CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

October 1, 2012

Honorable Judge Feinstein
Presiding Judge
San Francisco Superior Court
400 McAllister Street – Room 008
San Francisco, CA 94102-4512

Dear Judge Feinstein:

The following attachment is provided in response to several reports from the 2011-2012 Civil Grand Jury regarding the City's Arts Commission, Municipal Transportation Agency, and Employee Retirement System. For ease of administration, they have been provided in the format used to track implementation of Civil Grand Jury recommendations.

Please extend my thanks to the Civil Grand Jury for their service. Thank you for your time, and do not hesitate to contact me with any questions or comments at (415) 554-7500.

Sincerely,

Ben Rosenfield
Controller
City and County of San Francisco

Status of the Recommendations
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California Penal Code Section, 933.05 (b), requires the responding party to report for each recommendation of the Civil Grand Jury one of the following actions:

1. Recommendation Implemented	2. Will Be Implemented in the Future	3. Requires Further Analysis	4. Will Not Be Implemented: Not Warranted or Not Reasonable
- Date Implemented - Summary of Implemented Action	- Anticipated Timeframe for Implementation	- Explanation - Timeframe *(Not to exceed six months from date of publication of Grand Jury report)*	- Explanation

For each recommendation below, indicate one of the four actions you have taken or plan to take in the "Action Plan" column and provide the required explanation in the "2012 Response Text" column.

CGJ Year	Report Title	Finding or Recommendations	Response Required	Action	2012 Response Text
2011-2012	*Better MUNI Service Needed, Without Switchbacks*	F7. MUINI has failed to fully implement basic technological improvements in the system.	Office of the Controller	Partially agree	The SFMTA has worked to implement various technological improvements and upgrades to existing systems. These investments, of course, are financially constrained given limited resources available for service, maintenance, infrastructure, and other priority needs.
2011-2012	Better MUNI Service Needed, Without Switchbacks	F8. MUNI's newest and most advanced control centers lack adequate operating personnel and cannot communicate directly with MUNI drivers.	Office of the Controller	Agree	The newest control centers lacks some key functionality and has been understaffed. Plans are in place and underway for improvements in both areas.
2011-2012	Better MUNI Service Needed, Without Switchbacks	F9. MUNI has failed to conduct and publish monthly rider surveys as recommended in the FY 2008 and 2010 quality review.	Office of the Controller	Agree	The quality review recommendation for monthly surveys is not a requirement. MTA does do a significant amount of public outreach and opinion-testing through hearings and comment cards. Other survey efforts are also performed such as the annual city survey and MTA's own rider surveys performed to comply with Federal requirements. While the monthly rider surveys suggested in the FY 2008 and FY 2010 quality reviews are not a requirement, the SFMTA reports that they will commence monthly surveys later this fiscal year.

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2011-2012	Better MUNI Service Needed, Without Switchbacks	R2. Contact and learn from comparable transit systems that do not resort to switchbacks as a regular solution to their problems	Office of the Controller	2. Will be implemented in the future	The Controller's Office is engaged in a multi-year effort with the Municipal Transportation Agency (MTA) to improve MTA services. This effort, the Transportation Effectiveness Project (TEP) includes a variety of service improvements to address operating issues and to speed up MUNI service throughout the system. Addressing switchbacks along with other line management challenges are part of the TEP. In addition, the Controller's Office conducts quarterly benchmarking reports comparing San Francisco to other jurisdictions. MUNI services will be included in this benchmarking effort in upcoming fiscal quarters.
2011-2012	Better MUNI Service Needed, Without Switchbacks	R3. The Controller audit MUNI funds to determine if there are additional resources that may be available to rectify delays and scheduling problems.	Office of the Controller	1. Recommendation implemented	The Controller's Office conducts annual performance audits of the Municipal Transportation Agency and financial audits of selected issues and contracts. All audits include work to determine if MTA resources are being used effectively and efficiently and if funds could be better used. In addition, MTA has had multiple efforts in the last three fiscal years to identify new revenue sources and operating support. Finally, as noted above, MTA is engaged in a service improvement program (the TEP) whose central goal is to speed travel time throughout the system. This audit and project focus is ongoing.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R3. Encourage the creation of a non-profit organization dedicated to raising funds to meet program and operational needs.	Office of the Controller	4. Will not be implemented	Many civic functions such as Recreation and Park and the Library benefit from non-profits formed to further their purposes. The Art Commission could similarly benefit. However this action is not within the Controller' Office authority. We would assist with appropriate city accounting and financial arrangements should a non-profit be formed to support the Art Commission.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R4. Improve the orientation and training of Commissioners to provide them with a clear understanding of their administrative responsibilities and roles in budgeting, personnel management, city processes, and their role as ambassadors to the public to increase awareness of art opportunities in the community.	Office of the Controller	3. Requires further analysis	Complete and ongoing training is helpful for commissions to effectively discharge their duties, although we have not undertaken a review of the SFAC's training program. The Controller's Office can assist with training in public financial management and oversight roles for Commissioners, if requested by the SFAC. Comparable training has been provided by the Controller's Office to other City commissions, non-profit boards, and other public bodies.

