



Agenda Item #: \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Montgomery and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Lindy Coe-Juell, Assistant to the City Manager

**DATE:** September 2, 2008

**SUBJECT:** Extension of the Operating Agreement for the Pier with the State of California

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### **RECOMMENDATION:**

Staff recommends that the City Council authorize the City Manager to approve the attached amendment to the Pier agreement, which will extend the term of the operating agreement with the State for another 20 years.

### **FISCAL IMPLICATION:**

There is no fiscal implication associated with the recommended action. The agreement with the State, which owns the Pier and adjacent parking lots, provides that the City will maintain the premises with the meter money that we collect from the Pier parking lots. The City keeps a separate parking fund for the Pier and pays for maintenance and operation of Pier property from that fund. The subject amendment does not alter this basic arrangement; it simply extends the agreement for an additional 20 years.

### **BACKGROUND:**

On August 1, 1988, the City entered into a 20-year operating agreement for the Pier with the State of California. Through this agreement, the City gained operating control of the Pier, the adjacent parking lots and the comfort station. In return, the City agreed to take responsibility for all maintenance and care of the property by using the revenue collected from the parking meters located on the Pier parking lots.

This agreement has worked well over the last 20 years. The City has had the opportunity to manage the Pier for the enjoyment of our residents and visitors. Over that time, the City has facilitated the development of an Ocean Teaching Station and café in the Roundhouse at the end of the Pier. These facilities are popular with residents and guests alike. The December fireworks show is a good example of a City event on the Pier that is also very popular.

### **DISCUSSION:**

The original agreement with the State expired on August 1, 2008. Per the original agreement, we have the option of extending the term for another 20 years by approving an extension amendment. In the last year, City and State Staff began discussing the details of the extension. City Staff explored the possibility of the City taking ownership of the Pier. The State said that would only be

possible with a fair market assessment and payment to the State. Rather than seeking to expend capital funds at this time for the acquisition of the Pier, City Staff asked that the State include language in the amendment that would allow for terminating the Operating Agreement should the City pursue purchase of the Pier at a later date. The State agreed to this option, which is included in the attached amendment.

Staff, including the City Manager, City Attorney, Finance Director, Public Works Director and Risk Manager, have reviewed the terms of the amendment and we recommend its approval by the City Council. The amendment does not change the basic operating agreement between the City and the State. It does add some additional terms. For example, the amendment requires that we include the State of California as additional insured on our liability insurance for the Pier. Both our Risk Manager and City Attorney agreed that this requirement, which does not have any fiscal implication for our insurance premium, was reasonable. We have already requested that our insurance company add the State as additional insured.

We have attached the original Pier agreement and the recommended amendment for your review and approval.

**ATTACHMENTS:**

- A) Pier Operating Agreement Between the State and the City dated August 1, 1988
- B) Amendment No. 1

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION  
OPERATING AGREEMENT  
MANHATTAN STATE BEACH PIER

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OPERATING AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of August, 1988, by and between the STATE OF CALIFORNIA, acting through the Department of Parks and Recreation, hereinafter called "STATE", and the City of Manhattan Beach, a municipal corporation of the State of California, hereinafter called "CITY";

W I T N E S S E T H

WHEREAS, STATE has acquired for park and recreational purposes certain real property hereinafter described, known as Manhattan State Beach Pier, adjacent parking lots, and comfort station and has jurisdiction thereof; and

Pursuant to the provisions of Section 5080.30 et seq. of the Public Resources Code of the State of California, STATE may enter into contracts with political subdivisions of the State of California for the care, maintenance, and control, for the purposes of the State Park System, of lands under the jurisdiction of STATE; and

STATE and CITY desire to enter into an agreement to provide for such operation, care, custodial maintenance, and control of Manhattan State Beach Pier, the four (4) adjacent parking lots, and the adjacent comfort station, but excluding the Bike Path and Pier's Lifeguard Tower, all as described in Exhibits "A", "B", "C", and "D" and incorporated herein by this reference.

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1           NOW, THEREFORE, in consideration of the mutual covenants hereinafter  
2 contained, the parties hereto agree as follows:

3  
4           1. Term: CITY shall be responsible for a period beginning on the  
5 date first above appearing and ending twenty years from said date, with an  
6 additional twenty-year extension at the CITY'S option. The CITY may exercise  
7 such option not later than one year prior to the end of the initial 20-year  
8 term. During said period, CITY shall pay all costs of custodial maintenance,  
9 control, and operation of said property for said purposes and STATE shall not,  
10 during said period, be liable for the cost of said custodial maintenance,  
11 control, or operation. Nothing herein shall preclude CITY from receiving  
12 grants for such purposes or for development of said property to the full  
13 extent otherwise permitted by law.

14  
15           2. Use of Premises: While this agreement is in force and effect,  
16 said property shall be accessible and subject to the use and enjoyment of all  
17 citizens of the State of California, and all other persons entitled to use and  
18 enjoy the same, subject, however, in the manner of such use and enjoyment to  
19 the control of CITY in conformity with this agreement. CITY may adopt rules  
20 and regulations, including hours of operation, for the use and enjoyment of  
21 said property. Any such rules and regulations adopted by CITY shall conform  
22 to and be consistent with the rules and regulations adopted by STATE and  
23 generally applicable to the State Park System, including said property. Said  
24 property shall not be used for any other purpose than the purposes herein  
25 enumerated.

26 ---

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1           3. Concessions: Subject to prior approval in writing by STATE,  
2 CITY may grant concessions in or upon said property consistent with the use by  
3 the general public thereof for park and recreational purposes. The rights of  
4 the public to the use and enjoyment of said property shall thereupon be  
5 limited by such concession agreements. All such concessions shall be granted  
6 in substantial compliance with Public Resources Code Section 5080.20, 5080.33  
7 and 5080.34, and an applicable State approved general plan for the respective  
8 park unit.

9  
10           4. Fees: Any charges, fees, or collections made by CITY for  
11 services, benefits, or accommodations to the general public shall be limited  
12 to actual needs for maintenance, control, operation, and improvements of said  
13 property, and that commercialization for profit shall not be engaged in by  
14 CITY. Parking citation revenue shall be excluded from this limitation and be  
15 retained by CITY. All fees collected from the sale of monthly parking tickets  
16 as specified in Exhibit C-2 shall be retained in a special fund.

17  
18           5. Annual Reports: All income received and all expenditures made  
19 by the CITY in relation to concessions, special services, and all other  
20 matters incident to the development, maintenance, control, and operation for  
21 the State Beach Pier, adjacent parking lots, and comfort station or portion  
22 thereof subject to this agreement shall be deposited in a special fund and  
23 reported annually to the STATE. Pursuant to Public Resources Code  
24 Section 5080.32, all revenues received from lands subject to this agreement  
25 shall be expended only for the care, maintenance, operation, administration,  
26 improvement, or development of the subject State property. Such annual

27 ---

1 report shall be made for the annual period commencing on July 1 and  
2 terminating June 30 and shall be filed with STATE not later than December 1 of  
3 each year.

4  
5 The report shall include a reasonable annual estimate of the number  
6 of visitors to subject State property or portions thereof described on  
7 Exhibits A, B, and C, as well as the number of vehicles.

8  
9 "Revenue" herein shall be defined so as not to include indirect  
10 revenue such as sales tax, possessory interest tax, business license tax,  
11 parking citations, and other similar government exactions.

12  
13 The books, records, and accounts kept by CITY applying to the  
14 operation of the subject State property shall at all reasonable times be open  
15 for audit or inspection by STATE.

16  
17 6. Beach Erosion Control: It is further agreed and understood  
18 between the parties hereto that any development, beach erosion control, or  
19 protection work which may be undertaken by STATE or the United States of  
20 America, along or on said property, shall not, in any way, be construed as  
21 constituting a termination of this agreement or in any way affecting same.

22  
23 STATE shall have the right to enter into agreements for such work  
24 during the term hereof and to go upon said property or to authorize any  
25 person, firm, or corporation to go upon said property for the purpose of such  
26 construction, beach erosion protection or control work, or the doing of other  
27 public work for the improvement or development of said property, provided that

1 STATE shall give CITY 90-day written notice of its intention to do any of the  
2 work herein mentioned before such work is undertaken.

3

4 7. Construction of Improvements: Subject to State approval, CITY  
5 may, by its own forces or by contract, undertake projects for the development,  
6 construction, or improvement to said property. Plans and specifications for  
7 any such project shall be submitted to STATE for approval. No such project  
8 shall be commenced by CITY's own forces or contracts awarded prior to STATE  
9 approval.

10

11 STATE has the right to disapprove such plans and specifications and  
12 shall notify the CITY of its decision within 90 days of submittal. Such  
13 development, construction, or improvement shall be in accordance with  
14 Section 5080.31 P.R.C. and with a STATE approved general plan for the  
15 respective unit and any amendment thereof shall be subject to prior approval  
16 in writing by STATE.

17

18 Pursuant to Public Resources Code Section 5080.31(b), the STATE's  
19 general plan for the subject premises shall be prepared by the CITY and shall  
20 be approved by the California State Park and Recreation Commission prior to  
21 any new development or construction.

22

23 8. TITLE TO IMPROVEMENTS: The CITY hereby acknowledges the title  
24 of STATE in and to the premises described in this contract, including real  
25 property improvements existing or hereafter erected thereon, by the CITY,  
26 STATE, or others and hereby covenants and agrees never to assail, contest, or  
27 resist said title. Title to improvements will remain in STATE upon any



1 termination of this contract and no sums whatsoever shall be paid to the CITY  
2 or any other person upon termination for default of any terms of this  
3 contract.

