



August 27, 2021

Sent via U.S. Mail and email to CGrandJury@sftc.org

The Honorable Samuel K. Feng,
 Presiding Judge
 Superior Court of California, County of San Francisco
 400 McAllister Street, Room 008
 San Francisco, CA 94102-4512

Dear Judge Feng:

In accordance with Penal Code Sections 933 and 933.05, and pursuant to the request of Ms. Ellie Schafer, Foreperson of the City and County of San Francisco 2020-21 Civil Grand Jury, attached please find the response of the San Francisco Public Utilities Commission to the 2020-2021 Civil Grand Jury Report, *Van Ness Avenue: What Lies Beneath*. At its regularly scheduled public meeting of August 24, 2021, the Commission voted to approve the attached responses by Resolution No. 21-0134.

The Commission would like to thank the members of the 2020-2021 Civil Grand Jury for their service and their interest in our vital infrastructure.

Sincerely,

Sophie Maxwell
 President
 San Francisco Public Utilities Commission

cc: Mayor London Breed

- London N. Breed**
Mayor
- Sophie Maxwell**
President
- Anson Moran**
Vice President
- Tim Paulson**
Commissioner
- Ed Harrington**
Commissioner
- Michael Carlin**
Acting
General Manager



PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 21-0134

WHEREAS, On June 28, 2021, the 2020-2021 Civil Grand Jury released a report entitled, "Van Ness Avenue: What Lies Beneath," a copy of which is on file with the Commission Secretary; and

WHEREAS, The Civil Grand Jury requires responses from both the San Francisco Public Utilities Commission (SFPUC) General Manager and this Commission to the report's Findings numbers 1, 2, 3, 4, 6, 8, 9, and 11, and Recommendations numbers 1, 2, 3, 4, and 5; and

WHEREAS, California Penal Code §933(c) requires the Commission's response be submitted to the Presiding Judge no later than August 27, 2021; and

WHEREAS, At its August 24, 2021 public meeting, this Commission reviewed the attached responses of both the General Manager and the Commission to the above stated findings and recommendations in the Civil Grand Jury Report; now, therefore be it

RESOLVED, That this Commission hereby approves the responses attached hereto, as amended by motion of the Commission at its August 24, 2021 meeting, to the relevant findings and recommendations of the June 28, 2021, Civil Grand Jury Report entitled, "Van Ness Avenue: What Lies Beneath," and authorizes and directs the Commission President to submit the amended responses to the Presiding Judge of the Civil Grand Jury by August 27, 2021, as required by California Penal Code §933(c).

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of August 24, 2021.



Secretary, Public Utilities Commission

**AS AMENDED BY THE COMMISSION ON AUGUST 24,
2021 BY RESOLUTION NO. 21-0134**

Report Title [Publication Date]	F#	Finding	Respondent Assigned by CGJ [Response Due Date]	Finding Response (Agree/ Disagree)	SFPUC Finding Response
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F1	The delays in completion of the Van Ness BRT Project were caused primarily by avoidable setbacks in replacement of the water and sewer infrastructure.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Disagree partially	Many of the initial delays on the Project occurred during construction of the underground phase of the Project; however, these delays were both avoidable and unavoidable. The City and the contractor often share responsibility for delays, and some of the delays were due to third parties. Understanding the delay on this project involves looking at the contractor's initial claim for 279 days of delay and its pending claim for 344 delay days. As to the initial claim for 279 days, the parties agreed that 135 were compensable (City's responsibility) and 144 were noncompensable (not the City's sole responsibility). In other words, the contractor acknowledged that it shared responsibility for more than half of the delay days. As to the pending claim for 344 days, the contractor failed to provide the required scheduling analysis; thus, the City has been required to undertake its own analysis of the delay. This analysis is currently underway.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F2	The potential impact of utility replacement on the cost and duration of the overall project was given insufficient consideration in the initial planning process.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Disagree partially	The SFMTA gave significant consideration to the potential impacts of utility replacement during the planning process. The underground utility replacement activities and its associated risks were studied and reviewed in design and preconstruction phase based on the information available and the recommendations from consultants and the selected contractor. During the design phase, the City performed some potholing and coordinated with PG&E to relocate gas mains and an electrical ductbank. To minimize major traffic and operational impacts, the City included a standard requirement in the Specifications that the Contractor perform significant amounts of potholing 30 days in advance of any installation. The contract also included specific allowances to cover additional or unforeseen costs related to utility installation. In future contracts, the SFMTA agrees to consider applying more emphasis during the planning stage regarding the impacts of utility replacement.

