



San Francisco Ethics Commission

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Date: October 6, 2023

To: Members of the Ethics Commission

From: Michael Canning, Acting Policy and Legislative Affairs Manager

Re: **AGENDA ITEM 07 – Discussion and possible action regarding request for waiver of post-employment restrictions for Dan Bernal.**

Summary and Action Requested

This memo provides background and analysis to assist the Commission in determining whether to grant a post-employment waiver to Dan Bernal. Based on its review of Mr. Bernal's request and applicable law, Staff recommends that the Commission not approve the waiver. However, the Commission should evaluate Mr. Bernal's waiver request, and as required by City law, consider if not granting Mr. Bernal's waiver would cause extreme hardship for Mr. Bernal. The Commission should approve or deny Mr. Bernal's waiver based on that finding.

Background

On September 29, Dan Bernal sent a formal request to the Ethics Commission requesting that part of the City's post-employment restrictions in the Campaign and Governmental Conduct Code (C&GCC) be waived. Mr. Bernal has been a member of the San Francisco Health Commission since 2017 and currently serves as the President of that commission. Mr. Bernal is seeking a waiver for City's prohibition on receiving compensation from City contractors imposed by Subsection 3.234(a)(3), so that he may accept an offer of employment from the University of California, San Francisco (UCSF). Mr. Bernal's waiver request is included as **Attachment 1**. The facts included in this memorandum are drawn primarily from Mr. Bernal's written request, documents acquired through Mr. Bernal, and communications between Mr. Bernal and Staff.

Receiving Mr. Bernal's formal request on September 29 was Mr. Bernal's first contact with the Ethics Commission regarding this matter; however, Mr. Bernal apparently sought guidance from the City Attorney's Office prior to submitting his formal waiver request to the Commission.

Ethics Commission Regulation 3.234-4(a)(3) specifies that a waiver request shall be considered at the Ethics Commission's next regularly scheduled meeting, if "such request is received at least two calendar weeks in advance of the meeting." Mr. Bernal's request was received on the afternoon of September 29, which was exactly two weeks in advance of the Commission's October 13 meeting. While this request was received within the deadline, this left Staff with minimal time to review and analyze this waiver request before meeting materials were posted on October 6.

Applicable Law

The City has rules for all officers and employees that restrict what former City officials can do after they leave City service. These rules include a permanent restriction on representing any other person (except the City) before any court or government agency in connection with particular matters, a one-year restriction on communicating with the former City official's former department, and a prohibition on being employed by parties that contract with the City.

These rules further the purposes of the Campaign and Governmental Conduct Code, which per [Section 3.200](#) is chiefly to "promote fairness and equity for all residents and to maintain public trust in governmental institutions." The law seeks to ensure "that public officers and employees [are] independent, impartial, and responsible to the people and that public office and employment [is] not...used for personal gain." The Code also asserts that government decisions by City officers and employees "should be, and should appear to be, made on a fair and impartial basis."

Permanent Restriction on Representation in Particular Matters

[Subsection 3.234\(a\)\(1\)](#) of the C&GCC prohibits former City officers from representing any other person (except the City) before any court or government agency in connection with particular matter in which the former City officer was personally and substantially involved in as a City officer, with intent to influence. Ethics Commission [Regulation 3.234-1](#) outlines the scope of this restriction and provides guidance on determining whether this permanent ban applies to certain activities.

One-Year Restriction on Communicating with Former Department

[Subsection 3.234\(a\)\(2\)](#) of the C&GCC prohibits former City officers from, with the intent to influence a government decision, communicating on behalf of any other person (except the City) with any officer or employee of the department for which the former City officer served, for one year following the termination of their employment with the City. Ethics Commission [Regulation 3.234-2](#) outlines the scope of this restriction and provides guidance on determining whether this one-year ban applies.

Employment with Parties that Contract with the City

[Subsection 3.234\(a\)\(3\)](#) of the C&GCC prohibits current and former City officers from being "employed by or otherwise receiv[ing] compensation from a person or entity that entered into a contract with the City within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract." Ethics Commission [Regulation 3.234-3](#) outlines the scope of this restriction and provides guidance on determining whether this prohibition applies.

This prohibition on employment with City contractors furthers the goals of the Campaign and Governmental Conduct Code by ensuring that City officials cannot help award a City contract and then become employed by the contractor who has recently benefitted from the actions of the City official.

