

ADDENDUM TO ALL CITY AND COUNTY OF SAN FRANCISCO CONTRACTS

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12B.1, 12B.2 AND 12B.4 THEREOF, DEFINING LEASES, FRANCHISES, CONCESSIONS AND SUBORDINATE AGREEMENTS THEREUNDER AS CONTRACTS, AND PROHIBITING EMPLOYMENT DISCRIMINATION BECAUSE OF AGE.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code is hereby amended by amending Sections 12B.1, 12B.2 and 12B.4 thereof, to read as follows:

SEC. 12B.1

All contracting agencies of the City and County of San Francisco, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts, franchises, leases, concessions or other agreements involving real or personal property, hereafter negotiated, let, awarded, granted, renegotiated, extended or renewed, in any manner or as to any portion thereof, a provision obligating the contractor, franchisee, lessee, concessionaire, or other party to said agreement not to discriminate on the ground or because of race, color, creed, national origin, ancestry, age, sex or sexual orientation, against any employee of, or applicant for employment with, such contractor, franchisee, lessee, or concessionaire, and shall require such contractor, franchisee, lessee or concessionaire to include a similar provision in all subcontracts, subleases or other subordinate agreements let, awarded, negotiated or entered into thereunder.

(a) DEFINITIONS. As used in this chapter the term:

"Age" refers to and shall include any employee or applicant for employment who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years. For the purposes of this section, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty (40) years and has not attained the age of sixty-five (65) years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or political subdivisions participate shall not be considered discriminatory within the meaning of this section.

"Contract" shall mean and include an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded for and on behalf of the City and County of San Francisco.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who submits a bid and/or enters into a contract with department heads and officers empowered by law to enter into contracts on the part of the City and County for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a contract or agreement with the contractor to perform a substantial specified portion of the Contract for public works, improvements, supplies, goods or services, or for a lease, franchise or concession, let, granted or awarded for or on behalf of the City and County in accordance with the plans and specifications of such contract. Such term shall include any contractor who enters into a contract with any subcontractor for the performance of 10 per cent or more of the subcontract.

"Subcontract" shall mean and include an agreement or contract under or subordinate to a prime contract, franchise, lease or concession granted, let or awarded for or on behalf of the City and County of San Francisco.

"Concession" includes a grant of land or other property by or on behalf of the City and County of San Francisco to a person for the purpose or use specified in said grant.

"Concessionaire" shall mean and include a person who is the grantee or beneficiary of a concession as herein defined.

"Franchise" shall mean and include a right or privilege conferred by grant from the City and County of San Francisco, or any contracting agency thereof, and vested in and authorizing a person to conduct such business or engage in such activity as is specified in said grant.

"Franchisee" shall mean and include a person who is the grantee or beneficiary of a franchise as herein defined.

"Lease" shall mean and include a contract by which the City and County of San Francisco, or any contracting agency thereof, grants to a person the temporary possession and use of property, for reward, and the latter agrees to return the same to the former at a future time.

"Lessee" shall mean and include a person or tenant taking possession of property under a lease as herein provided, and further includes a bailee under a bailment agreement providing a rental for personal property.

"Sublease" shall mean and include a lease by which a lessee or tenant grants or lets to another person part or all of the leased property for a shorter term and under which said lessee or tenant retains some right or interest under the original lease.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the choice of human adult sexual partner according to gender.

"Supplier" means any person or persons, firm, partnership, corporation, or any combination thereof, who submits a bid or enters into a contract with the awarding agency of the City and County, or who submits a bid or enters into a contract with any contractor, subcontractor, lessee, sublessee, franchisee or concessionaire engaged in the performance of a contract let, awarded or granted by or on behalf of the city and county, for the supplying of goods, materials, services, equipment or furnishings.

SEC. 12B.2 NONDISCRIMINATION PROVISIONS OF CONTRACT.

Every contract or subcontract for or on behalf of the City and County of San Francisco for public works or for the purchase of goods or services, as provided in Sec. 12B.1 hereof, shall contain the provisions following, which shall be known as the nondiscrimination provisions of such contract.

In the performance of this contract, the contractor, subcontractor or supplier agrees as follows:

(a) Whenever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, or sexual orientation. The contractor, subcontractor or supplier will take affirmative action to insure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, ancestry, national origin, age, sex, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. Nothing in this ordinance shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants or employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this section.

(b) Except as in this section provided, or in cases where the law compels or provides for such action, any provisions in any contract agreement or undertaking entered into on or after the effective date of this chapter which prevent or tend to prevent the employment of any person solely by reason of his age, who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years shall be null and void.