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2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	F18. Art maintenance is more appropriately an operating rather than capital cost as it is a day-to-day responsibility of SFAC.	Office of the Controller	Diasgree	Art maintenance expenditures could appropriately be treated as an operating expense up to certain thresholds determined by standard accounting practices. The City's standard practice is to include planning for maintenance of capital assets through the City's capital planning process. Ultimately all uses -- whether for maintenance, capital, or operating expenditures -- draw from the same funding sources and are adopted in the City's annual budget.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	F19. Art maintenance is inappropriately treated as a capital expense by City government.	Office of the Controller	Diasgree	Art maintenance expenditures could appropriately be treated as an operating expense up to certain thresholds determined by standard accounting practices. The City's standard practice is to include planning for maintenance of capital assets through the City's capital planning process. Ultimately all uses -- whether for maintenance, capital, or operating expenditures -- draw from the same funding sources and are adopted in the City's annual budget.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R9. Re-designate maintenance and conservation of the Collection as an operating expense of the SFAC rather than a capital budget item	Office of the Controller	Disagree	Art maintenance expenditures could appropriately be treated as an operating expense up to certain thresholds determined by standard accounting practices. The City's standard practice is to include planning for maintenance of capital assets through the City's capital planning process. Ultimately all uses -- whether for maintenance, capital, or operating expenditures -- draw from the same funding sources and are adopted in the City's annual budget.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R10. Redirect and dedicate $1 million, over two years, of the Grants for the Arts/Hotel Tax Fund on a one-time basis to the Arts Commission to fund the inventory, maintenance, storage, de-accessioning, exhibition and installation of the existing Collection located in the City, at San Francisco International Airport, and at other City properties.	Office of the Controller	4. Will not be implemented	This action is not in the authority of the Controller. Appropriation of funds is the authority of the Mayor and Board of Supervisors under the budgetary and financial provisions of the Charter.

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2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R11. Designate Hotel Tax Funds from the initial $1 million for the development of educational print, on-line and phone app materials to showcase the existing Civic Art Collection located in the City, at San Francisco International Airport, and at other City properties to make the Collection more accessible to City residents and visitors.	Office of the Controller	4. Will not be implemented	This action is not in the authority of the Controller. Appropriation of funds is the authority of the Mayor and Board of Supervisors under the budgetary and financial provisions of the Charter
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R12. Designate Hotel Tax Fund monies of 1% of the value of the Collection (up to $900,000) on an annual basis for the maintenance and care of the Collection.	Office of the Controller	4. Will not be implemented	This action is not in the authority of the Controller. Appropriation of funds is the authority of the Mayor and Board of Supervisors under the budgetary and financial provisions of the Charter.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R15 SFAC hold public hearings about the Cultural Centers and their short- and long-term funding (for programs and facility maintenance), facility, and safety needs to develop an action plan to secure the Cultural Centers	Office of the Controller	3. Requires further analysis	This action is not in the authority of the Controller.]We would be willing to assist the SFAC in analysis needed to prepare a productive public hearing process.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	F28. The Street Artists annual fees since 2000 have increased in large part due to the costs of defending the Program Manager for violations of the Sunshine ordinances from the Street Artists	Office of the Controller	Disagree	Confirming this finding would require further analysis of the Street Artist Program's revenues and expenses, although generally speaking rising labor and benefit (and not legal) costs have been the dominant drivers of the City's expenditures in recent years.

