

January 5, 2023

Gayathri Thaikkendiyil  
Acting Executive Director  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053  
c/o Michael Canning, Senior Policy Analyst

Re: Supplemental Response to Commissioner Questions from 12/09/22 Ethics Commission Hearing - Item 8, and 12/02/22 Ethics Commission Staff Report on Phillip C. Wong's Request for Waivers of Sections 3.234(a)(1) and (a)(2) of the Campaign and Governmental Conduct Code

Dear Acting Director Thaikkendiyil:

By request of the members of the Ethics Commission (the "Commission") at the December 9, 2022 Ethics Commission Hearing (the "Hearing"), this is a supplemental response to specific questions raised by the Commission at the Hearing and to points raised in the Ethics Commission Staff Report (the "Staff Report") on my formal written request ("Initial Written Request") for waivers of Sections 3.234(a)(1) (Permanent Restriction on Representation in Particular Matters) and (a)(2) (One-Year Restriction on Communicating with Former Department) of the Campaign and Governmental Conduct Code ("C&GCC"), dated November 24, 2022.

This response is organized as follows: (1) clarification on undue influence as requested by Commissioner Romano, (2) further descriptions of the nature, scope, and subject matter of communications as requested by Commissioner Finlev, (3) the full job description of the Director role at BRIDGE Housing as requested by Chair Lee, and (4) responses to seven points raised in the Staff Report.

### **1. Commissioner Romano Requested Clarification on Undue Influence**

The C&GCC and its Regulations do not appear to define undue influence. The Staff Report did not provide a definition of undue influence. Additionally, at the Hearing, when I asked for a definition, the City Attorney was unable to provide a definition. The Regulations provide the five-factor test described as guidance to the Commission to determine if the waivers would create a potential for undue influence and unfair advantage (see section 2 for a list of the five factors). Based on my responses to the Staff Report below and the other information provided in the Initial Written Request and at the Hearing, I believe these factors suggest that the waivers would not create a potential for undue influence and unfair advantage.

However, at the Hearing, Commissioner Romano asked for clarification on undue influence. The most relevant guidance that I could find was under California Civil Code Section 1575,<sup>1</sup> which provides that undue influence occurs when “one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority, for the purpose of obtaining an unfair advantage over him.”

During the Hearing, Commissioner Romano asked those who spoke in support of my waiver request if they would make decisions related to Potrero HOPE SF based on my relationship with them. They generally responded that they would not. Communications and actions to implement the major approvals of Potrero HOPE SF involve transparent collaboration and well-established procedures for documentation based on the aligned interests of all stakeholders. Moreover, non-discretionary penalties and fines could apply to non-governmental entities that failed to follow procedures (such as building before obtaining the proper permits).

Furthermore, in my prospective role at BRIDGE Housing, I will not have real nor apparent authority over any stakeholder, especially the City or its governmental or regulatory counterparts. The City and other governmental entities have real and apparent regulatory authority over BRIDGE Housing.

## **2. Commissioner Finlev Requested More Information on the “Nature, Scope, and Subject Matter of Communications”**

Commissioner Finlev requested more information on the Nature, Scope, and Subject Matter of Communications, which is detailed below.

### **Nature of Communications**

The nature of communications would be between myself and various stakeholders, including City staff assigned to the Potrero HOPE SF project, and would generally occur via email or in virtual, in-person, or hybrid virtual and in-person meetings. An example of a typical meeting is recurring 1st and 3rd Wednesday of the month meetings with BRIDGE Housing and its technical consultants, and assigned City staff from San Francisco Public Works, the San Francisco Public Utilities Commission, the Mayor’s Office of Housing and Community Development, and the Office of Economic and Workforce Development. These regular meetings can on occasion include the San Francisco Housing Authority, the San Francisco Municipal Transportation Agency, the San Francisco Fire Department, the Office of the City Attorney, etc., depending on the scope and subject matter of the meetings. Another example is weekly meetings between BRIDGE Housing and its architectural, civil engineering, and construction teams with the Mayor’s Office of Housing and Community Development to discuss active construction items.