This rule is intended to create a buffer between the time a contract is awarded and when a City official involved in the award of that contract may become employed by the contractor. This buffer is an important tool for ensuring that government decisions are, and appear to be, made fairly and impartially. Without this rule, City officials could be tempted to make government decisions with their short-term career goals in mind, rather than the best interests of the City. Even if a City official makes their decisions fairly and impartially, going to work for a City contractor within 12 months of them entering into their contract could create the appearance of corruption among the public. Just the appearance of corruption can erode the public's faith in government and is something this rule is intended to prevent.

Waiver Authority of the Ethics Commission

[Subsection 3.234\(c\)\(3\)](#) of the C&GCC grants the Commission the ability to waive the prohibition on employment with parties that contract with the City, "if the Commission determines that imposing the restriction would cause extreme hardship for the City officer."

Ethics Commission [Regulation 3.234-4](#) further outlines the process for submitting and potentially approving post-employment waivers. The regulation specifies that the Commission "shall not approve any request for a waiver from the ban on receiving compensation from certain City contractors made under subsection 3.234(c)(3) unless the Commission makes a finding that imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the individual." When determining if not granting such a waiver would cause extreme hardship, the regulation specifies that the Commission may consider:

- the vocation of the individual;
- the range of employers for whom the individual could work;
- the steps the individual has taken to find new employment; and
- any other factors the Commission deems relevant.

When considering waiver requests, the Commission should also consider whether granting a waiver would further the purposes of the Campaign and Governmental Conduct Code. The Commission may grant a waiver only if it finds that not granting the waiver "would cause extreme hardship for the City officer."

Waiver requests are evaluated based on the facts that are provided in the request, shared in related communications with Staff and the Commission, and found in additional documents provided to Staff and the Commission. These facts allow the Commission to evaluate whether a waiver is appropriate and must therefore be complete and accurate. Any waiver that the Commission grants is limited to the facts provided, and, should the facts change, the requestor should seek an updated waiver from the Commission.

As the term "extreme hardship" is not defined in the Code or regulations, it is the responsibility of the Commission to determine if on balance, not granting a waiver would cause extreme hardship for the requestor. As specified in Commission regulations, the Commission may consider "any other

factors the Commission deems relevant” beyond those explicitly listed above. In the past, the Commission has considered factors like the importance of the work being done, the level of personal and substantial involvement the City officer had in awarding the contract, the timing of their involvement, the unique nature of the position, the impact on the prospective employer, the impact on the City or other stakeholders, and other factors, to determine if denying a waiver would cause the requestor extreme hardship.

Facts Presented

Dan Bernal has been a member of the San Francisco Health Commission since 2017 and currently serves as the President of that Commission. Mr. Bernal is currently employed as the Chief of Staff for Speaker Emerita Nancy Pelosi, a position he has held since 2002. On April 27, a search firm contacted Mr. Bernal regarding the position of Vice Chancellor of Community and Government Relations position with UCSF. Mr. Bernal received a tentative offer of employment from UCSF on August 29. Mr. Bernal has stated that if permitted to accept this position with UCSF, he intends to resign from the Health Commission immediately and plans to spend the rest of his career with UCSF. Mr. Bernal did inform Staff that he has already given notice to his current employer, to which Staff recommended he delay until the Commission has decided on his waiver request.

During the past 12 months, in his capacity as President of the Health Commission, Mr. Bernal has participated in six votes to approve nine contracts involving UCSF. Each of these contracts was approved through a voice vote on the Health Commission’s consent calendar and each vote was unanimous. Some of the contracts were new and others were amendments to existing contracts. Descriptions of each contract are included in Mr. Bernal’s waiver request that has been included as **Attachment 1**. The combined value of these contracts is in excess of \$75 million.

Additionally, on July 18, during a closed session of the Health Commission, Mr. Bernal participated in a unanimous voice vote for a settlement of litigation in which the City and UCSF were co-defendants and each paid \$100,000.