4  
5 At the end of the term of this agreement, and in the event that the STATE  
6 deems any CITY constructed improvements to be substandard, the STATE in its  
7 discretion may require the CITY to remove such substandard improvements. Any  
8 removal authorized shall be made without damage to adjacent property or  
9 improvements and if adjacent property or improvements are damaged, CITY shall  
10 reimburse STATE therefore or shall repair the damage at the option of STATE.  
11 After removal, the premises shall be left free and clear of all debris and in  
12 a condition reasonably similar to the present condition of said property.

13  
14 CITY shall not without prior written approval of STATE, remove,  
15 move, demolish, or alter in any manner, any improvements, natural features, or  
16 accretions existing on said property on the effective date of this agreement  
17 or subsequently occurring, except when engaged in the protection of public and  
18 private lands and waters from storms, floods, high tides, fire (all natural  
19 disasters), during a period of natural disaster or emergency declared by the  
20 Governor of California or the President of the United States.

21  
22 9. Eminent Domain: If said property or portion thereof is taken  
23 by proceedings in eminent domain, STATE shall receive the entire award for  
24 such taking except that CITY shall receive out of said award the fair market  
25 value of any improvements then existing and constructed by CITY (other than  
26 improvements erected with funds realized through income from said property or  
27 ---

1 State grants) on said property as said fair market value may be determined by  
2 said proceedings taking into consideration the terms of this instrument.

3

4 10. Hold Harmless: CITY shall maintain and operate the subject  
5 premises in a safe manner and in compliance with all laws and regulations  
6 including the applicable safety regulations of the California Occupational  
7 Safety and Health Act and applicable rules and regulations of "STATE".

8

9 The STATE will assume liability and defend and hold the CITY  
10 harmless from loss, costs, or expenses including costs of defense caused by  
11 the negligent or wrongful act or omission of STATE officers, agents, and  
12 employees occurring in the performance of agreements between the parties  
13 hereto to the extent that such liability is imposed on the CITY by the  
14 provisions of Section 895.2 of the Government Code of the State of  
15 California. In addition, when liability arises pursuant to Section 830 et  
16 seq., of the Government Code, by reason of a dangerous condition of public  
17 property of the STATE, the STATE shall assume liability and defend and hold  
18 the CITY harmless from loss, costs, or expenses including costs of defense  
19 caused thereby. The CITY shall provide warning signage to the public, erect  
20 appropriate barriers, and give prompt notice to the STATE of any observed  
21 dangerous condition.

22

23 The CITY will assume liability and defend and hold the STATE  
24 harmless from loss, costs, or expenses caused by the negligent or wrongful act  
25 or omission of CITY officers, agents, and employees occurring in the  
26 performance of agreements between the parties hereto to the extent that such

27 ---

1 liability is imposed on the STATE by the provisions of Section 895.2 of the  
2 Government Code of the State of California.

3

4 In the event STATE is named as co-defendant under the provisions of  
5 the Government Code Sections 895 et seq., the CITY shall notify STATE of such  
6 fact and shall represent STATE in such legal action unless STATE undertakes to  
7 represent itself as co-defendant in such legal action in which event STATE  
8 shall bear its own litigation costs, expenses, and attorney's fees.

9

10 In the event judgment is entered against the STATE and CITY because  
11 of the concurrent negligence of STATE and CITY, their officers, agents, or  
12 employees, an apportionment of liability to pay such judgment shall be made by  
13 a court of competent jurisdiction. Neither party shall request a jury  
14 apportionment.

15

16 11. Assignment: This agreement shall not, nor shall any interest  
17 therein or thereunder, be assigned, mortgaged, hypothecated, or transferred  
18 either by CITY or by operation of law, nor shall CITY let or sublet, or grant  
19 any licenses or permits with respect to the use and occupancy of said property  
20 or any portion thereof, without the written consent of STATE first had and  
21 obtained. Such consent shall not be unreasonably withheld.

22

23 12. Notices: Notices or reports desired or required to be given  
24 hereunder or under any law now or hereafter in effect may, at the option of  
25 the party giving same, be given by enclosing the same in a sealed envelope  
26 addressed to the party for whom intended and by depositing said envelopes,

27 ---

1 with postage prepaid, certified with return receipt requested, in the United  
2 States Post Office or any substation thereof.

3

4 In the event such notice is being given to the CITY, such notice and  
5 the envelope containing the same shall be addressed to the City Manager of the  
6 City of Manhattan Beach, 1400 Highland Avenue, Manhattan Beach,  
7 California 90266, or such other place as may hereafter be designated in  
8 writing by or on behalf of CITY; and in the event that said notice being sent  
9 to STATE, said notice and the envelope containing the same shall be addressed  
10 to the Department of Parks and Recreation, P.O. Box 942896, Sacramento, CA  
11 94296-0001, with copy to 1333 Camino del Rio South, Suite 200, San Diego,  
12 California 92108.

13

14 13. Termination:

15

16 a. STATE reserves the unqualified right to terminate this  
17 agreement by giving CITY eighteen (18) months' prior written notice of the  
18 effective date of such termination. STATE further may terminate this  
19 agreement for material breach by CITY of any of the provisions hereof. The  
20 CITY shall be given not less than ninety (90) days to cure any and all  
21 breaches hereunder.

22

23 b. CITY reserves the unqualified right to terminate this agreement  
24 by giving STATE eighteen (18) months' prior written notice of the effective  
25 date of such termination. CITY further may terminate this agreement for  
26 breach by STATE of any of the provisions hereof.

27 ---

1           c. Notwithstanding any other provisions in this contract and in  
2 addition to any other remedy available to STATE, STATE shall have the option  
3 to terminate the contract and to pay CITY the then depreciated cost of the  
4 facilities placed, created, or developed by CITY on the premises, except  
5 improvements erected with funds realized through income from said property or  
6 State grants. Such payment (buy-out) shall apply in the event of termination  
7 pursuant to Section 13(a) above.

8  
9           d. Upon a determination by a court that a material breach has  
10 occurred on the part of the CITY in performance of this contract, and the  
11 STATE has elected to terminate the agreement, the provisions of paragraph "c",  
12 above, shall not apply.

13  
14           e. For the purpose of paragraph "c" such facilities shall be  
15 deemed to be the improvements which CITY may construct hereunder or later  
16 adds, exclusive of trade fixtures, equipment, and any personal property. The  
17 cost of such facilities for the purposes of this paragraph shall be computed  
18 in the following manner:

19  
20           f. Upon completion of improvements, or within thirty (30) days of  
21 opening for public use, whichever is earlier, CITY will submit verified cost  
22 statements accompanied by substantiating invoices and bills of labor,  
23 material, or any other reasonable construction costs, to STATE. After such  
24 statements, invoices, and bills have been examined by STATE, STATE will in its  
25 sole discretion establish in a reasonable and fair manner the cost of  
26 improvements. In the event costs are not filed by CITY within the period  
27 above provided, STATE shall estimate said cost and serve the same on CITY in

1 the manner provided herein. STATE's estimate shall become final  
2 thirty (30) days after service thereof.

3

4 g. The amount to be paid as the then depreciated cost of the  
5 facilities in the event of termination under paragraph "c" shall be based on a  
6 capital recovery schedule determined by dividing the initial investment by the  
7 number of whole years remaining in the initial 20-year agreement period or any  
8 extension thereof at the time of investment, multiplied by the remaining  
9 years. The initial investment shall be the actual cost of all improvements,  
10 less any donations, contributions, fees, or State grants received by CITY for  
11 the construction of said improvements.

12

13 In the event of breach, bankruptcy, insolvency, abandonment, or the  
14 contract is terminated at CITY's request, the buy-out provisions contained  
15 herein are not to be considered as an obligation of the STATE.

16

17 The buy-out provisions shall only be operative when funds required  
18 by STATE for such buy-out are obtained through appropriation by the  
19 Legislature and through the normal budgeting process of the STATE.

20

21 14. Real Property Acquisition: It is understood and agreed by the  
22 parties hereto, that all applications for real property rights, appurtenant to  
23 the real properties herein described, shall be made in the name of and on  
24 behalf of STATE, and shall be subject to the prior approval in writing of  
25 STATE.

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1           15. Nondiscrimination: Pursuant to Public Resources Code  
2 Section 5080.34, this agreement prohibits, and every contract for a concession  
3 on lands that are subject to this operating agreement shall expressly  
4 prohibit, discrimination against any person because of race, color, religion,  
5 sex, marital status, national origin, or ancestry of that person. Attached  
6 Standard Form 17A is incorporated herein as Exhibit "D".

7

8           16. Limitation: This operating agreement is subject to all valid  
9 and existing contracts, leases, licenses, encumbrances, and claims of title  
10 which may affect said property.

11

12           17. Paragraph Titles: The paragraph titles in this contract are  
13 inserted only as a matter of convenience and for reference, and in no way  
14 define, limit or describe the scope or intent of this contract or in any way  
15 affect this contract.

16

17           18. Contracts in Counterparts: This contract is executed in  
18 counterparts each of which shall be deemed an original.

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1 IN WITNESS WHEREOF, the parties have executed this instrument upon  
2 the date first hereinabove appearing.