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<sup>1</sup> Section 1575 also provides that undue influence consists in taking an unfair advantage of another’s weakness of mind; or in taking a grossly oppressive and unfair advantage of another’s necessities or distress.

## **Scope of Communications**

The scope of communications concerns the implementation of the Potrero HOPE SF major approvals. For the communications between BRIDGE Housing, the City and other stakeholders, the scope of communications could cover staffing, individual roles and responsibilities, planning current and future phases, budgeting, legislative processes related to project financing and public infrastructure, and collaborating on issues as they arise.

For example, if the cost of construction of a new public housing building requires gap funding from the Mayor's Office of Housing and Community Development, there would be several meetings that would cover an audit of the Potrero HOPE SF budget, building-specific construction and lease-up schedules, and other items as part of the extensive and heavily City-regulated loan evaluation process that has many safeguards in place to prevent undue influence or unfair advantage by any participant.

## **Subject Matter of Communications**

The subject matter of communications concerns the implementation of the Potrero HOPE SF major approvals and involves ideas, opinions, attitudes, feelings, views, orders, or suggestions to achieve the successful implementation of Potrero HOPE SF.

### **3. Chair Lee Requested a Detailed Job Description for the BRIDGE Housing Director Role**

Chair Lee requested a Detailed Job Description for the BRIDGE Housing Director Role, which is attached to this supplemental response as Attachment 1. As is evident from the Job Description, communications with City staff are a necessary component of the job to create and maintain the level of coordination needed to successfully implement the complex Potrero HOPE SF project.

### **4. Responses to the Staff Report**

The Staff Report recommended the Commission not approve my Initial Waiver Request for waivers of Sections 3.234(a)(1) and (a)(2) of the C&GCC. The Staff Report recommendation was based on the application of the five factors provided in Ethics Commission Regulation 3.234-4 that the Commission may consider in determining whether such waivers would create the potential for undue influence or unfair advantage. The five factors are:

1. the nature and scope of the communications;
2. the subject matter of such communications;
3. the former position held by the officer or employee;
4. the type of inside knowledge that the individual may possess; and
5. any other factors the Commission deems relevant.

This section addresses seven points raised in the Staff Report in the order these points were raised to demonstrate that there is no potential for undue influence or unfair advantage.

## **Factor 1 and 2 - Nature, Scope, and Subject Matter of Communications**

1. Applying the first two factors, the Staff Report erroneously asserts that a “central aspect” of the role would be to represent BRIDGE Housing before different governmental agencies “with the intent to influence those agencies.”

In applying the first two factors, page 6 of the Staff Report erroneously describes my new role as having the “central aspect” of representing BRIDGE Housing in front of governmental agencies, including my former department, “with the intent to influence those agencies.” This is factually incorrect. The central aspect of my prospective role at BRIDGE Housing is the overall implementation of a City highest-priority, multi-phase, and multi-decade public housing revitalization project (Potrero HOPE SF), including implementing previously agreed upon obligations (the major approvals) to ensure the timely and complete planning and construction of public housing replacement units and new affordable housing during an ongoing affordable housing crisis. For example, this role will entail retaining and managing teams of architects, general contractors, and BRIDGE Housing staff. This role would not involve lobbying or any other type of influencing of governmental agencies to materially change the project. Further, many safeguards are in place to prevent undue influence and unfair advantage codified in City ordinances, codes, regulations, policies, and processes.

## **Factor 3 - Former Position Held by the Employee**

2. Applying the third factor, the Staff Report erroneously assumes the conclusion that the Commission granting waivers would result in the type of revolving door activity that the City’s post-employment restrictions are intended to address.

In applying the third factor, page 6 of the Staff Report appears to assume the conclusion of inappropriate revolving door activity because my current role includes representing the City in aspects of the implementation of Potrero HOPE SF and my new role would include representing BRIDGE Housing in the overall implementation of Potrero HOPE SF. The only support for this assertion appears to be the following two points.

First, page 6 of the Staff report asserts that “switching of the roles can lead to confusion about the interests being represented by the former official” that “can create the potential for undue influence over former colleagues and reduce confidence in the integrity of those interactions with others given the official’s prior relationships and access.”