Analysis

The Need for a Waiver for Mr. Bernal to Accept Employment with UCSF and Perform the Duties of that Position

For both the permanent restriction on representation in particular matters rule and the one-year post-employment communication rule, it does not appear that a waiver is necessary, as the position with UCSF would not require Mr. Bernal to engage in the activities prohibited by these rules. If Mr. Bernal wanted to represent UCSF, or any other non-City entity regarding any particular matters in which he personally and substantially participated as a City officer (such as the awarding of a UCSF City contract), he would need to seek a waiver from the Commission to allow that representation. Similarly, if Mr. Bernal wanted to communicate with his former colleagues at the Health Commission or the Department of Public Health with the intent to influence a government decision within 12

months of leaving City service, he would also need a waiver from the Commission. Mr. Bernal is not currently seeking a waiver for either of these rules and stated in his waiver request that he is both aware of these rules and intends to comply with them if allowed to accept this position with UCSF. Based on the facts provided, Staff does not believe a waiver for either of these rules is necessary for Mr. Bernal to be employed by UCSF and perform his potential duties as described.

Based on the facts presented in Mr. Bernal's waiver request, Staff believes that a waiver for the restriction on employment with parties that contract with City is necessary for Mr. Bernal to accept employment with UCSF.

Based on Ethics Commission [Regulation 3.234-3](#), the restriction on employment with parties that contract with the City would apply to Mr. Bernal's proposed employment with UCSF, since:

1. Mr. Bernal would be accepting employment and be entitled to compensation from UCSF, which is an entity other than the City.
2. The entity offering the employment, UCSF, entered into contracts with the City during the 12 months prior to Mr. Bernal receiving or being entitled to compensation.
3. Mr. Bernal participated personally and substantially in the award of the contracts between UCSF and the City, per the definition of "participate personally and substantially" found in [Ethics Commission Regulation 3.234-5\(e\)](#).

Regarding bullet point #2 above, Mr. Bernal has provided a list of contracts that he was personally and substantially involved in during the past 12 months. However, Section 3.234 concerns contracts that were "entered into...within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract. These are not necessarily the same lists. For example, if Mr. Bernal participated in the awarding of a contract 13 months ago, but that contract was not entered into (finalized and signed by both parties) until 11 months ago, that contract would be relevant to Section 3.234(a)(3), but not reflected in the list provided by Mr. Bernal. However, this potential discrepancy is not particularly relevant here, considering the quantity of contracts Mr. Bernal was involved in approving during the last 12 months, most of them have likely also been entered into within the last 12 months, which is sufficient for this rule to apply. But it is possible that there may be additional contracts UCSF entered into within the last 12 months, where Mr. Bernal was personally and substantially involved.

Regarding bullet point #3 above, Mr. Bernal has stated that his involvement in the awarding of these contracts to UCSF was nominal and had no impact on the outcome. Mr. Bernal has referenced that the Health Commission voluntarily votes on San Francisco Department of Public Health (SFDPH) contracts as a matter of policy and that this is done in an advisory capacity. Ethics Commission Regulation 3.234-5(e) specifies that to "participate substantially means that the officer's...involvement is, or reasonable appears to be, significant to the matter." As the President of the commission voting on the contract, Mr. Bernal's participation was both personal and substantial to the awarding of the contract, even if the Health Commission does not have the technical authority to approve contracts for SFDPH. Mr. Bernal does not dispute that he was personally and substantially involved in the awarding of these contracts or that Section 3.234(a)(3) applies.

In order for Mr. Bernal to receive or be entitled to compensation from UCSF, within 12 months of UCSF's entrance into the most recent contract with the City that Mr. Bernal was involved in awarding, Mr. Bernal would need a waiver from the Ethics Commission for the restriction on employment with parties that contract with City.

Considering if Imposing the Prohibition on Employment with Parties that Contract with the City would Cause Extreme Hardship for Mr. Bernal

When determining if not granting Mr. Bernal a waiver would cause extreme hardship, the regulations specify that the Commission may consider: Mr. Bernal's vocation, the range of employers for whom he could work, the steps he has taken to find new employment, and any other factors the Commission deems relevant. This memo will first consider the three factors explicitly identified in the Commission's regulations, before then exploring other potentially relevant factors.

Mr. Bernal's vocation, the range of employers for whom he could work, the steps he has taken to find new employment.

Mr. Bernal is currently employed as Speaker Emerita Nancy Pelosi's Chief of Staff, arguably one the most coveted positions in San Francisco or national politics. Mr. Bernal has worked for Speaker Emerita Pelosi for more than 20 years, and with the Speaker Emerita running for election in 2024, Mr. Bernal could stay in his position for the foreseeable future. Mr. Bernal's extensive career, both within San Francisco and at the highest levels of the federal government, would suggest that there would be numerous employment opportunities available within his chosen field. However, Mr. Bernal has told Staff that he was not actively looking for work when approached by UCSF's search firm regarding this position.