(c) The contractor, subcontractor or supplier will, in all solicitations or advertisements for employees placed by or on his behalf, state that qualified applicants will receive consideration for employment without regard to race, color, creed, color, ancestry, national origin, age, sex, or sexual orientation. Any solicitations or advertisements that satisfy similar requirements under Federal law, subject to the approval of the awarding authority, will also satisfy this requirement.

(d) The contractor, subcontractor or supplier will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's, subcontractor's or supplier's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The contractor, subcontractor or supplier with permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the awarding authority, the Fair Employment Practices Commission, or the San Francisco Human Rights Commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this contract, and on request provide evidence that he has or will comply with the nondiscrimination provisions of this contract.

(f) That contractor, subcontractor or supplier shall be deemed to have breached the nondiscrimination provision of this contract upon:

(1) A finding by the Director of the San Francisco Human Rights Commission, or such other official who may be designated by the Human Rights Commission, that contractor, subcontractor or supplier has willfully violated such nondiscrimination provisions; or

(2) A finding by the Fair Employment Practices Commission of the State of California that contractor, subcontractor or supplier has violated any provision of the Fair Employment Practices Act of California or the nondiscrimination provisions of this contract; provided that the Fair Employment Practices Commission has issued a final order pursuant to Section 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1429 of the Labor Code, provided further, that for the purposes of this provision, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director of the Human Rights Commission, or other official design-

ated by the Human Rights Commission, or the Fair Employment Practices Commission, the awarding authority shall notify contractor, subcontractor or supplier that unless he demonstrates to the satisfaction of the Director of the San Francisco Human Rights Commission, or other official designated by the Human Rights Commission, within such reasonable period as the Human Rights Commission shall determine, that the violation has been corrected, action will be taken as set forth in subparagraphs (g) and (h) hereof.

(4) The Human Rights Commission shall, within ten (10) days of the date of issuance of any finding by the Director of the Human Rights Commission or other official designated by the Commission in the enforcement of this chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of his right to appeal. Notice of appeal must be filed in writing with the Chairman of the Commission within 20 days of the date of mailing said copy and notice.

(5) For purposes of appeal proceedings under this section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Human Rights Commission be designated under Sec. 12B.2(f)(1) of this contract, that Commissioner may not participate in an appeal under this section except as a witness.

(6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his testimony, or books, records, documents or other things under his control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his presence at the proceeding, and requiring him to bring such books, records, documents or other things under his control.

(7) All appeals to the Human Rights Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, and to the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to this contract.

(8) If any contractor, subcontractor or supplier under contract to the City and County of San Francisco shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for cancellation of the contract or subcontract and such contractor, subcontractor or supplier shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(9) The Human Rights Commission of San Francisco shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this contract, and such rules and regulations shall, so far as practicable, be similar to those adopted in applicable Federal executive orders.

(g) There may be deducted from the amount payable to the contractor, subcontractor or supplier by the City and County of San Francisco under this contract a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this contract. In addition to any other penalties herein provided for the violation of the nondiscrimination provisions of this contract or for the failure of any contractor, subcontractor or supplier to abide by the rules and regulations herein contained, this contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding as set forth in Sec. 12B.2(f) that the contractor, subcontractor or supplier has discriminated contrary to the provisions of this contract, and all moneys due to or become due hereunder may be forfeited to, and retained by, the City and County of San Francisco.

(h) A breach of the nondiscrimination provisions in the performance of this contract shall be deemed by the City and County of San Francisco to be a material breach of contract and basis for determination by the officer, board or awarding authority responsible for the awarding or letting of such contract that the contractor, subcontractor or supplier is an irresponsible bidder as to all future contracts for which such contractor, subcontractor or supplier may submit bids. Such person, firm or corporation shall not, for a period of two (2) years thereafter, or until he shall establish and carry out a program in conformity with the nondiscrimination provisions of this contract, be allowed to act as a contractor, subcontractor or supplier under any contract for public works, goods or services for or on behalf of the City and County of San Francisco.

(i) Nothing contained in this contract shall be construed in any manner so as to prevent the City and County of San Francisco from pursuing any other remedies that may be available at law.

(j) Nothing contained in this contract shall be construed in any manner so as to require or permit the hiring of aliens on public works as prohibited by law.

(k) The contractor, subcontractor or supplier will meet the following standards for affirmative compliance:

(1) If the contractor, subcontractor or supplier has been held to be an irresponsible bidder under Sec. 12B.2(h) hereof, he shall furnish evidence that he has established and is carrying out a program in conformity with the nondiscrimination provisions of this contract.

(2) The contractor, subcontractor or supplier may be required to file with the Human Rights Commission a basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Willful false statements made in such reports shall be punishable as provided by law. No contractor, subcontractor or supplier shall be held in noncompliance for failing to file a report with the Human Rights Commission. Unless he has been specifically required to do so in writing by the Human Rights Commission.