3  
4 STATE OF CALIFORNIA  
5 DEPARTMENT OF PARKS AND RECREATION

6 *Lee McCaughey*  
7 Director

8 1-17-89  
9 Date

10 Attest:

11 CITY OF MANHATTAN BEACH

12 *Timothy J. Kelly*  
13 City Clerk

14 12/11/88  
15 Date

16 *Sam Hays*  
17 Mayor

18 Dec 5, 1988  
19 Date

20 Reviewed and Approved:

DEPARTMENT OF GENERAL SERVICES

21 *David J. Thompson*  
22 City Manager

BY \_\_\_\_\_

23 Dec 8, 1988  
24 Date

Date \_\_\_\_\_

25 Approved as to Form:

26 *Alan L. Wendroff*  
27 City Attorney

Dec. 9, 1988  
Date

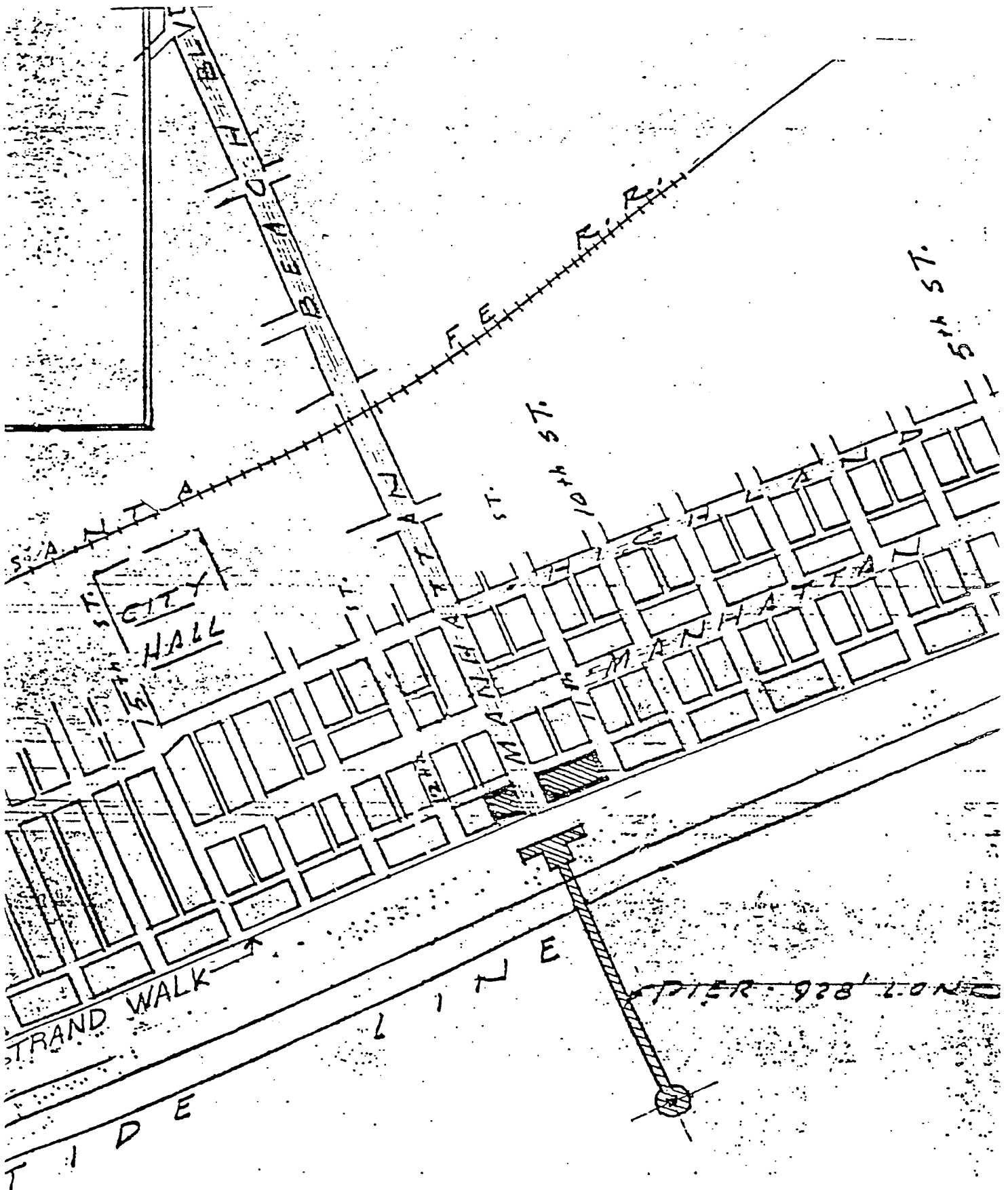
FORM	POLICY	BUDGET
Department of General Services		
<b>APPROVED</b>		
JAN 20 1989		
BY	ORIGINAL SIGNED BY <b>ALAN L. WENDROFF</b>	
Ass't. Chief Counsel		

0-7444X



EXHIBITS INDEX

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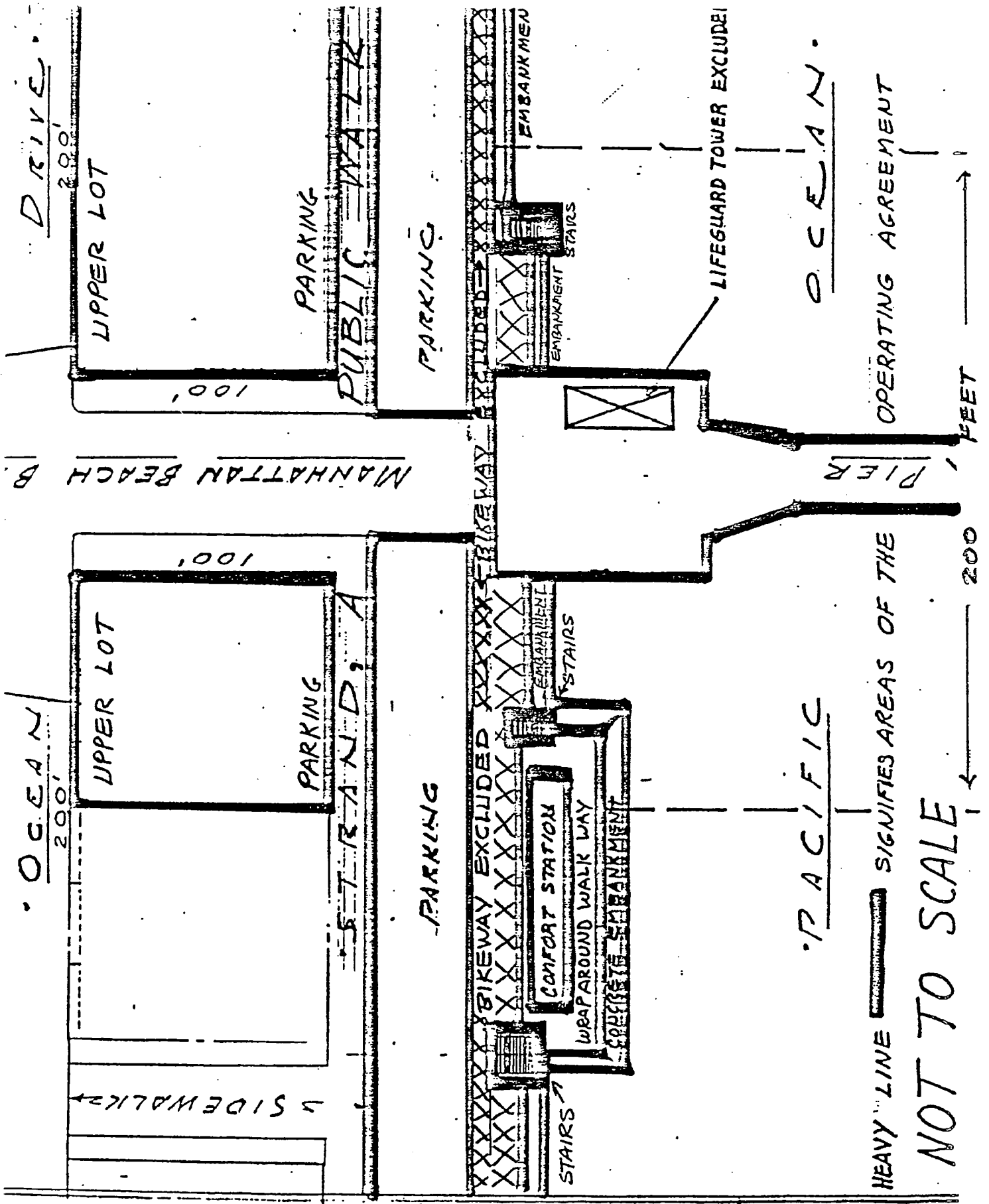


EXHIBIT B-1

The operating agreement includes the maintenance and operation of the four (4) paved State-owned parking lots adjacent to the Manhattan State Beach Pier. They are located on either side of, and just east of the Pier's entrance and are known as the "upper lots" and the "lower lots".