In 2018, the Ethics Commission granted a post-employment waiver request for the rule against employment with City contractors to Jeff Sheehy; however, the facts in that case were significantly different. Sheehy was appointed to the Board of Supervisors in 2017 and then lost his re-election bid in 2018. As a Supervisor, he participated in the approval of three UCSF contracts. Prior to serving as a Supervisor, Mr. Sheehy was employed by UCSF for 17 years and wanted to return to that employer after losing re-election. In contrast to Mr. Bernal, Mr. Sheehy was unemployed, had looked for other employment opportunities in his desired field, and was unable to find any other suitable opportunities. During its July 2018 meeting, the Commission voted to approve a waiver allowing Mr. Sheehy to apply for positions within UCSF.

Other factors the Commission may deem relevant.

In Mr. Bernal's request, he references multiple other factors that the Commission has considered when reviewing prior waiver requests, such as the importance of the work being done, the level of personal and substantial involvement the City officer or employee had in awarding the contract, the timing of their involvement, the unique nature of the position, the impact on the prospective

employer, and the impact on the City or other stakeholders. Staff will briefly address these factors below, before raising additional factors the Commission may wish to consider.

Importance of the work being done in UCSF position: Staff does not dispute how important the work UCSF does is or how passionate Mr. Bernal is about said work.

The level of personal and substantial involvement Mr. Bernal had in awarding the contracts: As previously discussed, Mr. Bernal does not dispute that he was personally and substantially involved in awarding the contracts to UCSF or that the rule in Subsection 3.234(a)(3) applies to him. However, Mr. Bernal does describe his participation as being nominal and having no impact on the outcome, in part because these votes were all unanimous, not debated by the Commission, and approved on the Commission's consent calendar.

Part of what makes an official's involvement in a matter "significant" for the purposes of Subsection 3.234(a)(3), per Ethics Commission Regulations, is if the officer's "involvement is, or reasonably appears to be, significant to the matter." Part of this rule considers the public's perception and what would 'reasonable appear' to be significant to a matter. From the perspective of the public, any vote the President of Commission participates in is going to be impactful. Furthermore, the votes being unanimous and not debated by the Commission could be perceived as being even stronger endorsements of the contracts, than if they had been debated or had split votes.

While items placed on a consent calendar may be routine, being approved through consent does not indicate that an item is not important or impactful. Many policymaking bodies routinely address critical matters through their consent calendars.

Mr. Bernal also states that the Health Commission "does not actually have the technical authority to approve SFDPH contracts" and that the Health Commission's role is ultimately advisory for contracts that must be approved by the Director of Health or the Board of Supervisors. While this may be true, it does not mean the actions of the Health Commission are not impactful. Even if not technically required, the actions of the Health Commission likely matter to specific stakeholders and the public. At the very least, these votes are a communication from the Health Commission to the Director of Health, the Board of Supervisors, and the public as to how the Commission views the appropriateness and quality of these contracts.

Health Commission approvals being voluntary does not suggest that they are not relevant for the purposes of Subsection 3.234(a)(3), which applies to all contracts in which the City officer "personally and substantially participated in the award of the contract." This language does not specify that this participation be mandatory. This is in contrast to other rules in the C&GCC, such as the rule against contractor contributions from [Subsection 1.126\(b\)\(1\)](#), which explicitly only applies when "the contract ***must be*** approved by such individual." This suggests Subsection 3.234(a)(3) is an intentionally broader standard than the one used elsewhere, and that voluntary participation is relevant.

The timing of Mr. Bernal's involvement in the awarding of the contracts: This factor was most recently considered in August, when the Commission considered, and approved, a post-employment waiver request for Tracy Packer. This factor was relevant for Ms. Packer's request because her involvement in the single contract she participated in awarding to her prospective employer occurred in 2019, but the contract was not entered into until January of 2023. Whereas Mr. Bernal has reported being personally and substantially involved in the awarding of nine contracts involving UCSF in the past 12 months.