(3) Personally, or through his representatives, the contractor, subcontractor or supplier shall, through negotiations with the unions with whom he has collective bargaining or other agreements requiring him to obtain or clear his employees through the union, or when he otherwise uses a union as an employment resource, attempt to develop an agreement which will:

(a) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training.

(b) Otherwise implement an affirmative antidiscrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.

(4) The contractor, subcontractor, supplier or trade association shall notify the contracting agency of opposition to the nondiscrimination provisions of this contract by individuals, firms or organizations during the term of this contract.

SEC. 12B.4. AFFIRMATIVE ACTION GUIDELINES

In order to be eligible to bid or to have a bid considered by the awarding agency, the contractor in all public works contracts shall submit an affirmative action program which shall meet the requirements of the Human Rights Commission.

The Human Rights Commission may also require contractors, subcontractors and suppliers to take part in a prebid or preaward conference in order to develop, improve or implement a qualifying affirmative action program.

(a) Affirmative action nondiscrimination programs developed pursuant to this section shall be effective for a period of twelve months next succeeding the date of approval by the Human Rights Commission. Contractors, subcontractors and suppliers who are members in good standing of a trade association which has negotiated an affirmative action nondiscrimination program with the Human Rights Commission may make this association program their commitment for the specific contract upon approval of the Human Rights Commission without the process of a separate prebid or preaward conference. Such an association agreement shall be effective for a period of twelve months next succeeding the date of approval by the Human Rights Commission. Trade associations shall provide the Human Rights Commission with a list of members in good standing in such association. The Human Rights Commission shall annually supply contracting agencies of the City and County with a list of contractors, subcontractors and suppliers who have developed approved affirmative action nondiscrimination programs.

(b) The awarding agency shall be responsible for notifying all prospective bidders of the requirements of this section and also, when requested by Human Rights Commission, for notifying the Human Rights Commission of each contract which is being proposed to be put to public bid.

(c) The proposed affirmative action program required to be submitted under Sec. 12B.4 hereof, and the prebid or preaward conference which may be required by Human Rights Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

(1) Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;

(2) Classroom preparation for the job when not apprenticeable;

(3) Preapprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that any contractor, subcontractor or supplier shall be required to provide, not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City and County of San Francisco for such work; and

(6) The entry of qualified minority journeymen into the industry.

(d) Affirmative action nondiscrimination agreements resulting from the proposed affirmative action programs or the prebid or preaward conferences shall not be confidential and may be publicized by the Human Rights Commission at its discretion. In addition, the Human Rights Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this ordinance.

(e) Any job training or education program using the funds, facilities, or staff of the City and County of San Francisco which, in the judgment of the Board of Supervisors or the Human Rights Commission can make a contribution to the implementation of this ordinance shall submit reports to the Human Rights Commission as requested and shall be required to cooperate with the contractors, subcontractors, suppliers and unions with Human Rights Commission for the effectuation of the affirmative action nondiscrimination programs developed under this ordinance.

Description

SWL 302

United Shell Fish

Commencing at the intersection of the monument line of Hyde Street, and the monument line of Jefferson Street; running thence easterly along the monument line of Jefferson Street for a distance of 795.03 feet; thence at a right angle northerly for a distance of 206.89 feet to the true point of beginning; thence continuing on the last aforesaid course for a distance of 10.11 feet; thence at a right angle easterly for a distance of 19.5 feet; thence at a right angle northerly for a distance of 4.50 feet; thence at a right angle easterly for a distance of 4.00 feet; thence at a right angle southerly for a distance of 14.40 feet; thence at a right angle easterly for a distance of 53.45 feet; thence at a right angle southerly for a distance of 30.21 feet; thence at a right angle westerly for a distance of 68.12 feet; thence at a right angle northerly for a distance of 30.00 feet; thence at a right angle westerly for a distance of 8.83 feet to the true point of beginning, and containing 2310 square feet of area, more or less.

EXHIBIT A

Sheet 1 of 2
See Drawing No. 8731-302-6
Rev. 1-19-76

San Francisco Bay

R

Edge of Deck

Point of Beginning

SWL 302

USF
2310 sq ft.

"Jones Alley"

EXHIBIT A

Jefferson St. Mon. Line

343.75' to Mon Line of Beach St.

Rev. 1-19-76

CONTRACT NO.

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

SWL 302
UNITED SHELL FISH
Description

APPROVED
DATE
DRAWING NO. 8731-302-6
SHEET NO. 2 OF 2

IN CHARGE OF SN MADE BY GAN TRACED BY GAN CRED. BY DATE 4/24/75 SCALE 1"=40'