As was described in my Initial Waiver Request, letters of support, and public testimony provided at the Hearing by members of several City departments, there is no confusion about my interests in (1) continuing to transparently support the City’s highest priority public housing revitalization project, (2) my desire to advance in my career and gain more transferable skills, and (3) maintaining my personal and professional integrity.

The common interest in the successful completion of Potrero HOPE SF is shared by all stakeholders, codified in City ordinances (e.g., Ordinance 015-17, Board of Supervisors File No. 161161), described in Potrero HOPE SF's major approvals, and in practice during the implementation of Potrero HOPE SF through standard City administrative processes. The City and BRIDGE Housing's interests are principally aligned on the implementation of the project which is a collaborative partnership with no adverse interests in terms of overall goals for Potrero HOPE SF.

Second, page 6 of the Staff Report states that an unfair advantage can accrue to BRIDGE Housing because BRIDGE Housing would benefit from my "unique knowledge, relationships, and insights." The Staff Report also appears to raise the same point regarding unique knowledge and relationships under Factor 4 (Inside Knowledge), below. See below the response to Factor 4 in response to this point.

I completely agree with the Staff Report that inappropriate revolving door activity is precisely "what the City's post-employment restrictions are intended to address." This is precisely why I sought informal advice from the Office of the City Attorney and Ethics Commission staff in considering the prospective role and am currently participating in this public waiver request process. I want to ensure that my new role would not be such an inappropriate revolving door activity but indeed complies with the processes intended to prevent this type of activity.

As stated in an Ethics Staff Memo recommending the same waivers for Tiffany Bohee, "the one-year post-employment communications ban was enacted to protect the integrity of government decision-making by preventing a public employee from using her influence or knowledge, gained as a public servant, to advance private interests at the expense of the public."<sup>2</sup> As in the Tiffany Bohee matter, BRIDGE Housing's work advances the City's interests as much as its own on Potrero HOPE SF. I am not a public employee attempting to use influence or knowledge gained as a public servant to advance private interests at the expense of the public.

#### **Factor 4 - Inside Knowledge**

3. *The Staff Report erroneously asserts that I would have knowledge of City processes and professional relationships that can be used to the unfair advantage of a non-governmental employer.*

Page 7 of the Staff Report asserts that "even if Mr. Wong does not have proprietary information, his firsthand experience and years of service navigating City processes and professional relationships are examples of the kinds of knowledge that can be used to the unfair advantage of a non-governmental employer."

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<sup>2</sup> See page 4 of the November 7, 2011 S.F. Ethics Staff Memo recommending approval of waivers of C&GCC 3.234(a)(1) and (a)(2) in response to the request of Tiffany Bohee; see also page 3 of the September 1, 2011 S.F. Ethics Staff Memo recommending approval of waivers of C&GCC 3.234(a)(1) and (a)(2) in response to the request of Thomas Long.

First, City processes, while complex, are generally publicly accessible and not proprietary. Firsthand experience with a public process is not proprietary even though certain processes are not as commonly used (e.g., subdivision mapping) compared with other City processes (e.g., paying property taxes). Further, the City processes involved in the implementation of Potrero HOPE SF (e.g., building permitting, public infrastructure permitting, subdivision mapping, and public financing) are standard and very normal administrative processes. Any potential candidate considered for this new position should be familiar with or should be able to make themselves familiar with these processes to perform the duties of the role.

For example, if BRIDGE Housing was constructing a replacement public housing building within Potrero HOPE SF, BRIDGE Housing would need to submit a building permit application online to the Department of Building Inspection and email a copy to certain identified parties, which is a process outlined in a memo directly provided to all of the parties involved in Potrero HOPE SF, including BRIDGE Housing. Even if another candidate for this role did not know this building permit process, the candidate should be expected and able to learn the process.

Second, my professional relationships cannot materially change any aspect of Potrero HOPE SF where the development agreement (major approvals) have long been finalized, and implementation is governed and protected by well-established and codified City ordinances, codes, regulations, policies, and processes. If in the very unlikely event BRIDGE Housing materially breached the Development Agreement, there would be a clearly documented “meet and confer” process to find a resolution as described in Section 10.2 of the Potrero HOPE SF Development Agreement.<sup>3</sup> If no resolution is reached, then there would be a lengthy and public process to initiate a change to the Master Developer from BRIDGE Housing to another affordable housing developer.