The unique nature of the UCSF position: Staff does not dispute that Mr. Bernal is likely well-qualified for this position and that the position would be a good fit for both him and UCSF. However, considering he has not actively been looking for other employment opportunities, it is unclear how unique of an opportunity this would be for Mr. Bernal. Staff are also not aware of what UCSF's hiring process has been for this position or how uniquely qualified Mr. Bernal is among any other candidates that may have been considered.

The impact on UCSF, the City, or other stakeholders: Staff anticipates that representatives from UCSF, the City, and other stakeholders will engage with the Commission and share how they believe the Commission's decision will impact them through public comment associated with this item during the October 13 meeting.

Financial hardship: In his request, Mr. Bernal articulates that accepting the position would be a financial benefit for him, as it would nearly double his current salary. However, describing Mr. Bernal's situation as a financial hardship is questionable. As previously discussed, Mr. Bernal is currently employed in a position at the top of his field and is not required to leave. Mr. Bernal has also not engaged in an extensive job search to determine what other comparable opportunities may be available to him, with prospective employers for whom he has not recently participated in the awarding of City contracts. In fact, Mr. Bernal's waiver request even refers to him, at least in the past, being aware of "more lucrative opportunities available in the private sector." It does not seem unreasonable to assume that someone with Mr. Bernal's experience and skillset could find other meaningful employment opportunities that are also well compensated.

Potential violation of C&GCC: While preparing this memorandum regarding Mr. Bernal's waiver request, Staff observed a potential violation of the C&GCC that Mr. Bernal may have committed by participating in matters concerning UCSF, when he was already discussing employment UCSF. [Subsection 3.206\(c\)](#) of the C&GCC prohibits City officers from making, participating in making, or otherwise seeking to influence a government decision, affecting an entity with whom the officer is discussing or negotiating an agreement concerning future employment.

As presented above, Mr. Bernal was contacted by UCSF's search firm on April 27. Mr. Bernal participated in the vote for a settlement of litigation on July 18 and may have voted on contracts involving UCSF after April 27. If Mr. Bernal was involved in decisions regarding UCSF, while simultaneously discussing employment with UCSF, Mr. Bernal may have violated Subsection 3.206(c).

After identifying this potential violation, Staff notified Mr. Bernal on October 5 and recommended he proactively reach out to the Commission's Enforcement Division regarding this matter. The current status of this matter and any subsequent actions by the Enforcement Division are confidential per the City Charter.

Staff have included this information so that the Commission is aware of the situation. The Commission can determine if it wishes to consider this potential violation a relevant factor in Mr. Bernal's waiver request.

Other ethical concerns: Both the permanent restriction on representation in particular matters rule (Subsection 3.234(a)(1)) and the one-year restriction on communicating with former department (Subsection 3.234(a)(2)) require the Commission to consider if granting a waiver would "create the potential for undue influence or unfair advantage." While Subsection 3.234(a)(3) uses the "extreme hardship" standard, not the "undue influence or unfair advantage" standard, the Commission may wish to consider this as a factor when determining extreme hardship, as well as broader consideration as to the intent of the City's Campaign and Governmental Conduct Code.

While the Commission's public waiver process does serve to shed light on specific matters and potentially make future inappropriate activity less likely, there is still the potential for the appearance of undue influence or unfair advantage in this matter. Even if Mr. Bernal's actions on the Health Commission were made fairly and without undue influence, Subsection 3.234(a)(3) is concerned with the potential appearance of impropriety, which can have harmful consequences on the public's trust in City government. If Mr. Bernal was to receive a waiver to work for UCSF, he would now be occupying a lucrative position with an entity for whom he had recently helped enrich with his City position, through the awarding of contracts that are valued in excess of \$75 million. This is more than enough to raise doubt in the mind of the public regarding the fairness and impartiality of City contracting.

The issue of the potential appearance of impropriety is also present in the findings and purpose section of Article III, Chapter 2 of the C&GCC, which states that "City and County contracts should be, and should appear to be, awarded on a fair and impartial basis."

Recommendation

As previously discussed, City law only allows the Commission to issue a waiver for the prohibition on employment with City contractors found in Subsection 3.234(a)(3), if the Commission "determines that imposing the restriction would cause extreme hardship" for the City officer. The Commission has discretion in determining what factors are relevant to determining when "extreme hardship" may occur and has the authority to evaluate any factors it deems relevant.