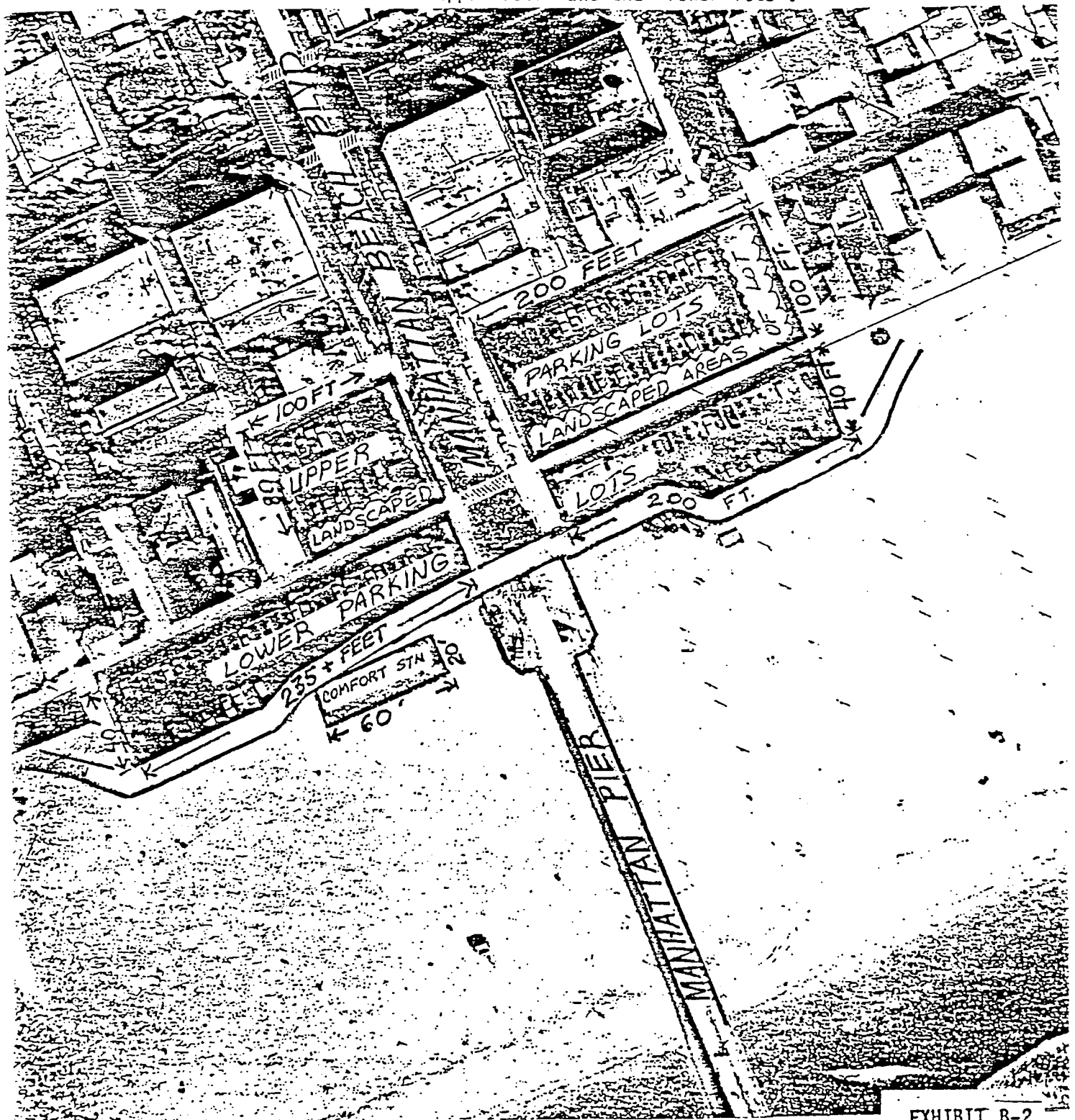
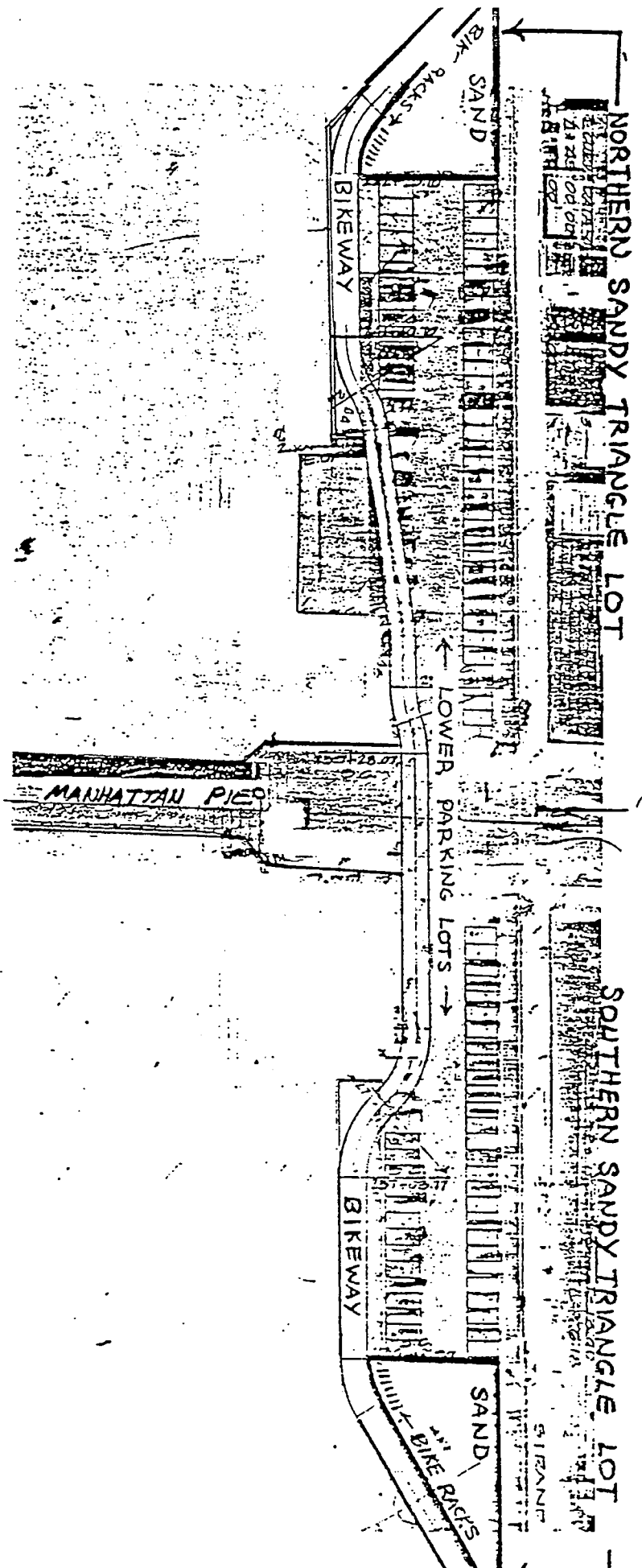


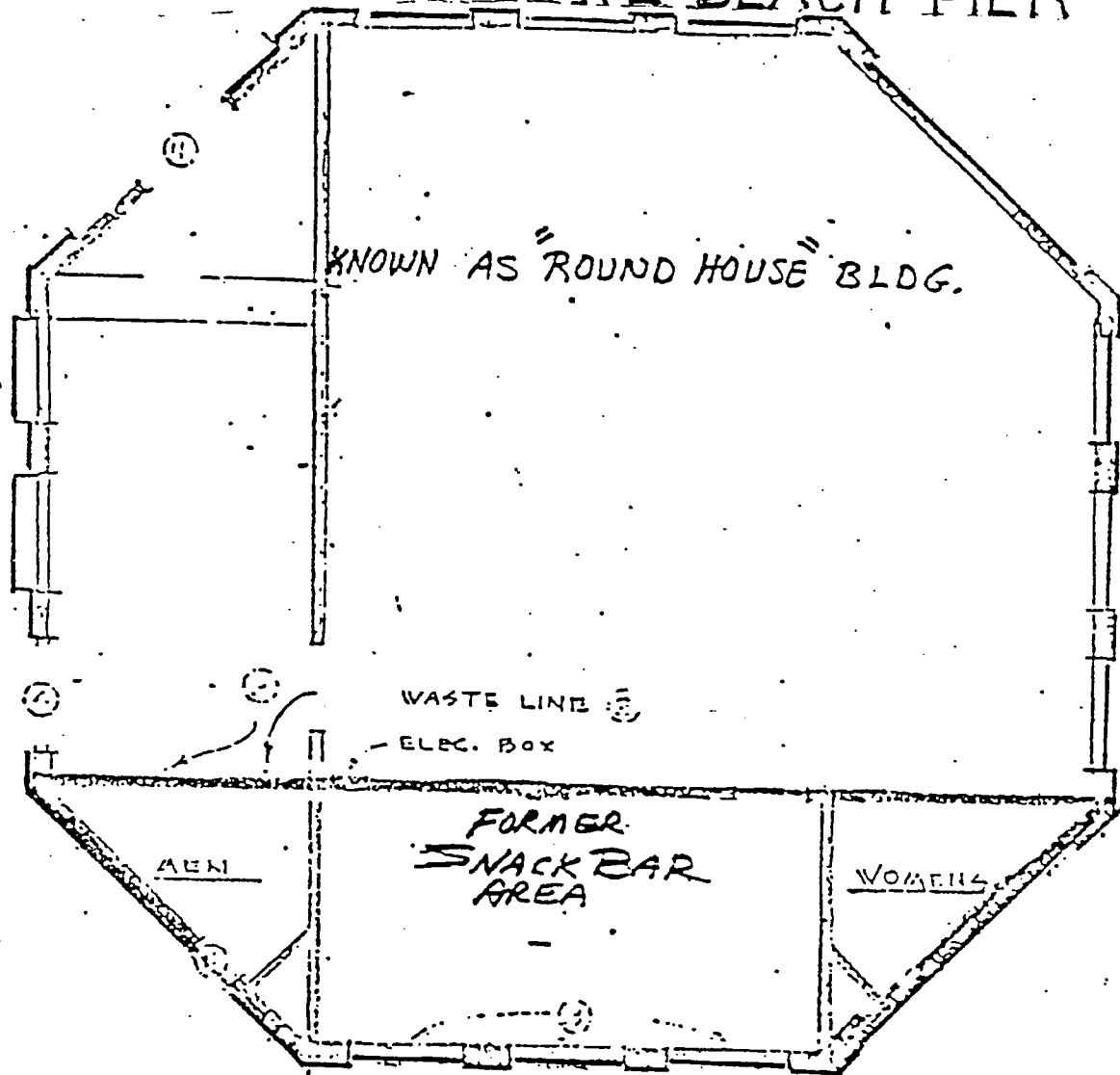
EXHIBIT B-2

DESCRIPTION OF MANHATTAN STATE BEACH PIER COMFORT STATION

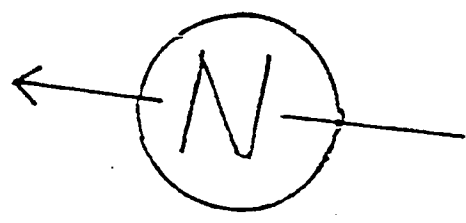
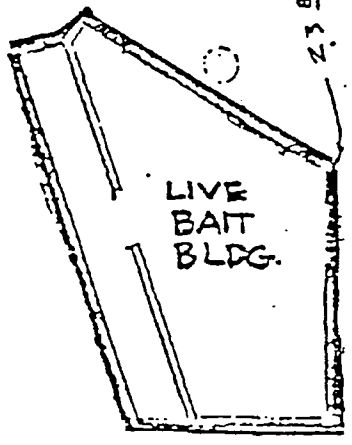
This operating agreement includes the maintenance and operation of the adjacent comfort station. The building is located approximately 50 feet north of the Pier's northern most edge. It lies west along the bikeway/foot path. It is level with the Pier and is surrounded by the raised walkway.



