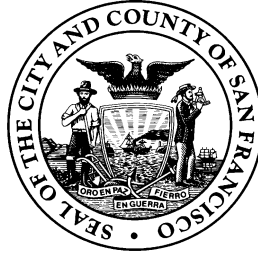


**BOARD of SUPERVISORS**



**City Hall**  
**1 Dr. Carlton B. Goodlett Place, Room 244**  
**San Francisco, CA 94102-4689**  
**Tel. No. (415) 554-5184**  
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**TDD/TTY No. (415) 554-5227**

November 10, 2021

The Honorable Samuel K. Feng  
Presiding Judge  
Superior Court of California, County of San Francisco  
400 McAllister Street, Department 206  
San Francisco, CA 94102

Subject: Civil Grand Jury Report - Van Ness Avenue: What Lies Beneath

Dear Judge Feng:

The Board of Supervisors' Government Audit and Oversight Committee conducted public hearings on September 30 and October 7, 2021, to review the findings and recommendations of the 2020-2021 Civil Grand Jury report, entitled "Van Ness Avenue: What Lies Beneath."

Prior to the Committee meeting, the following City Departments submitted required responses to the Civil Grand Jury:

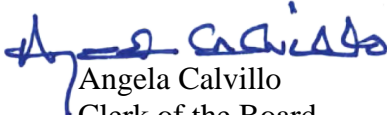
- Public Utilities Commission:  
Received August 27, 2021;
- Public Works:  
Received August 27, 2021;
- Office of the Mayor:  
Received August 27, 2021;
- Municipal Transportation Agency:  
Received August 27, 2021;
- Public Utilities Commission General Manager:  
Received August 27, 2021; and
- Municipal Transportation Agency Board:  
Received August 27, 2021.

During the October 7, 2021 meeting, the Government Audit and Oversight Committee prepared a resolution responding to the requested findings and recommendations identified in the report. The response was prepared by Resolution No. 496-21 (File No. 210703) and enacted on October 29, 2021.

By this message, the Office of the Clerk of the Board of Supervisors is transmitting their response (Resolution No. 463-21) to your attention.

If you have any questions, please contact John Carroll, Government Audit and Oversight Committee Clerk at (415) 554-4445, or via email to [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org).

Sincerely,



Angela Calvillo  
Clerk of the Board

jec:vy:ams

c: Thomas Paulino, Office of the Mayor  
Andres Power, Office of the Mayor  
Sally Ma, Office of the Mayor  
Anne Pearson, Office of the City Attorney  
Ben Rosenfield, City Controller, Office of the Controller  
Todd Rydstrom, Office of the Controller  
Peg Stevenson, Office of the Controller  
Mark de la Rosa, Office of the Controller  
Dennis Herrera, General Manager, Public Utilities Commission  
Donna Hood, Public Utilities Commission  
John Scarpulla, Public Utilities Commission  
Carla Short, Interim Director, Public Works  
David Steinberg, Public Works  
Jeremy Spitz, Public Works  
Jeffrey Tumlin, Executive Director, Municipal Transportation Agency  
Kate Breen, Municipal Transportation Agency  
Janet Martinsen, Municipal Transportation Agency  
Joel Ramos, Municipal Transportation Agency  
Christine Silva, Municipal Transportation Agency Board  
Alisa Somera, Legislative Deputy Director, Office of the Clerk of the Board  
Severin Campbell, Office of the Budget and Legislative Analyst  
Reuben Holober, Office of the Budget and Legislative Analyst  
Ellie Schafer, 2020-2021 Foreperson, San Francisco Civil Grand Jury  
Simone Manganelli, 2020-2021, Member, San Francisco Civil Grand Jury  
Michael N. Hofman, 2021-2022, Foreperson, San Francisco Civil Grand Jury

1 [Board Response - Civil Grand Jury Report - Van Ness Avenue: What Lies Beneath]

2  
3 **Resolution responding to the Presiding Judge of the Superior Court on the findings**  
4 **and recommendations contained in the 2020-2021 Civil Grand Jury Report, entitled**  
5 **“Van Ness Avenue: What Lies Beneath;” and urging the Mayor to cause the**  
6 **implementation of accepted findings and recommendations through her department**  
7 **heads and through the development of the annual budget.**

8  
9 WHEREAS, Under California Penal Code, Section 933 et seq., the Board of  
10 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior  
11 Court on the findings and recommendations contained in Civil Grand Jury Reports; and