Third, in my years of service for the City, I gained transferable general project management skills, including setting agendas, meeting facilitation, determining and distributing action items, and navigating transparent but complex processes. These are skills that would be valuable to any future employer and yet would not result in unfair advantage to a non-governmental employer because they are skills normally obtained in a project manager role.

4. *The Staff Report suggests that other non-profit housing entities may wish to enter into development agreements, which is not directly relevant here.*

To further support the notion that I have inside knowledge, page 7 of the Staff Report also confusingly asserts that: “BRIDGE Housing presumably is one among a number of non-profit housing entities that may wish to enter into development agreements with the City. Such entities, however, would not have similar access to the benefits that Mr. Wong would be providing to BRIDGE Housing.”

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<sup>3</sup> [https://default.sfplanning.org/devagreements/HOPE-SF/Potrero/HOPE-SF\\_Potrero\\_Development\\_Agreement.pdf](https://default.sfplanning.org/devagreements/HOPE-SF/Potrero/HOPE-SF_Potrero_Development_Agreement.pdf)

Although the first sentence may be true that other non-profit housing entities would like to enter into other development agreements with the City, this is not relevant to the specific post-employment waivers sought in this request. This request is specifically for post-employment restriction waivers on (i) permanent restriction on representation in a particular matter (Potrero HOPE SF) and (ii) one-year restriction on communicating with former department (the Office of Economic and Workforce Development).

Moreover, these statements appear to suggest an inappropriately broad employment restriction compared to what the C&GCC is intended to cover. The Staff Report could be interpreted as recommending the Commission restrict me from working for any developer or any other non-governmental entity involved in real estate development projects within San Francisco.

### **Factor 5 - Other Factors**

- 5. The Staff Report asserts that the City and BRIDGE Housing could have divergent interests that could lead to undue influence.*

Page 7 of the Staff Report hypothesizes that if BRIDGE Housing and the City's interests diverge that my experience and relationships "have the potential to, even though unintended, provide BRIDGE Housing with actual or perceived undue influence and an unfair advantage over the City."

First, "actual or perceived undue influence" is not the standard under the C&GCC or its Regulations. Instead, the Commission is to consider the potential for undue influence and unfair advantage discussed above in section 1.

Second, this hypothesis is an overestimation of any individual participant in the implementation of Potrero HOPE SF which is governed by several regulatory and contractual safeguards. If in the very unlikely event BRIDGE Housing and the City's interests diverged significantly and resulted in considering amending Potrero HOPE SF's Master Approvals, it would require many meetings, including public and community meetings, and the very transparent and well-defined processes governed by City ordinances, codes, regulations, policies, and processes. My representation of BRIDGE Housing would be focused on the completion of Potrero HOPE SF goals as laid out in the major approvals via transparent collaboration with stakeholders who share the same goals and interests for Potrero HOPE SF.

Third, normally obtained experience and professional relationships are not adequate examples of "inside knowledge" as explained in my response to point 3 above.

- 6. Similar to point 4 above, the Staff Report hypothesizes I could provide BRIDGE Housing with "unique leverage" over other non-profit housing entities in future development agreements.*

Page 7 of the Staff Report identifies that BRIDGE Housing could have “unique leverage” over other developers in securing future development agreements. This statement analyzed under Factor 5 (Other Factors) is essentially the same point identified in Factor 4 (Inside Knowledge). As stated above, this is not relevant to the specific post-employment waivers sought in this request.

7. *The Staff Report considers whether my job offer could disadvantage other qualified candidates, which does not appear to be a relevant factor to be considered.*

Page 7 of the Staff Report asserts that approved waivers “could disadvantage other qualified, would-be applicants for this position with BRIDGE Housing, who may never be considered if Mr. Wong assumes the position.” Although there may be other equally qualified candidates for the prospective role, it is unclear to me how this could be a relevant factor. Nevertheless, it is my understanding that BRIDGE Housing considered other candidates.

