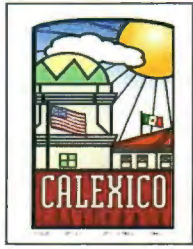


**AGENDA
ITEM**

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AGENDA STAFF REPORT

DATE: May 17, 2023

TO: Mayor and City Council

APPROVED BY: Esperanza Colio, City Manager *Esperanza Colio*

REVIEWED BY: Sandy Fonseca, Interim Finance Director

PREPARED BY: Norma Gerardo, Recreation Manager *Norma Gerardo*

SUBJECT: Discussion/Action Regarding Summer 2023 Pool Program:
a. Authorize City Manager to Sign Joint Use Agreement Between the Calexico Unified School District and the City of Calexico
b. Establish Potential Summer 2023 Pool Program Fees

=====

Recommendation:

It is recommended that the City Council of the City of Calexico:

- a. Authorizes City Manager to Sign Joint Use Agreement Between the Calexico Unified School District and the City of Calexico.
- b. Establishes Potential 2023 Summer Pool Program Fees.

Background:

On or about May 14, 2014, the Calexico Unified School District (CUSD) and the City of Calexico entered into a Memorandum of Understanding for the design, planning, construction, and operation of the swimming pool facilities and related facilities on the Calexico High School campus, located at 1030 Encinas Avenue, Calexico, California 92231. The pool facilities were completed and are in use by the School District and the City.

For the last several years, the City and CUSD have collaborated and signed annual MOUs for the provision of successful summer pool programs.

Last year's pool program ran from June 29, 2022 through August 20, 2022, for a term of eight (8) weeks and a total cost of \$46,161.70. The Recreation Department offered free swimming classes for preschoolers, school-age children, and adults. It also provided open swim, lap swim, water aerobics, and three Family Fun Fridays.

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Program costs were covered through a combination of American Rescue Plan Act Funds and sponsorships. The Summer 2022 Pool Program was entirely free of charge for everyone.

Discussion & Analysis:

On April 20, 2023, the City Council of the City of Calexico approved a 10-Week Summer 2023 Pool Program that will run from June 13, 2023 to August 18, 2023, for a total estimated cost of \$63,153.21.

City Staff recommends a symbolic charge be implemented to bring in program revenues (Table 1). Fees will be collected by CUSD pool cashier and deposited into a special CUSD community pool program account. All fees collected by CUSD will be reported to the City and will serve as a fund balance towards the following year’s community pool program.

Table 1 – Recommended Fees

Activity	2022 Attendance	Recommended Fee	Estimated Revenue
Swim Classes – One Week Sessions	340	\$20.00 p/session	\$6,800.00
Non-resident Swimming Classes	--	\$30.00 p/session	--
Facility Entrance:	--	\$1.00 p/day	--
Children Under 1	--	Free	--
Water Aerobics	683	\$1.00 p/day	\$683.00
Lap Swim	140	\$1.00 p/day	\$140.00
Fun Family Fridays	359	\$1.00 p/event	\$359.00
Open Swim	4,094	\$1.00 p/day	\$4,094.00
Estimated Total			\$12,076.00

Recreation staff researched other pool programs in the Imperial County and found recommended fees to be competitive (Table 2).

Table 2 – Fee Comparison

Organization	Activity	2022 Fee
City of Brawley	Swimming Classes	\$30.00 p/session
	Lap Swim	\$20.00 p/month
	Aqua Zumba	\$30.00 p/month
City of Imperial	2021 Swim Classes	\$45.00 p/session
	2021 Open Swim	\$1.50 p/day
	2021 Aqua Zumba	\$5.00 drop in
City of El Centro	Swimming Classes	\$45.00 p/session
	Lap Swim	\$5.00 p/day
	Open Swim	\$5.00 p/day
	Water Aerobics	\$5.00 p/day

City Staff recommends that the City Council of the City of Calexico authorizes the City Manager to sign Joint Use Agreement between the Calexico Unified School District and the City of Calexico. Furthermore, Staff recommends that the City Council approves fees in Table 1 or provides alternative direction regarding summer pool program fees.

Fiscal Impact:

None.

Coordinated With:

Calexico Unified School District.

Attachment:

1. Joint Use Agreement Between the Calexico Unified School District and the City of Calexico.

ATTACHMENT #1

**JOINT USE AGREEMENT
BETWEEN THE CALEXICO UNIFIED SCHOOL DISTRICT
AND THE CITY OF CALEXICO**

This Joint Use Agreement (“AGREEMENT”) is entered into this 1st day of June 2023 (“Effective Date”), by and between the CALEXICO UNIFIED SCHOOL DISTRICT (“DISTRICT”) and the CITY OF CALEXICO (“CITY”), sometimes collectively referred to as the Parties.

