

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