# WEST END OF MANHATTAN STATE BEACH PIER



FLOOR PLAN SCALE 1/8" = 1'-0"



## SPECIFIC OPERATION RESPONSIBILITIES ON MANHATTAN STATE BEACH PIER

NOTE: The following areas of operation are listed only to serve as a minimum requirement and in no way should be construed to limit overall operation.

### PIER:

#### a. Lifeguard Tower Exclusion

Notwithstanding any other provisions, this contract shall not include for the purposes of this operating agreement, that portion of the State pier known as the two-story lifeguard tower located on the southerly apron of the pier. Said lifeguard tower is to be operated, maintained, and controlled by the County of Los Angeles, Department of Beaches and Harbors, through a separate agreement with the State, which also provides for access and utilities.

#### b. Bikeway Exclusion

Notwithstanding any other provisions, this contract shall not include for the purposes of this operating agreement, that portion of State property known as the bikeway located between the Manhattan State Beach Pier and the lower parking lots as in Exhibit B-3. Said bikeway is to be operated, maintained, and controlled by the County of Los Angeles, Department of Beaches and Harbors, through a separate agreement with the State.

c. Gate entrance to Pier.

d. Electrical and lighting system on Pier.

e. Drinking fountains.

f. Fish cleaning areas.

g. Guard rails.

h. Planters and landscape.

i. Safety fence underneath Pier.

j. Round house building at Pier's end.

k. Bait building/shack at Pier's end.

l. Concrete embankments/retaining walls which lead down from the west edge of the bikeway and walkways to the sand, and which run the length of the lower parking lots.

m. Concrete steps leading up to the raised bikeway, walkways, and Pier.



SPECIFIC OPERATION RESPONSIBILITIES ON  
MANHATTAN STATE BEACH PIER  
PARKING LOTS

PARKING LOTS: The City is responsible for the maintenance and operation of the four (4) parking lots adjacent to Manhattan State Beach Pier as shown in this Exhibit attached hereto and made a part of this contract.

a. The City shall collect, operate, and maintain the parking meters within the State parking lots adjacent to Manhattan Beach (141 spaces).

b. The City shall collect and deposit coins from the parking meters on varying schedules throughout the year which will take into consideration the volume of activity at the Pier lots. Such coins shall be collected and, accordingly, identified in a separate account by the City.

c. The parking fees charged at the parking lot shall be approved by State. The current fee charged is .75 per hour. Notice of any change in fees will be given 90 days in advance of the effective date. City will reset the meters on the effective date.

d. The City shall unjam the meters on a regular basis as necessary in order to keep the meters in operating condition.

e. The City shall maintain and repair the lots' accesses/exits, meters, bumpers, retaining walls, fences, landscaping, and slope sprinkling systems.

f. City may sell parking stickers on a first-come, first-serve basis to persons desiring them on a three-month basis to allow parking between the hours of 6:00 p.m. and 8:00 a.m. for a monthly fee to be set by the City Council and approved by the State. Holders of overnight parking stickers shall be allowed to park on a 24-hour basis on holidays and weekdays between October 1 and April 1 of each year exclusive of the period between the week prior and the week after Easter. The City shall reserve seven (7) spaces within the parking lot for use by persons authorized by State and/or County of Los Angeles - Department of Beaches and Harbors. Revenues from the overnight parking stickers shall be retained by the City and deposited in a special fund pursuant to Section 5080.32 of the Public Resources Code.

g. City shall provide such personnel as may be required to collect and deposit the coins, discourage vandalism, protect the public, enforce parking regulations, and minimize traffic congestion in the parking lot and contiguous streets.

h. City shall pay the cost of all utilities serving the lots.

i. City shall maintain the parking lots in a neat and clean condition.

j. City shall maintain and operate the parking lots and meters in a safe manner and in compliance with all laws and regulations including the

applicable safety regulations of the California Occupation Safety and Health Act and applicable rules and regulations of "State".

k. Sandy Trangle Lots Exclusion

Notwithstanding any other provisions, this contract shall not include for the purposes of this operating agreement, the maintenance of those portions of state property known as the north and south sandy triangle lots which are located at the north and south ends of the lower parking lots, as depicted in Exhibit B-3.

SPECIFIC OPERATION RESPONSIBILITIES ON  
MANHATTAN STATE BEACH  
COMFORT STATION

COMFORT STATION:

- a. Building
- b. Dressing rooms
- c. Toilet and wash areas
- d. Outside showers
- e. Planters and landscape
- f. All systems related to the building
- g. Surrounding raised walkway
- h. Concrete steps

CUSTODIAL MAINTENANCE OBLIGATIONS OF THE CITY

A. UPKEEP

The upkeep that the CITY shall perform on a scheduled basis over the term of this contract shall consist of the following:

1. Buildings: Periodic inspection, mechanical and hand cleaning of the interiors and exteriors of all buildings to assure compliance with County and STATE public health standards.
2. Landscaped Grounds: Periodic inspection, cleaning, cultivating, fertilizing, pruning, and replacement of plants other than turf.
3. Parking Lots, Bumpers, Guardrails, Handrails, Retaining Walls, Concrete Embankments Lot Surfaces, Stairs, and Other Similar Structures: Periodic inspection and mechanical and hand cleaning of the surfaces to remove debris or Graffiti.
4. Garbage Containers: Periodic refuse removal and refuse container cleaning to assure compliance with STATE and County public health standards.
4. Fences: Periodic inspection and cleaning of fences and contiguous areas they stand upon.
7. Lights and Signs: Periodic inspection, replacement of lights, and cleaning of signs to assure legibility.

B. MAINTENANCE

The maintenance that the CITY shall perform over the term of this contract shall consist of the following:

1. Buildings: Periodic and emergency repairs to the interiors and exteriors of all buildings to assure that the buildings serve the function for which they were intended.
2. Landscaped Grounds: Periodic and emergency repairs to lighting and irrigation systems to assure the public's continued enjoyment of the PREMISES.
3. Parking Lots  
Periodic and emergency repairs to lighting systems, bumpers, guardrails, handrails, retaining walls, accesses and exits, and the surfaces of the parking lots, and other similar structures, including striping and traffic delineation.
4. Signs: Periodic and emergency repairs, replacement, and installation of all signs.

## NONDISCRIMINATION CLAUSE

(OCP - 1)

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

1 AMENDMENT NO. 1

2  
3 OPERATING AGREEMENT FOR THE  
4 OPERATION OF THE MANHATTAN STATE BEACH PIER  
5 LOCATED IN MANHATTAN STATE BEACH  
6

7 THIS AMENDMENT is made and entered into by and between the STATE OF  
8 CALIFORNIA, acting through the Department of Parks and Recreation, hereinafter called  
9 "State", and the City of Manhattan Beach, a municipal corporation of the State of California,  
10 California, hereinafter called "City".  
11

12 **WITNESSETH:**  
13

14 **WHEREAS**, an Operating Agreement was entered into on the 1st day of August,  
15 1988 for a 20-year term, by and between the State and City for the operation of the  
16 Manhattan State Beach Pier, with an additional twenty-year extension at the City's option,  
17 and  
18

19 **WHEREAS**, the parties hereto wish to amend said operation agreement to  
20 extend twenty-years; and  
21

22 **WHEREAS**, both parties wish to amend the Operating Agreement to update  
23 and clarify language of the Operating Agreement; and  
24

25 **WHEREAS**, the Concessionaire wishes to replace Paragraph 1, 5, 10, and  
26 15 of the Operating Agreement, and add Paragraphs 19 through 47 to the  
27 Operating Agreement;  
28

29 **NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE**  
30 **PARTIES AS FOLLOWS:**  
31  
32

1 In the Operating Agreement, remove "Paragraph 1" and replace with "Revised  
2 Paragraph 1". All references to "Paragraph 1" in the Operating Agreement shall henceforth  
3 refer to the Revised Paragraph 1. Revised Paragraph 1 reads:

4 1. **TERM:** The term of this Agreement shall be for a period of twenty (20)  
5 years and shall commence on August 1, 2008 and end on July 31, 2028.  
6 However, this Agreement shall not be effective until the first of the month following  
7 approval by the State of California, Department of General Services. Should the  
8 City hold-over after the expiration of the term of this contract with the express or  
9 implied consent of the State, such holding-over shall be deemed to be a tenancy  
10 from month-to-month at the herein stated prescribed rent as set forth in this  
11 contract subject otherwise to all the terms and conditions of this contract.  
12

13 In the Operating Agreement, remove "Paragraph 5" and replace with "Revised  
14 Paragraph 5". All references to "Paragraph 5" in the Operating Agreement shall henceforth  
15 refer to the Revised Paragraph 5. Revised paragraph 5 reads:

16 5. **RECORDS AND ACCOUNT:** At all times during the term of this  
17 Agreement, City shall keep separate, true, and complete books, records, and  
18 accounts of all income and fees received and all expenditures made by City in  
19 relation to concessions, events, special services, and all other matters incident to  
20 the development, control, and operation of the Premises. City shall report said  
21 income and expenditures to State in accordance with Exhibit F Annual Revenue  
22 and Expenditure Report, or in a similar format acceptable to State on an annual  
23 basis, which annual report shall be submitted for the period commencing July 1<sup>st</sup>  
24 and ending June 30<sup>th</sup> of each reporting year, and shall be filed with State no later  
25 than the following September 30<sup>th</sup>. In addition, within forty-five (45) days of the  
26 expiration or termination of this Agreement, City shall submit to State a statement  
27 of income and expenditures for the period of operation not previously reported,  
28 prepared as set forth above. The Annual Report shall include a reasonable  
29 estimate of the number of visitors and vehicles to the Park Unit and the basis by  
30 which the City makes such estimate.