AS AMENDED BY THE COMMISSION ON AUGUST 24, 2021 BY RESOLUTION NO. 21-0134

Report Title [Publication Date]	F#	Finding	Respondent Assigned by CGJ [Response Due Date]	Finding Response (Agree/ Disagree)	SFPUC Finding Response
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F3	The potential impact of utility replacement was known to City engineers to be a major risk, but was only considered a moderate risk and assigned no effective mitigation in the official risk register.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Disagree partially	The Contractor, City Staff, and an independent consultant cooperated in preparing the risk register and because of the mitigation measures being taken this was classified as a moderate risk. Several mitigation measures were included in the Specifications, such as requiring potholing 30 days in advance of the work, and providing the contractor with copies of deactivated utility drawings as reference documents. The Contractor failed to perform the required potholing in a timely fashion, at times attempting to dig potholes within hours of trenching to install utilities. Contractor's inability to properly anticipate/manage/mitigate utility issues during construction was the primary contributor to added contract costs and duration.

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Van Ness Avenue : What Lies Beneath [June 28, 2021]	F4	Project timelines could not be estimated accurately because documents did not reflect the extent and location of underground utilities accurately.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Disagree partially	Project timelines for projects with extensive underground utilities are often difficult to estimate because no matter how extensive the pre-construction investigation, there will always be unknowns. Contractors experienced in such work know that they must often deal with the unexpected. The project timeline prepared during pre-construction was a product of City staff, Contractor, and an independent consulting team based on the best information available. As construction started, the project team realized that some third party utilities, such as PG&E, provided inaccurate or incomplete information on their existing utilities. The contract contained an action plan to instruct the contractor for dealing with unknown utilities, as well as contingency for differing site conditions. However, the Contractor did not take the lead in field investigation and coordination with third party utilities, although they were contractually obligated to do so as a CM/GC. The Contractor failed to perform the required potholing in a timely fashion per contract, at times attempting to dig potholes within hours of trenching to install utilities. Contractor's inability to properly anticipate/manage/mitigate utility issues during construction was the primary contributor to added contract costs and duration. Contractor's initial construction sequencing plan was also unrealistic. All these issues contributed to an inaccurate project timeline projection.

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Van Ness Avenue : What Lies Beneath [June 28, 2021]	F6	Practical work during preconstruction that could have derisked the subsequent construction phase of the project was insufficient.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Disagree partially	The majority of the utility conflicts that resulted in additional contract time were at intersections. Potholing within intersections typically requires the intersection to be closed in order to provide a safe barrier for the workers from traffic. Given that Van Ness Avenue is a State highway, this would have been extremely difficult to occur. Typically, this level of potholing is reserved for the construction phase when traffic can be effectively closed/diverted. Ground-penetrating radar (GPR) during the design phase had several issues with accuracy and reliability of the data. Recent improvements in GPR provide for a more reliable tool for future projects.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F8	The effectiveness of the CMGC contract was greatly reduced because the general contractor was brought into the design process too late.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Disagree partially	While it would have been better to have the contractor on board earlier in the design phase, the Contractor did have a year (during pre-construction) to review the construction documents, provide comments, and familiarize itself with the conditions along the corridor. The CMGC construction contract with the Guaranteed Maximum Price was issued by SFMTA with the Contractor's concerns and input addressed. Since the prime did not involve the subcontractors directly with the City in the preconstruction process the City may not have received the full benefit of the subs' technical expertise and local knowledge. Contractor did not make the best use of its subcontractors.