12 WHEREAS, In accordance with California Penal Code, Section 933.05(c), if a finding or  
13 recommendation of the Civil Grand Jury addresses budgetary or personnel matters of a  
14 county agency or a department headed by an elected officer, the agency or department head  
15 and the Board of Supervisors shall respond if requested by the Civil Grand Jury, but the  
16 response of the Board of Supervisors shall address only budgetary or personnel matters over  
17 which it has some decision making authority; and

18 WHEREAS, Under San Francisco Administrative Code, Section 2.10(a), the Board of  
19 Supervisors must conduct a public hearing by a committee to consider a final report of the  
20 findings and recommendations submitted, and notify the current foreperson and immediate  
21 past foreperson of the civil grand jury when such hearing is scheduled; and

22 WHEREAS, In accordance with San Francisco Administrative Code, Section 2.10(b),  
23 the Controller must report to the Board of Supervisors on the implementation of  
24 recommendations that pertain to fiscal matters that were considered at a public hearing held  
25 by a Board of Supervisors Committee; and

1           WHEREAS, The 2020-2021 Civil Grand Jury Report, entitled “Van Ness Avenue: What  
2 Lies Beneath” (“Report”) is on file with the Clerk of the Board of Supervisors in File  
3 No. 210702, which is hereby declared to be a part of this Resolution as if set forth fully herein;  
4 and

5           WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond  
6 to Finding Nos. F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, and F14, as well as  
7 Recommendation Nos. R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, and R11 contained in the  
8 subject Report; and

9           WHEREAS, Finding No. F1 states: “The delays in completion of the Van Ness BRT  
10 Project were caused primarily by avoidable setbacks in replacement of the water and sewer  
11 infrastructure;” and

12           WHEREAS, Finding No. F2 states: “The potential impact of utility replacement on the  
13 cost and duration of the overall project was given insufficient consideration in the initial  
14 planning process;” and

15           WHEREAS, Finding No. F3 states: “The potential impact of utility replacement was  
16 known to City engineers to be a major risk but was only considered a moderate risk and  
17 assigned no mitigation strategy in the official risk register;” and

18           WHEREAS, Finding No. F4 states: “Project timelines could not be estimated accurately  
19 because documents did not reflect the extent and location of underground utilities accurately;”  
20 and

21           WHEREAS, Finding No. F5 states: “The evaluation rubric for preconstruction contract  
22 bids weighted cost too heavily, as compared to technical expertise, even after project-specific  
23 legislation allowed for a lower weight to be assigned to cost;” and

24           WHEREAS, Finding No. F6 states: “Practical work during preconstruction that could  
25 have derisked the subsequent construction phase of the project was insufficient;” and

1           WHEREAS, Finding No. F7 states: "Review of preconstruction deliverables did not  
2 sufficiently measure the contractor's preparedness for construction, which resulted in both  
3 inaccurate cost estimates and timelines;" and

4           WHEREAS, Finding No. F8 states: "The effectiveness of the CMGC contract was  
5 greatly reduced because the general contractor was brought into the design process too late;"  
6 and

7           WHEREAS, Finding No. F9 states: "Underspecification in technical requirements led to  
8 additional costs for work that could have been predicted and included in the original contract;"  
9 and

10          WHEREAS, Finding No. F10 states: "Contention over underspecified or unclear  
11 contract terms and technical requirements led to a deterioration in the relationship between  
12 the City and Walsh, the general contractor;" and

13          WHEREAS, Finding No. F11 states: "The removal of Synergy, the underground  
14 subcontractor, from the project, partially as a result of poor cost estimates, contributed to the  
15 deterioration of the relationship between Walsh, the general contractor, and the City;" and

16          WHEREAS, Finding No. F12 states: "The contentious relationship between Walsh, the  
17 general contractor, and the City made it difficult to resolve problems as they arose, despite  
18 close collaboration being one of the potential advantages of the CMGC contract;" and

19          WHEREAS, Finding No. F13 states: "Lack of an in-the-field point of contact between  
20 Walsh and the City during early stages of construction led to delays and increased costs on  
21 the project;" and

22          WHEREAS, Finding No. F14 states: "Confusion related to the contractual requirements  
23 for pedestrian monitoring contributed to the deterioration of the relationship between Walsh,  
24 the general contractor, and the City;" and

25

1           WHEREAS, Recommendation No. R1 states: "By June 2022, the City should adopt a  
2 policy that all capital project feasibility plans include an itemized assessment of risks to project  
3 timelines and costs, which must be accompanied with specific procedures that will be  
4 undertaken to mitigate those risks early in the project;" and