31 The books, records, and accounts applying to the operation of the Premises  
32 and kept by City shall be open for audit or inspection by State at all reasonable

1 times. All records shall be kept by City for a period of at least four (4) years. City  
2 shall be subject to State's audit requirements and remedies as set forth herein.

3  
4 In the Operating Agreement, remove "Paragraph 10" and replace with "Revised  
5 Paragraph 10". All references to "Paragraph 10" in the Operating Agreement shall  
6 henceforth refer to the Revised Paragraph 10. Revised Paragraph 10 reads:

7 10. **HOLD HARMLESS AGREEMENT**: City shall indemnify, hold  
8 harmless, and defend State, its officers, agents, and employees against any and  
9 all claims, demands, damages, costs, expenses, or liability costs, (including but  
10 not limited to attorneys fees, experts fees, and costs of suit), arising indirectly or  
11 directly out of the development, operation, or maintenance of the Premises by  
12 City, or in any way related to the performance of this Agreement by City, by reason  
13 of its acts or omissions relating to the Premises and/or its obligation pursuant to  
14 this Agreement and/or by reason of injury, death, property damage, or any claim  
15 arising from the alleged violations of any state or federal law, statute, or  
16 regulations, including but not limited to the Americans with Disabilities Act of 1990  
17 Titles I, II and III ["ADA"], however caused or alleged to have been caused,  
18 provided, however, in no event shall City be obligated to defend or indemnify State  
19 with respect to the sole negligence or willful misconduct of State, its employees, or  
20 agents (excluding City herein, or any of its concessionaires).

21 In the event State is named as co-defendant in a legal action under the  
22 provisions of the Government Code Section 810 et seq., and served with process  
23 of such legal action, State shall immediately notify City of such fact and City shall  
24 represent State in such legal action as provided herein unless State undertakes to  
25 represent itself as co-defendant in such legal action, in which event State shall  
26 bear its own litigation costs, expenses, and attorney's fees.

27 In the event judgment is entered against State and City because of the  
28 concurrent negligence of State and City, their officers, agents, or employees, an  
29 apportionment of the liability to pay such judgment shall be made by a court of  
30 competent jurisdiction. Neither party shall request a jury apportionment.



1 In the Operating Agreement, remove "Paragraph 13" and replace with "Revised  
2 Paragraph 13". All references to "Paragraph 13" in the Operating Agreement shall  
3 henceforth refer to the Revised Paragraph 13. Revised Paragraph 13 reads:

4 13. **TERMINATION**

5 A. Notwithstanding the provisions of Paragraph 25, DEFAULTS AND  
6 REMEDIES, either party may terminate this Agreement for any reason. The party  
7 who wishes to terminate the Agreement shall give written notice of its intention no  
8 later than three hundred and sixty five (365) days before the scheduled termination  
9 date. Such notice shall be given in writing and shall be effective on the date given  
10 in the notice as the scheduled date for the termination of the Agreement.

11 B. In the event that the State is the party choosing to terminate the  
12 Agreement, the State shall pay to City on the termination date a sum of money  
13 equal to the depreciated cost of the improvements installed or constructed upon  
14 the Premises by the City with the following exceptions, (a) improvements erected  
15 with funds realized through income from the Premises, and (b) improvements the  
16 cost of which City has been paid or reimbursed by State through grants or other  
17 sources. It is expressly understood that the reimbursement provisions are not  
18 applicable where State terminates this Agreement for any breach on the part of  
19 City. In the event of breach, bankruptcy, insolvency, abandonment, or termination  
20 of Agreement upon City's request, the reimbursement provisions shall not apply  
21 and shall not be considered an obligation of the State.

22 C. State may not commence termination proceedings until such time as  
23 the funds required for such termination and reimbursement have been obtained  
24 through appropriations by the Legislature and through the normal budgeting  
25 process of the State.

26 D. If the Premises ownership is transferred from the State to the City,  
27 this Operating Agreement will be terminated once the property transfer is  
28 complete.

29  
30  
31 In the Operating Agreement, remove "Paragraph 15" and replace with "Revised  
32 Paragraph 15". All references to "Paragraph 15" in the Operating Agreement shall  
33 henceforth refer to the Revised Paragraph 15. Revised Paragraph 15 reads:

1           15. **NONDISCRIMINATION**: Pursuant to Public Resources Code Section  
2 5080.34, this Agreement and every contract on lands that are subject to this  
3 Agreement shall expressly prohibit discrimination against any person because of  
4 sex, sexual orientation, race, color, religious creed, marital status, ancestry,  
5 national origin, medical condition, age (40 and above), and disability (mental and  
6 physical) including HIV and AIDS.

7           City shall comply with the provisions of the Fair Employment and Housing  
8 Act (Gov. Code, §12900 et seq.) and the applicable regulations promulgated  
9 thereunder (Cal. Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of  
10 the Fair Employment and Housing Commission implementing Government Code,  
11 §12990 (a)-(f), are incorporated into this Agreement by reference and made a part  
12 hereof as if set forth in full (Cal. Code Regs, tit. 2, §7285.0 et seq.). City shall give  
13 written notice of their obligations under this clause to labor organizations with  
14 which they have a collective bargaining or other Agreement. City shall include the  
15 non-discrimination and compliance provisions of this clause in all contracts to  
16 perform work under and/or in connection with this Agreement.

17           In the event of violation of this paragraph, State will have the right to  
18 terminate this Agreement, and any loss of revenue sustained by the State by  
19 reason thereof shall be borne and paid for by City.

20

1 In Operating Agreement, add the following Paragraphs 19 through 45:

2  
3 19. **CONSIDERATIONS**: In consideration of the services to be performed  
4 by City pursuant to this Agreement, State hereby authorizes the use of the  
5 Premises by City "rent-free basis on the condition that City exert a good faith effort  
6 in performing the terms and conditions of this Agreement". In the event that City  
7 fails to perform in good faith, the Premises shall revert back to the State, at State's  
8 option, and State shall have the right to pursue any other remedies available under  
9 this Agreement and/or otherwise available by law.

10 Any income to City derived from its control and operation of Premises for  
11 services, benefits, or accommodation to the general public, or otherwise, shall be  
12 used only for the maintenance, operation, administration, improvement, or  
13 development of lands and/or facilities located within Manhattan State Beach, as  
14 described in Exhibit A, Premises. The City is entitled to use income derived from  
15 its control and operation of Premises for funding the direct costs of utilities,  
16 maintenance and operation of the facilities including salaries, benefits and  
17 administrative overhead not to exceed eight percent (8%) of the annual gross  
18 income for that year. In the event the administrative overhead exceeds eight  
19 percent (8%), the State and City agree to review the limitation. The City agrees to  
20 submit a listing of these direct costs, with the City's Annual Report, for the State's  
21 approval, which shall not be unreasonably withheld. Any such portion of income  
22 as may exceed costs and expenses to maintain and operate Premises as  
23 described within this Agreement may be retained for capital improvement projects  
24 on the Premises as determined by the City Council of the City of Manhattan  
25 Beach. Such capital projects shall be submitted to the State with the City's Annual  
26 Report and Capital Improvement Plan documents. The State shall have thirty (30)  
27 days to review the proposed projects, after which time approval shall be  
28 automatically granted. Excess funds retained by the City at the final termination of  
29 this Agreement, including any subsequent extensions, shall be remitted to State in  
30 accordance with Section 5080.32 (b)(2) of the California Public Resource Code.

31  
32 20. **MAINTENANCE OBLIGATION OF CITY**: During the term of this Agreement  
33 and at City's own cost and expense, City shall maintain and operate the Premises

1 including equipment, personal property, and Alterations or improvements of any  
2 kind that may be erected, installed, or placed thereon in a clean, safe, wholesome,  
3 and sanitary condition free of trash, garbage, or obstructions of any kind. All  
4 construction, operation, and maintenance shall be in accordance with all laws,  
5 codes, regulations, ordinances, and generally accepted industry standards  
6 pertaining to such work.

7 Should City fail, neglect, or refuse to undertake and complete any required  
8 maintenance, State shall have the right to perform such maintenance or repairs for  
9 the City. In this event, City shall promptly reimburse State for the cost thereof,  
10 provided, however, that State shall first give City ten (10) days written notice of its  
11 intention to perform such maintenance or repairs. State shall not be obligated to  
12 make any repairs to or maintain any improvement on the Premises. City hereby  
13 expressly waives the right to make repairs at the expense of the State and the  
14 benefit of Sections 1941 and 1942 of the California Civil Code relating thereto, if  
15 there be any. State has made no representations respecting the condition of the  
16 Premises, except as specifically set forth in this Agreement.

17 State reserves the right to enter the Premises for inspection and work  
18 related to its care and maintenance during the term hereof, provided that State  
19 shall give City reasonable written notice of its intention to do any of the work  
20 herein mentioned before such work is undertaken.

21  
22 21. **TAXES:** City, by signing this Agreement, acknowledges that occupancy  
23 interest and rights to do business on State property may create a possessory  
24 interest as that term is defined in Revenue and Taxation Code Section 107.6,  
25 which possessory interest may subject a concessionaire to liability for the payment  
26 of property taxes levied on such possessory interest. City and/or any  
27 concessionaire engaged by City shall pay all lawful taxes, assessments, or  
28 charges that may be levied by the State, County, City, or any tax or assessment  
29 levying body at any time upon any interest in or created by this Agreement, or any  
30 possessory right that City and/or any concessionaire may have in or to the  
31 Premises covered hereby or the improvements thereon, by reason of City and/or  
32 any concessionaire's use or occupancy thereof or otherwise, as well as all taxes,  
33 assessments, and charges on goods, merchandise, fixtures, appliances,

1 equipment, and property owned by City and/or any concessionaire in or about the  
2 Premises.