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2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R19. Legal expenses for the Sunshine Ordinance defense be paid from an account, other than the Street Artist Fund.	Office of the Controller	Disagree	Legal expenses are an operating cost of the Street Artist Program and are appropriately paid from the special revenue fund that supports the Program. This is standard public accounting practice for simliarly-funded City programs. The Mayor and the Board of Supervisors have the authority, through the City's annual budget process, to provide a General Fund subsidy to the program, to cover legal or other costs.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	F34 For general operating and SFAC Gallery exhibition expenses, SFAC relies on public funds that are designated by Charter for "maintenance of a symphony orchestra...."	Office of the Controller	Disagree	While the SFAC receives approximately $800,000 annually from the SF Symphony, this amount is legally distint from the Charter-required allocation of property tax funds to the SF Symphony.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	F35. Since 1935, SFAC has chosen the San Francisco Symphony as recipient of those funds.	Office of the Controller	Agree	This is a correct statement.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	F36. SFAC is without legal or practical recourse if SFS revoked its annual contribution of 40% of those funds given to SFAC.	Office of the Controller	Disgree	If the SF Symphony revoked its gift to the SFAC, the SFAC would have the ability to request funds from other sources through the City's budget process, ultimately driven by decisions of the Mayor and Board of Supervisors.

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2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	F37. The manner in which SFAC funds its operations by a giveback donation of SFS monies creates, at the least, an appearance of fiscal impropriety and violates the intent of the 1935 Charter amendment.	Office of the Controller	Disagree	The City's budget is in compliance with Charter Section 16.106 that requires an annual appropriation for a municipal symphony. The SFAC is in compliance with the acceptance of gifts, granted by Charter Section 5.100.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	F38. GFTA funds the San Francisco Symphony for over $600,000 annually for operating expenses	Office of the Controller	Agree	This is a correct statement.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R22. The Arts Commission/Symphony Agreement comply with the intent of the full amount of the tax revenues go toward Symphony operating expenses.	Office of the Controller	1. Rec implemented	The City's budget is in compliance with Charter Section 16.106 that requires an annual appropriation for a municipal symphony. The SFAC is in compliance with the acceptance of gifts, granted by Charter Section 5.100.
2011-2012	When There's Smoke . . . The Need to Strengthen the Art Commission's Cultural Legacy	R23. Redirect Hotel Tax Fund money allocated to the SFS by GFTA to the SFAC.	Office of the Controller	4. Will not be implemented	This action is not in the authority of the Controller. The Controller's Office monitors and acts to maintain the Hotel Tax Fund's compliance with Charter and Code requirements. Grants for the Arts has programmatic authority over their grants and allocations.

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2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	F1. The San Francisco Employees' Retirement System Pension Fund is currently underfunded by more than $2 billion.	Office of the Controller	Agree	As of the most recent San Francisco Employees' Retirement System (SFERS) actuarial valuation (July 1, 2011), the SFERS unfunded actuarial liability was $2,285.6 million.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	F2. The San Francisco Employees' Retirement System Board did not complete a "failure analysis" subsequent to the funding loss suffered in 2008-09.	Office of the Controller	Disagree	The Board and SFERS actuaries conducted extensive discussions and analysis subsequent to Fiscal Year (FY) 2008-09 and changes to actuarial assumptions were debated and acted upon. The Board considers the impacts of various return scenarios on an annual basis, and transmits these to the City for use in the City's budget planning.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	F3. The City must pay increasing contributions to the Fund due to underfunding.	Office of the Controller	Agree	At the February 2012 meeting of the SFERS Board, SFERS consulting actuaries provided projections using various investment return scenarios. Those scenarios anticipate that City contribution rates are likely to rise at least through FY 2014-15 when SFERS recognizes its final installment of deferred losses associated with FY 2008-09 under the Plan's five-year smoothing policy. Whether City contributions must continue to rise after FY 2014-15 as a percentage of payroll will depend on future investment returns along with the results of annual reevaluations of other actuarial assumptions.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	F4. The increases in pension contributions by the City are growing at a faster rate than expenditures on most other City services since 1999.	Office of the Controller	Agree	I agree, although the City had no required pension contributions to SFERS in FY 1998-99 due to surplus funding of the Plan at that time. Thus it is not possible to calculate a growth rate on percentage terms from that base year. Looking at more recent 3-year growth between FY 2008-09 and FY 2011-12, the City's growth in employer share contributions to SFERS was from $112 million in FY 2008-09 to $385 million in FY 2011-12, for an average annual growth of 50.8%. This is indeed a much faster growth rate than on other expenditures, such as salaries (0.1% average annual growth over this period) or health benefits for active employees (5.9% average annual growth).