5           WHEREAS, Recommendation No. R2 states: "By June 2022, the City should adopt a  
6 policy that all capital project sponsors publish, before proceeding to the construction phase,  
7 an itemized assessment of derisking activities actually performed;" and

8           WHEREAS, Recommendation No. R3 states: "By June 2022, the Board of Supervisors  
9 and SFPUC should review and update policies and regulations to ensure that detailed as-built  
10 documentation of both private and public utilities is filed after all underground projects  
11 (whether undertaken by SFPUC, another City agency, or a private enterprise), with sufficient  
12 resolution and precision to allow accurate design of any future work;" and

13           WHEREAS, Recommendation No. R4 states: "The Board of Supervisors should direct  
14 all City departments to adopt a policy that all projects that involve underground work in the  
15 City's main corridors include, as part of the design process, the use of exploratory potholing,  
16 or another equivalent industry best-practice to identify unknown underground obstructions  
17 adhering to CI/ASCE 38-02 ("Standard Guideline for the Collection and Depiction of Existing  
18 Subsurface Utility Data") Quality Level A. This policy should take effect for all contracts signed  
19 after January 1, 2022, and the work should be required to be performed before final  
20 construction terms or prices are agreed to;" and

21           WHEREAS, Recommendation No. R5 states: "By June 2022, and before entering into  
22 future CMGC relationships, the Board of Supervisors should direct all City departments to  
23 adopt, publish, and enforce in all future contracts industry-standard best practices for  
24 management of CMGC projects;" and

25

1           WHEREAS, Recommendation No. R6 states: "The adopted CMGC management policy  
2 should specifically include the industry best practice of awarding the contract before project  
3 design continues past 30% completion;" and

4           WHEREAS, Recommendation No. R7 states: "By June 2022, the Board of Supervisors  
5 should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion  
6 in awarding CMGC contracts;" and

7           WHEREAS, Recommendation No. R8 states: "SFMTA should establish a policy for  
8 review of technical quality of preconstruction and design deliverables, to be used in all CMGC  
9 or design contracts signed after January 2022, including in-the-field validation of key  
10 assumptions of site conditions by City engineers;" and

11           WHEREAS, Recommendation No. R9 states: "Beginning January 1, 2022, SFMTA  
12 should assign to every CMGC project a dedicated in-the-field contractor liaison to facilitate  
13 collaborative problem resolution, and sufficient support staff to monitor actual progress and  
14 site conditions;" and

15           WHEREAS, Recommendation No. R10 states: "By June 2022, the City should adopt a  
16 policy that any public communication about a planned or in-progress capital project that  
17 includes disruption of public services or right-of-way should include itemized assessments of  
18 risk to projected costs and duration;" and

19           WHEREAS, Recommendation No. R11 states: "Beginning immediately, and in all  
20 future capital or maintenance projects that require pedestrian monitors, the City should ensure  
21 that associated costs are either specifically included in the primary construction contract, or  
22 explicitly planned for and funded by the City, before construction begins;" and

23           WHEREAS, In accordance with California Penal Code, Section 933.05(c), the Board of  
24 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior  
25 Court on Finding Nos. F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, and F14, as

1 well as Recommendation Nos. R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, and R11 contained  
2 in the subject Report; now, therefore, be it

3           RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the  
4 Superior Court that they agree with Finding No. F1; and, be it

5           FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
6 of the Superior Court that they agree with Finding No. F2; and, be it

7           FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
8 of the Superior Court that they disagree partially with Finding No. F3 for reason as follows: the  
9 preparation of a risk register was a shared responsibility of City staff, the contractor, and an  
10 independent consultant, and the risks were deemed moderate because mitigation measures  
11 were identified that were not carried out by the contractor as required and, be it

12           FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
13 of the Superior Court that they disagree partially with Finding No. F4 for reason as follows:  
14 even with accurate documentation of existing underground utilities, project timelines still may  
15 not have been estimated accurately without sufficient pre-construction field investigation; and,  
16 be it

17           FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
18 of the Superior Court that they agree with Finding No. F5; and, be it

19           FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
20 of the Superior Court that they agree with Finding No. F6; and, be it

21           FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
22 of the Superior Court that they agree with Finding No. F7 and, be it

23           FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
24 of the Superior Court that they disagree partially with Finding No. F8 for reason as follows:  
25 while the benefits of bringing in the CMGC contractor earlier in the project is acknowledged,