3  
4 **22. UTILITIES AND SERVICES:** City shall be responsible for all expenses  
5 resulting from utilities supplied to the Premises. City shall be responsible for  
6 distribution systems and all related expenses within the Premises.

7  
8 **23. INSURANCE:**

- 9       A.     Liability Insurance: At its sole expense, City agrees to maintain in  
10            force during the term of this Agreement comprehensive general liability  
11            insurance, insuring against claims for injuries to persons or property  
12            occurring in, upon, or about Premises. The insurance shall have limits of  
13            not less ONE MILLION DOLLARS (\$1,000,000) for injuries to person or  
14            persons; not less than ONE MILLION DOLLARS (\$1,000,000) for property  
15            damage.
- 16       B.     State agrees that City, at City's option, may self-insure the coverages  
17            required by this Paragraph.
- 18       C.     Each policy of liability insurance shall contain an endorsement,  
19            including the State through its Department of Parks and Recreation, as  
20            additional insured as follows:
- 21                1)     State of California, its officers, employees, and servants are  
22                included as additional insured but only insofar as operations and  
23                facilities under this Agreement are concerned;
- 24                2)     The insurer will not cancel or reduce the insured's coverage  
25                without thirty (30) days prior written notice to State.
- 26       D.     The insurance requirements in this Paragraph apply to all contracts,  
27            including concession operations, entered into by the City as they  
28            relate to the Premises.
- 29       E.     No cancellation provision in any insurance policy shall diminish the  
30            responsibility of the City to furnish continuous insurance throughout the  
31            term of the Agreement. Each policy shall be underwritten to the satisfaction  
32            of the State. A signed Certificate of Insurance, with each endorsement  
33            required, including but not limited to State's additional insured  
34            endorsement, shall be submitted to State at the time this Agreement is

1 executed, showing that the required insurance has been obtained. Further,  
2 at least thirty (30) days prior to the expiration of any such policy, City shall  
3 submit to State a signed and completed Certificate of Insurance, with all  
4 endorsements required by this paragraph, showing, to the satisfaction of  
5 State, that such insurance coverage has been renewed or extended.

6 Within fifteen (15) days of State's request, City shall furnish State with a  
7 signed and complete copy of the required policy and/or evidence of self-  
8 insurance.

9 F. City agrees to impose the foregoing insurance requirements on any  
10 and all concessionaires and shall require that State be named as an  
11 additional insured on all policies. Failure to provide any of the required  
12 insurance and/or endorsements shall constitute a material breach of this  
13 Agreement.

14  
15 **24. PROHIBITIONS AGAINST ASSIGNING, SUBLETTING:**

16 This Agreement and/or any interest therein or thereunder shall not be  
17 assigned, delegated, mortgaged, hypothecated, or transferred by City without  
18 obtaining the prior written consent of State, which shall not be unreasonably  
19 withheld.

20  
21 **25. DEFAULTS AND REMEDIES:**

22 Any failure by a party to this Agreement to observe or perform a provision of  
23 this Agreement, where such failure continues for thirty (30) days after written  
24 notice of such failure, shall constitute a default and breach of this Agreement.

25 However, if the nature of the default is such that it cannot be reasonably cured  
26 within the thirty (30) day period, the offending party shall not be deemed to be in  
27 default if an effective cure is commenced within the thirty (30) day period and  
28 thereafter diligently prosecuted to completion. Upon an event of default by State,  
29 City shall have the right to terminate this Agreement by providing written notice to  
30 State.

31 Upon an event of default by City, State shall have the right to terminate this  
32 Agreement and obtain immediate possession of the Premises at any time by  
33 written notice to City. In such event, State shall be entitled to all rights and  
34 remedies at law and/or in equity, including but not limited to, costs and expenses

1 incurred by State in recovering possession of and/or restoring the Premises, and  
2 compensation for all detriment proximately caused by City's failure to perform its  
3 obligations under this Agreement.

4  
5 **26. SURRENDER OF THE PREMISES; HOLDING OVER:**

6 Surrender: On expiration or within thirty (30) days after earlier termination  
7 of this Agreement, City shall surrender the Premises to State with all fixtures,  
8 improvements, and Alterations in good condition, except for fixtures,  
9 improvements, and Alterations that City is obligated to remove. City shall remove  
10 all of its personal property and shall perform all restoration required by the terms of  
11 this Agreement within the above stated time unless otherwise agreed to in writing.

12 If City fails to surrender the Premises to State on the expiration,  
13 assignment, or within thirty (30) days after earlier termination of the term as  
14 required by this Paragraph, City shall hold State harmless for all damages  
15 resulting from City's failure to surrender the Premises.

16 Holding Over: After the expiration or earlier termination of the term and if  
17 City remains in possession of the Premises with State's express consent, such  
18 possession by City shall be deemed to be a temporary tenancy terminable on  
19 thirty (30) days written notice given at any time by either party. All provisions of  
20 this Agreement except those pertaining to the term shall apply to the temporary  
21 tenancy.

22  
23 **27. COMPLIANCE WITH LAWS, RULES, REGULATIONS, AND POLICIES:**

24 City shall comply with all applicable laws, rules, regulations, and orders  
25 existing during the term of this Agreement, including obtaining and maintaining all  
26 necessary permits and licenses. City acknowledges and warrants that it is, or will  
27 make itself, through its responsible managers, knowledgeable of all pertinent laws,  
28 rules, ordinances, regulations, or other requirements having the force of law  
29 affecting the operation of the Premises, including but not limited to laws affecting  
30 health and safety, hazardous materials, pest control activities, historical  
31 preservation, environmental impacts, and building standards.

32

1        **28. DISABILITY ACCESS LAWS:**

2            With regard to all operations and activities that are the responsibility of City  
3 under this Agreement, and without limiting City's responsibility under this  
4 Agreement for compliance with all laws, City shall be solely responsible for  
5 complying with the requirements of the Americans with Disabilities Act of 1990  
6 (ADA) (Public Law 101-336, commencing at Section 12101 of Title 42, United  
7 States Code, including Titles I, II, and III of that law), the Rehabilitation Act of  
8 1973, and all related regulations, guidelines, and amendments to both laws.

9            With regard to facilities for which City is responsible for operation,  
10 maintenance, construction, restoration, or renovation under this Agreement, City  
11 also shall be responsible for compliance with Government Code Section 4450, et  
12 seq., Access to Public Buildings by Physically Handicapped Persons, and  
13 Government Code Section 7250, et seq., Facilities for Handicapped Persons, and  
14 any other applicable laws, regulations, guidelines and successor statutes. Such  
15 compliance shall be at City's sole cost and expense. Written approval from State  
16 is required prior to implementation of any plans to comply with accessibility  
17 requirements.

18  
19        **29. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:**

20            By signing this Agreement, City does hereby swear, under penalty of  
21 perjury, that no more than one final, unappealable finding of contempt of court by a  
22 federal court has been issued against City within the two-year period immediately  
23 preceding the date of this Agreement because of City's failure to comply with a  
24 federal court order that City shall comply with an order of the National Labor  
25 Relations Board.

26  
27        **30. DRUG-FREE WORKPLACE:**

28            City agrees to comply with Government Code Section 8355 in matters  
29 relating to the provision of a drug-free workplace. This compliance is evidenced  
30 by the executed Standard Form 21, Drug-Free Workplace Certification, attached  
31 hereto as **Exhibit G** and made a part of this Agreement.



1        31. **ENVIRONMENTAL AWARENESS AND RESOURCE PROTECTION:**

2            City shall comply with State's resource management and preservation  
3 mandates in the conduct of all activities that impact cultural, natural, or scenic  
4 resources. These mandates include the California Public Resources Code  
5 Sections 5024 and 5097 et seq., State's Resource Management Directives, and  
6 the United States Secretary of the Interior's Guidelines for Historic Preservation.

7  
8        32. **HAZARDOUS SUBSTANCES:**

9            A.        On the Premises City shall not:

- 10                    1)        keep, store, or sell any goods, merchandise, or materials that  
11                    are in any way explosive or hazardous;  
12                    2)        carry on any offensive or dangerous trade, business, or  
13                    occupation;  
14                    3)        use or operate any machinery or apparatus that shall injure  
15                    the Premises or adjacent buildings in any way; or  
16                    4)        do anything other than is provided for in this Agreement.

17            B.        Nothing in this paragraph shall preclude City from bringing, keeping,  
18                    or using on or about said Premises such materials, supplies, equipment,  
19                    and machinery as is appropriate or customary in the care, maintenance,  
20                    administration, and control of parklands. Gasoline, oils, and all other  
21                    materials considered under law or otherwise to be hazardous to health and  
22                    safety shall be stored, handled, and dispensed as required by present or  
23                    future regulations and laws.

24            C.        City shall comply with all laws, federal, state, or local, existing during  
25                    the term of this Agreement pertaining to the use, storage, transportation,  
26                    and disposal of any hazardous substance, as that term is defined in such  
27                    applicable law. In the event the State or any of its affiliates, successors,  
28                    principals, employees, or agents should incur any liability, cost, or expense,  
29                    including attorney's fees and costs, as a result of the City's illegal use,  
30                    storage, transportation, or disposal of any hazardous substance, including  
31                    any petroleum derivative, City shall protect, indemnify, defend, and hold  
32                    harmless any of these individuals against such liability. Where City is found  
33                    to be in breach of this provision due to the issuance of a government order

1 directing City to cease and desist any illegal action in connection with a  
2 hazardous substance, or to remediate a contaminated condition directly  
3 caused by City or any person acting under City's direct control or authority,  
4 City shall be responsible for all costs and expenses of complying with such  
5 order including any and all expenses imposed on or incurred by the State in  
6 connection with or in response to such government order.