RECITALS

WHEREAS, on or about May 14, 2014, DISTRICT and CITY entered into a Memorandum of Understanding for the design, planning, construction, and operation of the swimming pool facilities and related facilities on the Calexico High School campus, located at 1030 Encinas Avenue, Calexico, California 92231 (“Pool Facilities”);

WHEREAS, the Pool Facilities have been completed and in use by the DISTRICT and CITY;

WHEREAS, the Community Recreation Act, Education Code section 10900 et seq., encourages and authorizes public entities to organize, promote, and conduct community recreation programs for the development of good citizenship and attainment of general educational and recreational objectives for children and adults in California;

WHEREAS, pursuant to Education Code section 17527, et seq., DISTRICT is authorized to enter into joint use agreements “to make vacant classrooms or other space in operating school buildings available . . . to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals . . .”;

WHEREAS, Education Code sections 17527 through 17538 authorize the governing board of any school district to enter into an agreement for the joint use of operating school property if the joint use does not (1) interfere with the educational program or activities of the school, (2) unduly disrupt residents in the surrounding neighborhood, or (3) jeopardize the safety of school children;

WHEREAS, DISTRICT, pursuant to section 17529 of the Education Code, has determined that permitting CITY to jointly use the Pool Facilities will not (1) interfere with the educational programs or activities of any school or class conducted on the school site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the school site;

WHEREAS, the Parties wish to provide a summer community pool program at the Pool Facilities (“Program”); and

WHEREAS, the Parties have agreed to share certain costs and responsibilities for operating the Pool Facilities for the summer community pool programs on or about June 11, 2023, through August 20, 2023;

NOW THEREFORE, DISTRICT, and CITY agree as follows:

1. **Use of Property.** DISTRICT agrees to allow use of the Pool Facilities by CITY for the operation of the CITY-sponsored summer swim programs and public access to the Pool Facilities. DISTRICT, and CITY have agreed upon a collaborative effort for a summer schedule for CITY-sponsored summer swim programs and public access to the Pool Facilities. Pending funding, it is anticipated that the summer schedule will begin on or about June 11, 2023, and end on or before August 20, 2023. A copy of a proposed schedule is attached as Exhibit A.

2. **Scheduled Budget.** DISTRICT, and CITY have agreed to monitor and audit, on a weekly basis, any and all funds and expenditures designated for this project.

- i. The DISTRICT audit representative will be Maribel Paez, Assistant Superintendent of Business Services.
- ii. The CITY audit representative will be Norma Gerardo, Recreation Manager.

3. **Term.** The Term of the AGREEMENT shall be one (1) year, commencing on June 1, 2023 (“Commencement Date”) and expiring on May 31, 2024 (“Initial Term”).

At Parties’ discretion, this AGREEMENT may be extended on mutually agreed upon terms and conditions beyond the Initial Term for additional one (1) year terms (each, a “Renewal Term”, collectively with the Initial Term, the “Term”), and the Parties may mutually agree to further renewal of this AGREEMENT after the initial Renewal Term; provided, as a condition precedent to any Renewal Term, the DISTRICT must be able to make the Joint Use findings as required by Section 17529 of the Education Code, namely that the CITY’s use of the Pool Facilities will not do any of the following: (a) interfere with the educational program or activities of the DISTRICT; (b) unduly disrupt the residents in the surrounding neighborhood; or (c) jeopardize the safety of the children of the school.

4. **CITY Responsibilities.** The CITY will be responsible, for the following:

- A. Registration for the CITY-sponsored summer swim programs.
- B. Assist with the selection of the instructors for the CITY-sponsored summer swim programs.
- C. Monitoring of the instructors and CITY-sponsored summer swim programs.
- D. Advertising for the CITY-sponsored summer swim programs.
- E. Funding the DISTRICT for their share cost associated in running the 2023 Summer Pool Program as depicted in Exhibit B.
- F. Seeking funding/donations to offset program costs.
- G. The CITY’s liaison for the summer swim program is Norma Gerardo, ADDRESS: 707 Dool Ave., Calexico, CA 92231. (760) 768-2176