Based on its review of Mr. Bernal's request and applicable law, Staff recommends that the Commission not approve the waiver. This recommendation is based on 1) the fact that Mr. Bernal is

already employed, with the option to remain at his current employer, and has not yet attempted to find other, non-prohibited employment opportunities, 2) the scope and quantity of contracts he has participated in awarding to UCSF, including at least nine contracts within the past 12 months valued in excess of \$75 million, and 3) concerns that granting such a waiver could contribute to the appearance of impropriety within City contracting and further erode the public's faith in City government.

However, Staff recommends the Commission evaluate Mr. Bernal's waiver request, review the contents of this memo, and engage with Mr. Bernal and other stakeholders during the October 13 meeting, to determine if, based on any factors the Commission deems relevant, denying this waiver would cause Mr. Bernal an extreme hardship. If the Commission determines that not granting the waiver would cause extreme hardship to Mr. Bernal, the Commission should approve Mr. Bernal's waiver.

Staff would like to thank Mr. Bernal for his waiver request, willingness to communicate throughout this process, and service to the City.

Attachments:

Attachment 1: Waiver Request from Dan Bernal Dated September 29, 2023

Attachment 1

September 29, 2023

VIA E-MAIL

Ms. Gayathri Thaikkendiyil
Acting Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

RE: Waiver Request Under San Francisco Campaign and Governmental Conduct Code Section 3.234(a)(3)

Dear Ms. Thaikkendiyil:

Pursuant to San Francisco Campaign and Governmental Conduct Code section 3.234(c)(3), I am writing to respectfully request a waiver from the prohibition on accepting a job from a City contractor imposed by section 3.234(a)(3).

I am a member of the San Francisco Health Commission, and I am seeking this waiver in order to accept an offer of state government employment from the University of California, San Francisco (UCSF) to serve as Vice Chancellor for Community & Government Relations. After closely reviewing City law and Ethics Commission regulations, as well as recent examples of the Ethics Commission reviewing waivers from this section, I believe that the circumstances of my nominal participation in matters before the Health Commission related to UCSF and my professional and personal qualifications for this unique employment opportunity warrant the Ethics Commission to grant me a waiver and allow me to accept this position.

As you know, UCSF is the leading public university dedicated to advancing health worldwide through preeminent biomedical research, graduate-level education in the life sciences and health professions, and excellence in patient care. UCSF is San Francisco's second largest employer after the City and County and the fourth largest employer in the Bay Area with more than 25,000 employees, and produces an estimated \$8.9 billion impact on the local economy.

If I am allowed to accept this offer of employment, I intend to spend the rest of my career working at UCSF.

Health Commission Contracts

During the last twelve months of my service on the Health Commission, I participated in six unanimous voice votes to approve consent calendars that contained the following nine contracts involving UCSF:

- A contract with UCSF Ward 86 at San Francisco General Hospital (SFGH) in the amount of \$3.65 million over 3.5 years to provide HIV Health Access Point services to meet the needs of people who use drugs and intravenous drug users.

- A contract with UCSF Alliance Health Project in the amount of \$2.59 million over 3.5 years to provide HIV Health Access Point services to meet the needs San Francisco’s Asian and Pacific Islander communities.
- An amendment to a contract with UCSF Citywide Single Point of Responsibility program increasing the amount by \$53.2 million and extending the term by four years to provide outpatient behavioral health treatment for transitional age youth, adult and elderly clients in San Francisco who are homeless or marginally housed with the highest mental health and social service needs.
- An amendment to a contract with UCSF Alliance Health Project increasing the amount by \$456,311 to provide Getting to Zero funded Intensive Case Management, psychiatry and other mental health services targeting Long-Term Survivors of HIV living in San Francisco.
- An amendment to a contract with UCSF Infant and Parent Program increasing the amount by \$3.28 million and extending the term by four years to provide high-risk pregnant women and newly parenting families of all ethnicities in San Francisco with prenatal and postpartum care, early intervention and mental health services.
- A professional services agreement with the UCSF-Team Lily Clinic at SFGH in the amount of \$261,248 over two years to provide clinic-based prenatal care for pregnant and postpartum people in San Francisco experiencing homelessness, substance use disorders, incarceration, intimate partner violence and/or mental illness.
- A professional services agreement with UCSF Vouchers 4 Veggies-EatSF Program in the amount of \$1.06 million for one year to improve infant and maternal health for pregnant people in San Francisco who are participating in SFDPH Women, Infants & Children Supplemental Nutrition and Black Infant Health programs.
- A contract with UCSF Vouchers 4 Veggies-EatSF Program to continue services in the above sole source professional services agreement in the amount of \$1.18 million for 1 year and 11 months.
- An amendment to a contract with UCSF Ward 86 at SFGH for the Homeless, Aging & Long-Term Survivors Center of Excellence increasing the amount by \$16.48 million and extending the term by 5 years and 8 months to provide primary medical care and supportive services for long-term survivors of HIV in San Francisco who are homeless or marginally housed with substance use and/or active mental health disorders.