## **5. Closing Note**

In closing, I would like to continue to offer gratitude for the difficult but important work of the staff and the members of the Ethics Commission and advising City Attorneys. I continue to extend this gratitude to the many individuals who have advised me that this waiver request is still worth pursuing. I continue to reserve my deepest gratitude for the many individuals who will continue advancing this important work with or without me and to the communities that continue to patiently wait.

Thank you for your continued careful and thorough consideration of my request for waivers.

With gratitude,

*Phillip Christopher Wong*

Phillip Christopher Wong

CC:

Kate Sofis, Director, Office of Economic and Workforce Development  
Anne Taupier, Director of Development, Office of Economic and Workforce Development  
Judson True, Director of Housing Delivery, Office of the Mayor  
Eric Shaw, Director, Mayor’s Office of Housing and Community Development  
Lydia Ely, Director, Mayor’s Office of Housing and Community Development

CC through Commission Staff:

Chair Yvonne Lee, San Francisco Ethics Commission  
Vice-Chair Larry Bush, San Francisco Ethics Commission  
Commissioner Theis Finlev, San Francisco Ethics Commission  
Commissioner Michael S. Romano, San Francisco Ethics Commission  
Commissioner Argemira Flórez Feng, San Francisco Ethics Commission



Attachment 1

BRIDGE Housing Job Description for Director Role



## Job Description

<b>Job Title:</b>	Director of Development, Rebuild Potrero	<b>Department:</b>	7910 NorCal Development
<b>Reports to:</b>	Executive Vice President	<b>Type:</b>	Full-time, Exempt

### Job Purpose

The Director of Development for Rebuild Potrero is responsible for managing all aspects of the redevelopment process for Potrero Terrace and Annex, a large public housing site in San Francisco, CA.

The Director will supervise and manage the BRIDGE Project team to advance a complex multi-phased master plan redevelopment effort, including both horizontal infrastructure and vertical developments in each phase, from conception through construction completion and lease-up. Key responsibilities include managing relationships with various local, State and Federal public agencies, development partners, resident community, neighbors and other stakeholders; negotiating a variety of legal agreements as needed throughout the build out; establishing and maintaining relationships with various City departments as well as elected officials; representing BRIDGE at public, political, industry and community events; overseeing and directing Project staff to manage the design, construction and financing for the project. Additionally, the Director will be responsible for overseeing and managing internal coordination with multiple BRIDGE departments including Community Building, Resident Services, Finance and Accounting, and Property and Asset Management, to ensure holistic management of the project throughout the development life cycle, culminating in a smooth transition of the vertical affordable housing development in each development phase to operations. The Director will report to the Executive Vice President of Development for Northern California.

### Duties and Responsibilities

#### General

- Be “the face” of the Project for a wide range of stakeholders including local, State and Federal public agencies, City departments, public officials, resident community, community leaders, lenders, investors, grantors, donors, industry leaders, and other project partners as appropriate
- Manage the BRIDGE development team to advance Project goals per schedule and budget
- Work hand in hand with the Community Development team on the redevelopment effort ensuring close coordination with community stakeholders
- Coordinate as needed with other departments at BRIDGE to ensure seamless internal management through the development phase and transition to operations

- Work closely with EVP on strategies to expedite the Project schedule and advance the Project
- Provide periodic Project status updates to the BRIDGE senior management team, CEO and BRIDGE Board of Directors

#### *Planning/Entitlement Approvals*

- Coordinate as needed with local, State and Federal public agencies including but not limited to MOHCD, SFHA, OEWD, HCD, HUD; other City departments; Hope SF, residents, community leaders, community-based organizations and non-profits
- Attend community meetings, board of supervisor meetings, commission hearings, and other approval meetings and hearings as required
- Supervise Project staff to manage an interdisciplinary team of architects, engineers, attorneys and other consultants through the design and permit approval process for the infrastructure, residential and community/public benefits components of the master plan development