- a. **DISTRICT Responsibilities.** The DISTRICT will be responsible, for the following:
 - A. Providing access to the Pool Facilities for the CITY-sponsored summer swim programs and public access in accordance with the proposed schedule. (See Exhibit A.)
 - B. Maintenance of the Pool Facilities, as follows:
 - (a) Sundays, the pool shall be completely closed to the public to allow district personnel to clean the entire pool and provide proper recommended maintenance and perform required water testing.
 - (b) Mondays, the pool shall be completely closed to the public and school district to allow swimming pool water, the pool pH, pool Alkalinity, chlorine stabilizer, and pool calcium hardness levels to settle.
 - C. Hiring lifeguards, pool manager, water safety instructor and cashier. It is anticipated that the DISTRICT will hire as many as 11 lifeguards, 10 water safety instructors 2 pool managers, and 2 cashiers, if available, from June 11, 2023, to August 20, 2023, for the CITY-sponsored summer swim programs and public access in accordance with the agreed-upon schedule.
 - D. Seeking funding/donations to offset program costs.
 - E. The DISTRICT's contact person for this AGREEMENT is Maribel Paez, Assistant Superintendent of Business Services, ADDRESS: 901 Andrade Ave., Calexico, CA 92231. (760) 768-3888

5. **Fingerprinting and Criminal Background Verification.** If CITY uses Pool Facilities during school hours, CITY shall be responsible for requesting and coordinating DISTRICT assistance with compliance with all applicable fingerprinting and criminal background investigation requirements for its employees, as applicable, as described in Education Code Section 45125.1. DISTRICT shall provide such fingerprinting and criminal background investigation requirements, if required, upon request of CITY and the costs of such investigation (including third-party costs) shall be borne by CITY. CITY shall obtain written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements prior to each individual's commencement of employment or participation in CITY-sponsored summer swim programs and prior to permitting contact with any pupils.

6. **Insurance.** CITY agrees to provide insurance with the following limits during the CITY-sponsored summer swim programs:
 - A. General liability insurance and automobile insurance with a combined single limit of not less than \$1,000,000.00, with the DISTRICT named as an additional insured.

- B. Workers' Compensation insurance for any CITY employees who either instruct or monitor the CITY-sponsored swim programs on DISTRICT property.
- C. CITY's Property Insurance. CITY acknowledges that the insurance to be maintained by DISTRICT on the Pool Facilities will not insure any of CITY's property. CITY shall be responsible, at its own expense, for maintaining in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by CITY and personal property in, about, or on the Pool Facilities. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of CITY's property.

7. **Indemnification.**

CITY shall indemnify, protect, defend, save and hold DISTRICT, its officers, employees, and agents, harmless from all claims, actions, damages, liability and expenses, including attorneys' fees and costs, associated with the loss of life, personal injury, and/or damage to property arising from the use of the Pool Facilities by the CITY or arising from the CITY's failure to comply with this AGREEMENT, or otherwise occasioned wholly or in part by any act or omission by CITY, its agents, representatives, employees, invitees or licensees, or from any violation of any federal, state, or municipal law or ordinance, to the extent causes, in whole or part, by the willful misconduct, negligent acts, or omissions of the CITY or its officers, employees, volunteers or agents. CITY shall defend and hold DISTRICT harmless in connection with any claims associated with or arising from the CITY's use of the Pool Facilities. It is understood that the duty of the CITY to indemnify and hold harmless, includes but is not limited to, the duty to defend as set forth in Civil Code section 2778.

- A. CITY agrees that CITY, at its sole cost and expense, shall be solely responsible for developing and enforcing proper protocols and procedures, and otherwise ensuring compliance with these requirements by CITY and CITY's employees, volunteers, participants, partners, officers, students, clients, members, agents, contractors, customers, guests, attendees, invitees, staff, and visitors.
- B. To the fullest extent permitted by California law, CITY releases DISTRICT, its Board and individual members of the Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (collectively, the "DISTRICT") from and against any and all actions, claims, suits, demands, costs (including, without limitation, attorneys' fees and costs), losses, penalties, expenses, fines, harms, and liabilities of any kind, nature, and description ("Claims") directly or indirectly resulting from, arising out of, or in any manner connected with CITY's use of or presence in, upon, or about the Pool Facilities and related facilities or CITY's performance of the

AGREEMENT. CITY understands and agrees that this release includes any Claims based on the actions, omissions, or negligence of the DISTRICT, during, or after CITY's use of the Pool Facilities and related facilities. This waiver and release is intended to discharge the DISTRICT against any and all liability arising out of or connected in any way with CITY's use and occupancy of the Pool Facilities and related facilities, even though that liability may occur or arise out of the negligence or carelessness on the part of the DISTRICT. CITY understands that, by signing this AGREEMENT, CITY is releasing claims and giving up substantial rights, including the right to such, and acknowledges that CITY is doing so voluntarily. No representations, statements, or inducements, oral or written, apart from the foregoing written statement, have been made.