I also participated in a voice vote for a settlement of litigation in which the City and County of San Francisco and UCSF were co-defendants and each paid \$100,000. The legal settlement was recommended by the City Attorney during closed session, and the Health Commission unanimously voted by voice to recommend that the Board of Supervisors approve the settlement.

The Ethics Commission’s Expanded View of What Constitutes Extreme Hardship

The Ethics Commission Staff’s August 14, 2023 memorandum regarding a prior request for waiver notes that the term “extreme hardship” is not defined in the law, and that the Commission may interpret extreme hardship broadly and in fact may look at a wide range of factors. Factors which the Commissioners have analyzed in prior waiver requests, include: 1) the importance of the work being done, 2) the level of personal and substantial involvement the employee had in awarding the contract, 3) the timing of their involvement, 4) the unique nature of the position, 5)

the impact on the prospective employer, 6) the impact on the City or other stakeholders, and 7) any other factors the Commission finds relevant.

A. The Importance of the UCSF Position

The Vice Chancellor for Community & Government Relations (my potential position) leads a dedicated team of public servants to engage local communities in UCSF projects and activities and to incorporate community input into UCSF initiatives. In addition, the Vice Chancellor oversees UCSF's Anchor Institution initiative which invests millions of dollars each year in the Bay Area's under-resourced communities through workforce development, procurement and community investment. The Vice Chancellor also serves as the primary spokesperson between UCSF and key officials, legislators, agencies and constituencies at the federal, state and local levels.

As a person living with HIV for more than 33 years, I have a deep and personal connection to UCSF's mission and values. Since the earliest days of the AIDS crisis, UCSF has led the way in HIV/AIDS research, care and prevention that have saved lives and improved the health of countless individuals. UCSF played a key role in establishing the nation's first dedicated AIDS ward, developing San Francisco's system of care that served as a national model and the basis for the Ryan White Care Act in addition to conducting groundbreaking research in treatment and prevention. I know that I would not be alive today without the decades-long hard work and dedication of the researchers, physicians, nurses and staff of UCSF. It would be my great privilege to be a part of UCSF's leadership in the fight against HIV/AIDS, addressing health disparities in underserved communities and other critical areas.

B. My Level of Involvement With the Commission Contracts

My participation in the contracts between the Health Commission and UCSF was nominal and had no impact on the outcome. Each contract was recommended by Department of Public Health (SFDPH) staff and then placed on the Health Commission's consent calendar by the Finance & Planning Committee, on which I do not serve. All contracts were approved unanimously by voice vote by the Commission with no discussion or debate of the individual contracts.

Indeed, every Health Commission agenda with a consent calendar includes the following language: "All matters listed under this item constitute a Consent Agenda, are considered to be routine by the Health Commission and will be acted upon by a single roll call vote of the Health Commission. There will be no separate discussion of these items unless a member of the Commission requests discussion, in which event the matter shall be removed from the Consent Agenda and considered as a separate agenda item. Approval is requested."

Additionally, based on guidance provided by the City Attorney's office to the Commission's Executive Secretary, the Health Commission evidently does not actually have the technical authority to approve SFDPH contracts and legal settlements. However, decades ago, the Health Commission made the policy decision to publicly review and vote on contracts and settlements as part of its governance role. Evidently, the Commission acts only in an advisory capacity by reviewing and recommending contracts and settlements that must be approved by the Director of

Health or the Board of Supervisors. I am not providing this information to assert that section 3.234(a)(3) does not apply, but rather to provide additional context about my involvement with these contracts.