7 D. Notwithstanding the foregoing, in the event a government order is  
8 issued naming City, or City incurs any liability during or after the term of the  
9 Agreement in connection with contamination that preexisted the City's  
10 obligations and occupancy under this Agreement, or prior agreements or  
11 that were not directly caused by City, the State shall be solely responsible  
12 as between City and State for all expenses and efforts in connection  
13 therewith, and State shall reimburse City for all reasonable expenses  
14 actually incurred by City therewith.

15 E. All pest control activities, chemical and non-chemical, shall be  
16 approved by State prior to action by the City. City or the pest control  
17 business acting on behalf of City shall submit a DPR 191, Pest Control  
18 Recommendation, or equivalent to State for approval. State has fourteen  
19 (14) days to approve or deny the request. State review and approval shall  
20 be solely for compliance with State's policies and in no way shall relieve  
21 City or its contractors, employees, agents, or representatives from  
22 compliance with all laws and regulations concerning such activities, nor  
23 from carrying out the work in a workmanlike manner.

24 City or the pest control business acting on behalf of City shall submit  
25 a report of completed work for each pest management action to the State  
26 no later than seven (7) days after performance of the work. The report may  
27 be submitted on a DPR 191, Pest Control Recommendation, or equivalent.

28  
29 **33. SIGNS AND ADVERTISING:**

30 No signs, logos, names, placards, or advertising matter shall be inscribed,  
31 painted, or affixed upon Premises, or circulated or published without prior written  
32 approval of the State. Approval will be granted only when said signs or advertising  
33 is consistent with the purposes of this Agreement.

1  
2 **34. INTELLECTUAL PROPERTY RIGHTS:**

3 Any names, logos, trademarks, and/or copyrights developed during and/or  
4 pursuant to this Agreement that in any way associate, identify, or implicate an  
5 affiliation with California State Parks shall be approved by State for use, shall  
6 belong to State upon creation, and shall continue in State's exclusive ownership  
7 upon termination of this Agreement.  
8

9 **35. PARTICIPATION IN STATE PARK MARKETING PROGRAMS:**

10 City acknowledges that State has an established advertising and marketing  
11 program designed to promote additional revenue for the State and to deliver a  
12 consistent and positive image to the public. City agrees to cooperate in this  
13 program in the manner by giving reasonable consideration of advertising materials  
14 submitted by the State consistent with State advertising at similar park units  
15 throughout the State.

16 A. City agrees to place on the Premises any advertising that the  
17 approved under this program. Any advertising approved under this  
18 program will be placed at State's expense.

19 B. City agrees to rent or sell, along with all other items of merchandise  
20 that are part of the City's normal and customary inventory, any item of  
21 merchandise that the State approves under this program, provided that City  
22 is authorized to sell or rent it under the terms of the Agreement, and the  
23 City receives reasonable compensation for its sale.  
24

25 **36. CHILD SUPPORT COMPLIANCE ACT:**

26 City recognizes the importance of child and family support relating to child  
27 and family support enforcement, including, but not limited to, disclosure of  
28 information and compliance with earnings assignment orders, as obligations and  
29 shall fully comply with all applicable state and federal laws provided in Chapter 8  
30 (commencing with section 5200) of Part 5 of Division 9 of the Family Code.

31 To the best of its knowledge City is fully complying with the earnings  
32 assignment orders of all employees and is providing the names of all new

1 employees to the New Hire Registry maintained by the California Employment  
2 Development Department.

3  
4 **37. DISPUTES:**

5 City shall continue with any and all responsibilities under this Agreement  
6 during any dispute.

7  
8 **38. INSPECTION:**

9 State or its authorized representative shall have the right at all reasonable  
10 times to inspect the Premises to determine compliance with the provisions of this  
11 Agreement.

12  
13 **39. SUCCESSORS IN INTEREST:**

14 Unless otherwise provided in this Agreement, the terms, covenants, and  
15 conditions contained herein shall apply to and bind the heirs, successors,  
16 executors, administrators, and assigns of all the parties hereto, all of who shall be  
17 jointly and severally liable hereunder.

18  
19 **40. PARTIAL INVALIDITY:**

20 If any term, covenant, condition, or provision of this Agreement is held by a  
21 court of competent jurisdiction to be invalid, void, or unenforceable, the remainder  
22 of the provisions hereof shall remain in full force and effect and shall in no way be  
23 affected, impaired, or invalidated thereby.

24  
25 **41. TIME OF ESSENCE:**

26 Time shall be of the essence in the performance of this Agreement.

27  
28 **42. DURATION OF PUBLIC FACILITIES:**

29 By entering into this Agreement, State makes no stipulation as to the type,  
30 size, location, or duration of public facilities to be maintained at this unit, or the  
31 continuation of State ownership thereof, nor does the State guarantee the  
32 accuracy of any financial or other factual representation that may be made  
33 regarding the Premises.

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**43. WAIVER OF RIGHTS, CLAIMS, AND AGREEMENT TERMS:**

Unless otherwise provided by this Agreement, no waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the State to re-enter the Premises or to exercise any right, power, or privilege, or option arising from any breach, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option, or be construed as a waiver of such breach or relinquishment of any right or acquiescence therein. No notice to the City shall be required to restore or revive time as of the essence after the waiver by the State of any breach. No option, right, power, remedy, or privilege of the State shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the State by this Agreement shall be deemed cumulative.

**44. INTERPRETATION OF AGREEMENT:**

This Agreement is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

**45. INDEPENDENT CONTRACTOR:**

In the performance of this Agreement, City and the agents and employees of City shall act in an independent capacity and not as officers or employees or agents of the State.

**46. MODIFICATIONS AND APPROVAL OF AGREEMENT**

This Agreement contains and embraces the entire Agreement between the parties hereto and neither it nor any part of it may be changed, altered, modified, limited, or extended orally or by any Agreement between the parties unless such Agreement be expressed in writing, signed, and acknowledged by the State and City or their successors in interest.

1           Notwithstanding any of the provisions of this Agreement, the parties may  
2 hereafter, by mutual consent expressed in writing, agree to modifications thereof,  
3 additions thereto, or terminations thereof, which are not forbidden by law. This  
4 Agreement, amendments, modifications, or termination thereof shall not be  
5 effective until approved by State's relevant control agencies.

6  
7

1 IN WITNESS WHEREOF, the parties hereto warrant that they respectively have the  
2 requisite authority to enter this contract, binding the named parties for which they sign, and  
3 have executed this amendment on the dates set forth below.  
4

5  
6 **APPROVED:**

7  
8 **CITY OF MANHATTAN BEACH**

**STATE OF CALIFORNIA**  
**DEPARTMENT OF PARKS AND RECREATION**

9  
10  
11  
12 By: \_\_\_\_\_

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

13  
14 Name: \_\_\_\_\_

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

15  
16 Title: \_\_\_\_\_

Title: District Superintendent

17  
18 Date: \_\_\_\_\_

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

19  
20  
21  
22  
23 **ATTORNEY GENERAL:**

**DEPARTMENT OF GENERAL SERVICES:**

24  
25 Approved as to legal sufficiency  
26 in accordance with the requirements  
27 of Sections 5080.02-5080.21 of the  
28 Public Resources Code.

29  
30 **EDMUND G BROWN JR, Attorney General**  
31 **of the State of California**

32  
33  
34 By: \_\_\_\_\_  
35 Deputy Attorney General

36  
37 Dated: \_\_\_\_\_  
38  
39

Annual Revenue and Expenditure Statement  
Operating Agreements

**EXHIBIT "F"**





Annual Revenue and Expenditure Statement  
Operating Agreements

Park Unit \_\_\_\_\_

Operating Agency \_\_\_\_\_

State's Fiscal Year \_\_\_\_\_ to \_\_\_\_\_

	Expenditures	Revenue	Balance
Visitor Entrance Fees			
Separate Parking Fees			
Concession A			
Concession B			
Concession C			
Special Events			
Miscellaneous Revenue			
Total Annual Revenue			
Salaries & Wages			
Maintenance & Housekeeping			
Utilities			
Capital Improvement Projects			
Miscellaneous Expenses			
Total Annual Expenditures			
Balance			

Preparer Name \_\_\_\_\_ Date \_\_\_\_\_

Phone Number \_\_\_\_\_



# Standard Form 21 Drug-Free Workplace Certification

## EXHIBIT "G"

STATE OF CALIFORNIA

### DRUG-FREE WORKPLACE CERTIFICATION

STD. 21 (REV. 12-93)

*I, the official named below, hereby swear that I am duly authorized legally to bind the contractor or grant recipient to the certification described below. I am fully aware that this certification, executed on the date below, is made under penalty of perjury under the laws of the State of California.*

The contractor or grant recipient named above hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor or grant recipient will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
  - (a) The dangers of drug abuse in the workplace,
  - (b) The person's or organization's policy of maintaining a drug-free workplace,
  - (c) Any available counseling, rehabilitation and employee assistance programs, and
  - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(c), that every employee who works on the proposed contract or grant:
  - (a) Will receive a copy of the company's drug-free workplace policy statement, and
  - (b) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.
4. At the election of the contractor or grantee, from and after the "Date Executed" and until (NOT TO EXCEED 36 MONTHS), the state will regard this certificate as valid for all contracts or grants entered into between the contractor or grantee and this state agency without requiring the contractor or grantee to provide a new and individual certificate for each contract or grant. If the contractor or grantee elects to fill in the blank date, then the terms and conditions of this certificate shall have the same force, meaning, effect and enforceability as if a certificate were separately, specifically, and individually provided for each contract or grant between the contractor or grantee and this state agency.