8. **Miscellaneous.**

- A. Execution in Counterparts. This AGREEMENT may be executed in any number of separate counterparts, of which so executed shall be deemed an original, and such counterparts shall together constitute one and the same AGREEMENT.
- B. Entire Agreement, Waivers and Amendments. This AGREEMENT and any written agreement entered into by the Parties with respect to the PROJECT identified herein, incorporate all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or part of the subject matter thereof. All waivers of the provisions of this AGREEMENT must be in writing and signed by the appropriate authorities of the party to be charged. Any amendment or modification to this AGREEMENT must be in writing and executed by each party.
- C. Governing Law; Venue. This AGREEMENT shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Imperial County, California.
- D. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this AGREEMENT, each party shall bear its own costs of suit, including attorneys' fees.
- E. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

- F. **Successor and Assigns.** This AGREEMENT shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
- G. **Captions.** The captions contained in this AGREEMENT are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.
- H. **Severability.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.
- I. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, this AGREEMENT has been executed as of the Effective Date.

CALEXICO UNIFIED SCHOOL DISTRICT

By:

CITY OF CALEXICO

By:

EXHIBIT "A"

Proposed Schedule

2023 Summer Recreation Pool Program								
First Half - June 13 - July 22								
	MOND	TUESDAY	WEDNESDA	THURSDAY	FRIDAY	SATURDAY	SUNDAY	
8am - 9am	Pool Restricted to Summer School & After School Programs						Closed for Chemicals	
9am - 10am								
10am - 11am								
11am - 12 pm								
12pm - 1pm								
1pm - 2pm								
2pm - 3pm								
3pm - 4pm								
5pm - 6pm	Pool Closed	Public Swim	Public Swim	Public Swim	Public Swim & Family Nights (3 Fridays)	Public Swim		
6pm-7pm		Water Aerobics Lap Swim	Water Aerobics Lap Swim	Water Aerobics Lap Swim				
7pm-8pm								
8pm-9pm								
Second Half - July 25 - August 18 (19 Days)								
	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	
8am - 9am	Pool Closed	Swimming Lessons	Swimming Lessons	Swimming Lessons	Swimming Lessons	Swimming Lessons	Closed for Chemicals	
9am - 10am								
10am - 11am								
11am - 12 pm								
12pm - 1pm								
1pm - 2pm								
2pm - 3pm								
3pm - 4pm								
5pm - 6pm			Public Swim	Public Swim	Public Swim	Public Swim & Family Nights (2 Fridays)		Public Swim
6pm-7pm			Water Aerobics Lap Swim	Water Aerobics Lap Swim	Water Aerobics Lap Swim			
7pm-8pm								
8pm-9pm								

EXHIBIT "B"

Shared Costs

2023 Summer Recreation Pool Program				
Itemized Expenditures June 13 to July 22 (30 Days)				
Staffing Services: 5-Hour Shift				
Position	#	Hourly Rate	Total Hours:	Total Expense:
Pool Tech	1	\$ 32.90	240	\$ 2,632.00
Pool Cashier 4.5-hour shift	1	\$ 15.50	135	\$ 2,092.50
Pool Manager	1	\$ 25.00	150	\$ 3,750.00
Pool Manager - Staff Training Time 2hr	2	\$ 25.00	4	\$ 100.00
Lifeguard	6	\$ 20.00	900	\$ 18,000.00
Lifeguard - Staff Training Time 2 hr	6	\$ 20.00	12	\$ 240.00
				\$ 26,814.50
Supplies/Materials/Services:				
Expenditure Type	# of operating	Full Cost	1/3 of the Cost	Total Expense:
Pool Parts & Supplies	30	\$ 135.87	\$ 45.29	\$ 1,358.73
Maintenance & Repairs	30	\$ 11.53	\$ 3.84	\$ 115.27
				\$ 1,473.99
				\$ 28,288.49
Itemized Expenditures July 25 - August 18 (19 Days)				
Staffing Services A.M. Session (16 Days): 5-Hour Shift				
Position	#	Hourly Rate	Total Hours:	Total Expense:
Pool Tech	1	\$ 32.90	128	\$ 1,403.73
Pool Manager	1	\$ 25.00	80	\$ 2,000.00
Lifeguard / Water Safety Instructor	6	\$ 21.00	480	\$ 10,080.00
				\$ 13,483.73
Staffing Services P.M. Session (19 Days Overlapping the A.M. Session): 5-Hr Shift				
Position	#	Hourly Rate	Total Hours:	Total Expense:
Pool Tech	1	\$ 32.90	24	\$ 263.20
Pool Manager	1	\$ 25.00	95	\$ 2,375.00
Pool Manager - Staff Training Time 2 hr	2	\$ 25.00	4	\$ 100.00
Lifeguard	6	\$ 20.00	570	\$ 11,400.00
Lifeguard - Staff Training Time 2 hr	6	\$ 20.00	12	\$ 240.00
Pool Cashier 4.5-hour shift	1	\$ 15.50	85.5	\$ 1,325.25
				\$ 15,703.45
Supplies/Materials/Services:				
Expenditure Type	# of operating	Full Cost	1/3 of the Cost	Total Expense:
Pool Parts & Supplies	19	\$ 135.87	\$ 45.29	\$ 860.53
Maintenance & Repairs	19	\$ 11.53	\$ 3.84	\$ 73.00
				\$ 933.53
				\$ 30,120.71
Total Both Sessions:				\$ 58,409.21