C. The Unique Nature of the UCSF Position

Serving as Vice Chancellor for Community & Government Relations at UCSF would be a once-in-a-lifetime opportunity where I could both continue my career in government service at a prestigious public university and contribute my knowledge, experience and passion to support UCSF's leadership in advancing health worldwide. In addition, my accepting this role would increase the representation and visibility of Latinx and LGBTQ+ communities, and in particular people living with HIV, in senior leadership roles in state government.

I believe I am uniquely qualified to contribute to the success of UCSF's mission at a time of rapid growth and potential for societal impact. The vision for the future of UCSF includes rebuilding the Parnassus Heights campus to meet growing demand for health care in San Francisco, preserving St. Francis and St. Mary's hospitals as critical health care resources for their neighboring communities, and expanding the Anchor Institution initiative.

My lived experience as a long-term survivor of HIV/AIDS has instilled in me a deep commitment to improving health equity and economic security in under-resourced communities. Since moving from Washington, D.C. to San Francisco in 1999, I have volunteered and served on the Board of Directors for the AIDS Emergency Fund and Breast Cancer Emergency Fund, Susan B. Komen Breast Cancer Foundation Bay Area Affiliate, San Francisco AIDS Foundation and National AIDS Memorial. In addition to serving as a Health Commissioner, I was appointed in 2019 as the HIV/AIDS Patient Advocate on the Independent Citizens Oversight Committee of the California Institute for Regenerative Medicine which is dedicated to accelerating stem cell and gene therapy research, clinical trials, treatments and cures to address unmet medical needs.

D. Financial Hardship

I also respectfully note that not being able to accept this position at this time would cause me financial hardship. I have dedicated my career to public service despite more lucrative opportunities available in the private sector. The Vice Chancellor position would nearly double my current compensation as Speaker Emerita Pelosi's San Francisco Chief of Staff, which is at the top of my position's salary range. This position would also provide me with generous retirement and other benefits that will be critical as I approach retirement.

In addition, I have recently incurred significant debt due to my recent divorce settlement, and I have had to pay legal fees with home equity and other credit. I also anticipate incurring travel and other expenses in the near future to support my elderly parents in Florida who have complex medical needs.

In many ways, it feels like I have been preparing my entire career for this position. By granting this waiver, the Ethics Commission would enable me to continue my government service while

addressing my current and future financial obligations and preparing financially for retirement without incurring more debt.

Granting a Waiver Would Not Raise Ethical Concerns

I understand that San Francisco's prohibition on accepting a job with a City contractor was created to protect the integrity of governmental decision-making and to ensure that government officials act in the public interest and not in their self-interest. I wholeheartedly support these goals and believe that my involvement in the contracts and settlement involving UCSF did not create the potential for, or appearance of, any undue influence, favoritism or preferential treatment.

During my 25-year career in public service, I have closely followed and complied with government ethics rules at the local, state and federal levels. In fact, after being approached by the search firm conducting the UCSF selection process, I sought and followed advice from the City Attorney's office regarding any potential conflicts with my service on the Health Commission. None of my actions as Health Commissioner were taken in order to accrue any personal benefit, financial or otherwise, nor were they taken with the intention of benefiting a prospective future employer. Therefore, the waiver I am requesting would be fully consistent with the intention of the law.

If the Ethics Commission grants my waiver request and allows me to accept this position, I will resign from the Health Commission effective immediately in order to prevent any actual or perceived conflict of interest related to UCSF. Further, I will faithfully fulfill the requirements of San Francisco Campaign and Governmental Conduct Code section 3.234(a)(1)(A) which permanently bans me from representing UCSF for matters in which I personally participated, section 3.234(a)(2) which bans me from lobbying the SFDPH for any matter on behalf of UCSF for one year, and section 3.228 which prohibits disclosing or otherwise using any confidential or privileged information obtained during my service on the Health Commission.

Certification and Conclusion

Pursuant to regulation 3.234-4(a)(2), I certify that I have provided a copy of this waiver request to Mark Morewitz, Executive Secretary of the San Francisco Health Commission.

Thank you for your consideration of this waiver request. I look forward to discussing the request with the Commissioners at the October 13, 2023 meeting. If you have questions or need more information, please do not hesitate to contact me.

Sincerely,


Daniel Enrique Bernal

CC:

Mark Morewitz, Executive Secretary, Health Commission

Dr. Grant Colfax, MD, Director of Health, Department of Public Health

Julie Van Nostern, Esq., Deputy City Attorney