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2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	F5. The Fund can artificially reduce the City's estimated liabilities by increasing its investment return assumptions for future years.	Office of the Controller	Disagree	Fund Investment return assumptions are set by the SFERS Board, and I disagree with characterizing any decision by the SFERS Board as "artificial." Board decisions regarding Investment return assumptions are made in public after hearing recommendations from professional actuaries. The Board has a fiduciary duty to Plan beneficiaries and as such has a responsibility to maintain the long-term health of the Plan.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	F6. The unrealistically high assumed investment return rate of 7.66% is driven by concern for the mandated member and City contributions, with little regard for prudent management.	Office of the Controller	Disagree	Fund investment return assumptions are set by the SFERS Board. Board decisions regarding investment return assumptions are made in public after hearing recommendations from professional actuaries. The Board has a fiduciary duty to Plan beneficiaries and as such has a responsibility to maintain the long-term health of the Plan.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	F7. Studies show that public funds with low-risk investment policies perform as well as or better than those with high-risk policies.	Office of the Controller	Requires further research	I do not have personal knowledge as to the accuracy of this finding.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	R1. San Francisco Employees' Retirement System Board address the $2 billion dollar underfunding of the San Francisco Employees' Retirement System Pension Fund by forming a high-level task force with City officials, a panel of experts, community groups, and the public to develop courses of action.	Office of the Controller	4. Will not be implemented	This recommendation implies that the challenge of addressing the underfunding of the plan is unknown to the System and that an approach toward closing this gap is not in place. Neither implication is true. The funding status of the plan has been the subject of a great deal of attention by the SFERS Board, the Mayor, Board of Supervisors, plan beneficiaries, and the electorate in the past two years. The Charter and

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2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	R2. Adopt a realistic and consistent formula for estimating the assumed expected investment return rate.	Office of the Controller	1. Rec implemented	I believe this recommendation has already been implemented within the framework of the existing SFERS Board processes. The SFERS Board will continue to consider changes to their assumed expected investment return rate on a regular basis under its existing procedures.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	R3. The San Francisco Employees' Retirement System Board undertake an in-depth investigation and "failure analysis" study of its investment policy and report its findings to its members and to the public.	Office of the Controller	1. Rec implemented	I believe this recommendation has already been implemented. While the term "failure analysis" is not used by SFERS, I believe the intent behind this recommendation of reviewing investment policies and reporting to the public is being implemented within the framework of the existing SFERS Board processes. The SFERS Board will continue to consider changes to their investment policies on a regular basis under its existing procedures.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	R4. Investigate, quantify and address all the major risks in the portfolio and make this information public.	Office of the Controller	1. Rec implemented	I believe this recommendation has already been implemented. The SFERS Board Strategic Plan, adopted at the Boards October 12, 2011 meeting, discusses an investment risk management initiative, which has been implemented by SFERS with regular monthly public reports since February 2011 that include a discussion of investment risk exposures in the SFERS portfolio.
2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	R5. Investigate less volatile and risky investment policies that would attain sufficient returns for the San Francisco Employees' Retirement System Pension Fund.	Office of the Controller	1. Rec implemented	This recommendation has been implemented. This recommendation has been implemented by SFERS to the extent that a range of investment options are discussed and implemented by the Plan.

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2011-2012	Investment Policies and Practices of the San Francisco Employees' Retirement System	R6. Replicate the Stanford, Upjohn, and The New York Times evidence-based comparison studies using San Francisco data, to apply their findings to the San Francisco Employees' Retirement System Pension Fund.	Office of the Controller	3. Requires further analysis	SFERS actuarial consultants produce various benchmarks and comparisons as part of the analyses they provide the SFERS Board. I cannot tell whether a replication of the precise studies cited would be a cost-effective use of resources.