1 the record reflects that the contract effectiveness was also reduced by subsequent actions of  
2 the contractor; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
4 of the Superior Court that they disagree partially with Finding No. F9 for reason as follows: the  
5 record reflects that underspecification of technical requirements was not necessarily  
6 responsible for cost overruns and that the contractor's own settlement of claims on this issue  
7 and lack of requests for clarification of technical requirements during pre-construction support  
8 this conclusion; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
10 of the Superior Court that they disagree partially with Finding No. F10 for reason as follows:  
11 the record reflects that numerous other factors contributed to the deterioration in relationship  
12 between the City and Contractor and, be it

13 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
14 of the Superior Court that they disagree partially with Finding No. F11 for reason as follows:  
15 the record does not demonstrate that the cost estimates were necessarily poor, only that there  
16 was disagreement over the subcontractor's proposed price; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
18 of the Superior Court that they agree with Finding No. F12; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
20 of the Superior Court that they disagree wholly with Finding No. F13; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge  
22 of the Superior Court that they agree with Finding No. F14; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
24 No. R1 has been implemented; and, be it

25

1 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
2 No. R2 requires further analysis, and hereby directs the Budget and Legislative Analyst to  
3 issue a report by March 31, 2022 analyzing options for the adoption of a policy regarding  
4 itemized assessments of de-risking activities for major capital projects; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
6 No. R3 requires further analysis, and hereby urges the San Francisco Public Utilities  
7 Commission to review its policies regarding as-built documentation and the feasibility of  
8 establishing a digital as-built document repository and to deliver its findings to the Board of  
9 Supervisors by March 31, 2022; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
11 No. R4 requires further analysis, and hereby urges the San Francisco Municipal  
12 Transportation Agency to analyze options for adopting a dynamic policy setting forth best  
13 practices for exploratory potholing or equivalent industry-standard practices for major capital  
14 projects, and to deliver its findings to the Board of Supervisors by March 31, 2022; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
16 No. R5 requires further analysis, and hereby urges the SFMTA to analyze options for adopting  
17 a dynamic policy setting forth best practices for CMGC contracts for major capital projects,  
18 and to deliver its findings to the Board of Supervisors by March 31, 2022; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
20 No. R6 requires further analysis, and hereby urges the SFMTA to analyze options for adopting  
21 a dynamic policy setting forth a standard expectation for CMGC contracts to be awarded no  
22 later than at the 30% design stage for major capital projects, and to deliver its findings to the  
23 Board of Supervisors by March 31, 2022; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
25 No. R7 has not been implemented but will be implemented, and hereby directs the Budget

1 and Legislative Analyst to issue a report by March 31, 2022 laying out options and key  
2 considerations for an ordinance to amend the Administrative Code to remove the mandatory  
3 cost criterion in awarding CMGC contracts; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
5 No. R8 has not been implemented but will be implemented, and hereby urges the SFMTA to  
6 develop a formalized process for reviewing and commenting on pre-construction deliverables  
7 by March 31, 2022; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
9 No. R9 has been implemented; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
11 No. R10 requires further analysis, and hereby urges the SFMTA to develop a policy for the  
12 public communication of capital project risk assessment and to delivery its findings to the  
13 Board of Supervisors by March 31, 2022; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation  
15 No. R11 has been implemented; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the  
17 implementation of the accepted findings and recommendations through her department heads  
18 and through the development of the annual budget.



City and County of San Francisco

Tails  
Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 210703

Date Passed: October 19, 2021

Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2020-2021 Civil Grand Jury Report, entitled "Van Ness Avenue: What Lies Beneath;" and urging the Mayor to cause the implementation of accepted findings and recommendations through her department heads and through the development of the annual budget.

September 30, 2021 Government Audit and Oversight Committee - CONTINUED

October 07, 2021 Government Audit and Oversight Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE


October 07, 2021 Government Audit and Oversight Committee - RECOMMENDED AS AMENDED

October 19, 2021 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 210703

I hereby certify that the foregoing Resolution was ADOPTED on 10/19/2021 by the Board of Supervisors of the City and County of San Francisco.

  
Angela Calvillo  
Clerk of the Board


Unsigned

10/29/2021

London N. Breed  
Mayor

Date Approved

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without her approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

  
\_\_\_\_\_  
Angela Calvillo  
Clerk of the Board

10/29/2021

\_\_\_\_\_  
Date

File No.  
210703