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Van Ness Avenue : What Lies Beneath [June 28, 2021]	F9	Under specification in technical requirements led to additional costs for work that could have been predicted and included in the original contract.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Disagree partially	In an effort to continually improve our contract documents, we review the project specifications, in particular with multi-agency projects where various sets of specifications are merged. The Van Ness project also had the challenge of coordinating City specifications with Caltrans requirements. Specifically, in the case of the potholing and pedestrian control specifications, the contractor settled claims on these issues for less than 20% of its costs incurred, illustrating that its claim arising from purported ambiguity in the specifications had little merit. Moreover, Contractor had access to the specifications for many months during the pre-Construction period and did not request any clarification/changes at that time. Contractor raised issues with the technical requirements after the construction started.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F11	The removal of Synergy, the underground subcontractor, from the project, partially as a result of poor cost estimates, contributed to the deterioration of the relationship between Walsh, the general contractor, and the City.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Disagree wholly	The City supported the contractor's decision to remove its underground utility contractor, Synergy. The relationship only began to deteriorate when the contractor bid out Synergy's work and received a bid substantially more than Synergy's estimate. Over a year after Synergy was removed, Walsh filed a claim under penalty of perjury for \$11.9M arising from damages it purportedly incurred relating to Synergy's removal. That claim was resolved by the City paying Walsh nothing on this issue. The price difference was not due to poor cost estimating, but to unexpected market conditions.

2020-21 CIVIL GRAND JURY FINDINGS, RECOMMENDATIONS, AND RESPONSES TO FINDINGS AND RECOMMENDATIONS

Report Title [Publication Date]	R# [for F#]	Recommendation	Respondent Assigned by CGJ [Response Due Date]	Recommendation Response (Implementation)	SFPUC Recommendation Response
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R1 [for F1, F2, F4, F6, F9]	By June 2022, the City should adopt a policy that all capital project feasibility plans include an itemized assessment of risks to project timelines and costs, which must be accompanied with specific procedures that will be undertaken to mitigate those risks early in the project.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Has been implemented	This has been implemented for all SFPUC major capital projects and projects of particular technical complexity.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R2 [for F1, F2, F3, F4, F6, F9]	By June 2022, the City should adopt a policy that all capital project sponsors publish, before proceeding to the construction phase, an itemized assessment of derisking activities actually performed.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Requires further analysis	Speaking for the Agency and not the City as a whole, the SFPUC believes that additional analysis is required on this recommendation to determine how to best assess and disclose of derisking activities.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R3 [for F1, F2, F3, F4, F6, F9]	By June 2022, the Board of Supervisors and SFPUC should review and update policies and regulations to ensure that detailed as-built documentation of both private and public utilities is filed after all underground projects (whether undertaken by SFPUC, another City agency, or a private enterprise), with sufficient resolution and precision to allow accurate design of any future work.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Requires further analysis	Speaking for the Agency, and not the Board of Supervisors, the SFPUC's standard project procedure requires the maintenance of detailed as-built digital documentations on our recent capital projects. However, further analysis is required regarding the implementation of this recommendation for digital as-builts across all underground projects for public and private utilities, such as considering a digital repository.

2020-21 CIVIL GRAND JURY FINDINGS, RECOMMENDATIONS, AND RESPONSES TO FINDINGS AND RECOMMENDATIONS

Report Title [Publication Date]	R# [for F#]	Recommendation	Respondent Assigned by CGJ [Response Due Date]	Recommendation Response (Implementation)	SFPUC Recommendation Response
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R4 [for F1, F4, F6, F7]	The Board of Supervisors should direct all City departments to adopt a policy that all projects that involve underground work in the City’s main corridors include, as part of the design process, the use of exploratory potholing, or another equivalent industry best-practice to identify unknown underground obstructions adhering to CI/ASCE 38-02 (“Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data”) Quality Level A. This policy should take effect for all contracts signed after January 1, 2022, and the work	San Francisco Public Utilities Commission and GM [August 27, 2021]	Has been implemented	Speaking for the Agency, and not the Board of Supervisors, the SFPUC utilizes best practices on capital projects regarding the use of exploratory potholing. Utility best practices dictate that small capital projects on small streets do not require potholing.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R5 [for F8, F10, F11, F12, F13]	By June 2022, and before entering into future CMGC relationships, the Board of Supervisors should direct all City departments to adopt, publish, and enforce in all future contracts industry-standard best practices for management of CMGC projects.	San Francisco Public Utilities Commission and GM [August 27, 2021]	Has been implemented	The SFPUC is actively implementing best practices on CM/GC contracts.