#### *Community Engagement and Outreach*

- Work closely with the Community Development team to strategize and manage resident engagement and outreach ensuring close coordination with SFHA, MOHCD, Hope SF, community-based organizations and non-profits
- Ensure all community development and resident engagement efforts are aligned with key stakeholder priorities and objectives
- Coordinate with the Community Development team to ensure budgetary resources are appropriately managed to deliver clear outcomes that advance key stakeholder goals
- Represent BRIDGE along with Project staff and Community Development staff at community meetings and other stakeholder meetings as needed
- Work closely with SFHA and community leaders to manage resident relocation to enable expediting the development schedule for upcoming phases

#### *Project Design and Construction/Rehab*

- Supervise Project staff to manage the design and construction teams through predevelopment, construction and completion to deliver a financially feasible development consistent with BRIDGE development standards and the Project schedule
- Work with Project staff and the design and construction teams to explore and evaluate cost effective approaches to potentially expedite the progression of upcoming development phases

#### *Financial*

- Supervise BRIDGE Project team to ensure costs for Project phases in predevelopment and under construction are tracking below budget
- Work closely with Project staff to ensure periodic delivery of up-to-date proformas and projections that accurately reflect the Project budget and financing plan for future phases, to assist with managing and potentially expediting the overall Project schedule
- Discuss potential financial structuring strategies for future phases with EVP and supervise staff to prepare and submit the requisite subsidy funding applications to local, State and Federal funding programs

- Oversee Project staff coordination with the financial consultant, subsidy lenders, and debt and equity providers to ensure financial feasibility and delivery of current and future phases per the projected schedule
- Manage Project costs throughout the development process

#### *Transactions*

- Supervise Project staff to effectively and efficiently manage real estate transactions including site and property acquisitions, predevelopment, construction and permanent loan closings and tax credit equity syndications
- Partner with SFHA, MOHCD and OEWD to effectively manage the sale of the market rate parcels in various phases of the master plan development
- Review all legal documents, loan and partnership terms, conditions and obligations; discuss potential risks and liabilities with EVP, BRIDGE General Counsel and/or external counsel; evaluate and present comprehensive risk mitigation measures to BRIDGE senior management and Board for approval

#### *Supervision and Reporting*

- Supervise the BRIDGE Project team to deliver the project on time and under budget
- Mentor Project staff and direct their performance to achieve collective team goals, ensuring completion of a high-quality development in conformance with BRIDGE's commitment to the long-term physical, financial, operational health and quality of homes for its residents
- Provide weekly Project status updates to EVP highlighting issues that may need feedback from BRIDGE senior management and Board

### **Requirements**

- Minimum 7 years of experience in real estate development, architecture, planning, public policy, business or finance
- Strong academic background with Bachelor's degree, plus MBA or equivalent degree, or experience in business, real estate, architecture, planning, public policy or finance
- Experience working on complex large scale mixed-income, mixed-use, master plan developments in dense transit-oriented urban areas, including both horizontal infrastructure and vertical multi-family buildings, retail spaces and public amenities
- Good judgment and deal structuring abilities
- Experience reviewing and negotiating legal documents
- Experience with energy efficient, sustainable green building practices
- Excellent communication, presentation and interpersonal skills
- Prioritization and organizational skills
- Ability to work independently while also maintaining communication within a large organization
- Excellent listening, verbal and written skills including an ability to advocate for a project while maintaining positive relationships with a variety of stakeholders
- Real estate experience in the San Francisco Bay Area

### Preferred Qualifications

- Experience taking several developments from conception to completion in San Francisco
- Ability to navigate through complex approval processes with multiple public agencies
- Affordable housing finance expertise including experience with subsidy loans, LIHTC and tax-exempt bond financing and reviewing and modeling financial proformas
- Master's degree in related field

### Working Conditions

- Works in an office environment
- Works a standard workweek with occasional evenings
- Travels up to 35% of the time; occasional overnight travel

### Physical Requirements

- Sitting, standing, walking, talking, hearing, and repetitive motions
- Move, lift, carry, push, pull, and place objects weighing less than or equal to 25 pounds without assistance

<b>Approved by:</b>	
<b>Date Approved:</b>	
<b>Reviewed by:</b>	
<b>Date Reviewed:</b>	

*Pursuant to the San Francisco Fair Chance Ordinance, we will consider for employment qualified applicants with arrest and conviction records.*

***BRIDGE Housing is an Equal Opportunity Employer***