EXHIBIT "C"

FINGERPRINT AND CRIMINAL BACKGROUND CHECK CERTIFICATION

In accordance with the Department of Justice fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq.

With respect to the Joint Use Agreement and Lease ("Agreement") between the Calexico Unified School District ("District") and City of Calexico ("Contracting Party"):

One of the boxes below must be checked with regard to Contracting Party and Contracting Party's personnel (officers, principals, paid or unpaid employees, volunteers, agents, subtenants and subcontractors of Contracting Party who will provide services under the Agreement) ("Contracting Party's Personnel") and the arrangements verified by an authorized representative of District prior to commencement of the Agreement.

Fingerprinting/Background Check requirements do not apply because Contracting Party/Contracting Party's Personnel will not have any interaction with District pupils based on the type of service being provided, the location at which services will be provided, or for other reason (Specify):

Contracting Party/Contracting Party's Personnel qualify for a waiver of fingerprint/criminal background check requirements on the following basis:

___ The services provided by Contracting Party/Contracting Party's Personnel are for an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable. [Ed. Code, §45125.1(b)]

___ Contracting Party/Contracting Party's Personnel will have no interaction with District pupils that is not under the immediate supervision and control of the pupil's parent/guardian. Enter details of parental supervision:

___ Contracting Party/Contracting Party's Personnel will have no interaction with pupils that is not under the immediate supervision and control of a District employee who has been properly fingerprinted and undergone background checks. Enter details of District employee supervision arrangements:

- Contracting Party is a sole proprietor who may interact with District pupils not under the immediate supervision of a pupil's parent, guardian or District employee, and in accordance with the fingerprinting requirements of Education Code section 45125.1(h), hereby agrees to the District's preparation and submission of fingerprints so that the California Department of Justice may determine (A) that Contracting Party has not been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work or action under the Agreement shall commence until the Department of Justice ascertains that Contracting Party has not been convicted of a felony as defined in Government Code Section 45122.1.

- Contracting Party is not a sole proprietor and has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contracting Party's Personnel who may interact with District pupils not under the immediate supervision of a pupil's parent, guardian or District employee during the term of the Agreement, and the California Department of Justice has determined (A) that none of Contracting Party's Personnel has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Contracting Party performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. A complete and accurate list of Contracting Party's Personnel who may come in contact with District pupils during the course and scope of the Agreement is attached hereto. No work or action under the Agreement shall commence until the Department of Justice ascertains that none of Contracting Party's Personnel has been convicted of a felony as defined in Government Code Section 45122.1.

CONTRACTING PARTY CERTIFICATION

I am a representative of the Contracting Party entering into this Agreement with the District, and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of the Contracting Party. By signing below, I certify that the information contained on this certification form is accurate. I understand that it is Contracting Party's sole responsibility to maintain, update, and provide the District with current "Fingerprint and Criminal Background Check Certification" information for all Contracting Party's Personnel throughout the duration of the Agreement. **A list of Contracting Party's Personnel is attached hereto as Attachment A.**

Date: _____

Contracting Party: _____

Signature: _____

Print Name: _____

Title: _____

ATTACHMENT "A"
Contracting Party's Personnel

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of personnel, attach additional copies of this page.