File No. 210702 **Committee Item No.** 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight **Date:** Oct. 7, 2021
Board of Supervisors Meeting: **Date:** _____

Cmte Board

☐	☐	**Motion**
☐	☐	**Resolution**
☐	☐	**Ordinance**
☐	☐	**Legislative Digest**
☐	☐	**Budget and Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☐	☐	**Introduction Form**
☐	☐	**Department/Agency Cover Letter and/or Report**
☐	☐	**MOU**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☐	☐	**Contract/Agreement**
☐	☐	**Form 126 – Ethics Commission**
☐	☐	**Award Letter**
☐	☐	**Application**
☒	☐	**Public Correspondence**

OTHER

☒	☐	Civil Grand Jury Presentation – September 30, 2021
☒	☐	SFMTA Presentation – September 30, 2021
☒	☐	2020-2021 Civil Grand Jury Report
☒	☐	2020-2021 Civil Grand Jury Press Release
☒	☐	SFPUC Response – August 27, 2021
☒	☐	Public Works Response – August 27, 2021
☒	☐	Mayor's Consolidated Response – August 27, 2021
☒	☐	SFMTA Board Response – August 27, 2021

Prepared by: John Carroll **Date:** Oct. 1, 2021
Prepared by: John Carroll **Date:** _____
Prepared by: John Carroll **Date:** _____

Van Ness Avenue: What Lies Beneath

JUNE 2021

City and County of San Francisco

Civil Grand Jury | 2020–2021

About the Civil Grand Jury

The Civil Grand Jury is a government oversight panel of volunteers who serve for one year. It makes findings and recommendations resulting from its investigations.

Reports of the Civil Grand Jury do not identify individuals by name. Disclosure of information about individuals interviewed by the jury is prohibited.

California Penal Code, section 929.

2020–2021 Jurors

Ellie Schafer, *Foreperson*
Allen Cohn, *Foreperson Pro Tem*
Stephanie Jacques, *Recording Secretary*
Donna Hurowitz, *Corresponding Secretary*

Ron Boring
Geoffrey Brown
Mike Fitzgerald
JR Formanek
Nina Huebsch
Evelyn Hunt
Simone Manganelli
James Matthews
Dr. Janet Mohle-Boetani
Kenneth Moses
Judi Sanderlin
Adam J. Thaler
Nicholas Weininger
Bebo White
Thomas Yankowski

To learn more about the Civil Grand Jury, visit: https://civilgrandjury.sfgov.org/

Table of Contents

Executive Summary

The Van Ness Corridor Transit Improvement Project (Van Ness Project) and the delays it has incurred illustrate organizational shortcomings the City and County of San Francisco (the City) faces in delivering major public works projects. In particular:

1. Planning and design processes failed to capture the scope of the project adequately.
2. Contracting processes failed to instill accountability.
3. Ongoing project management failed to remediate problems efficiently and effectively.

These shortcomings created opportunities for mistakes years before breaking ground and throughout the construction process, and many of them were foreseeable and avoidable. The City should take action to address these shortcomings to prevent similar failures in future projects.

Background

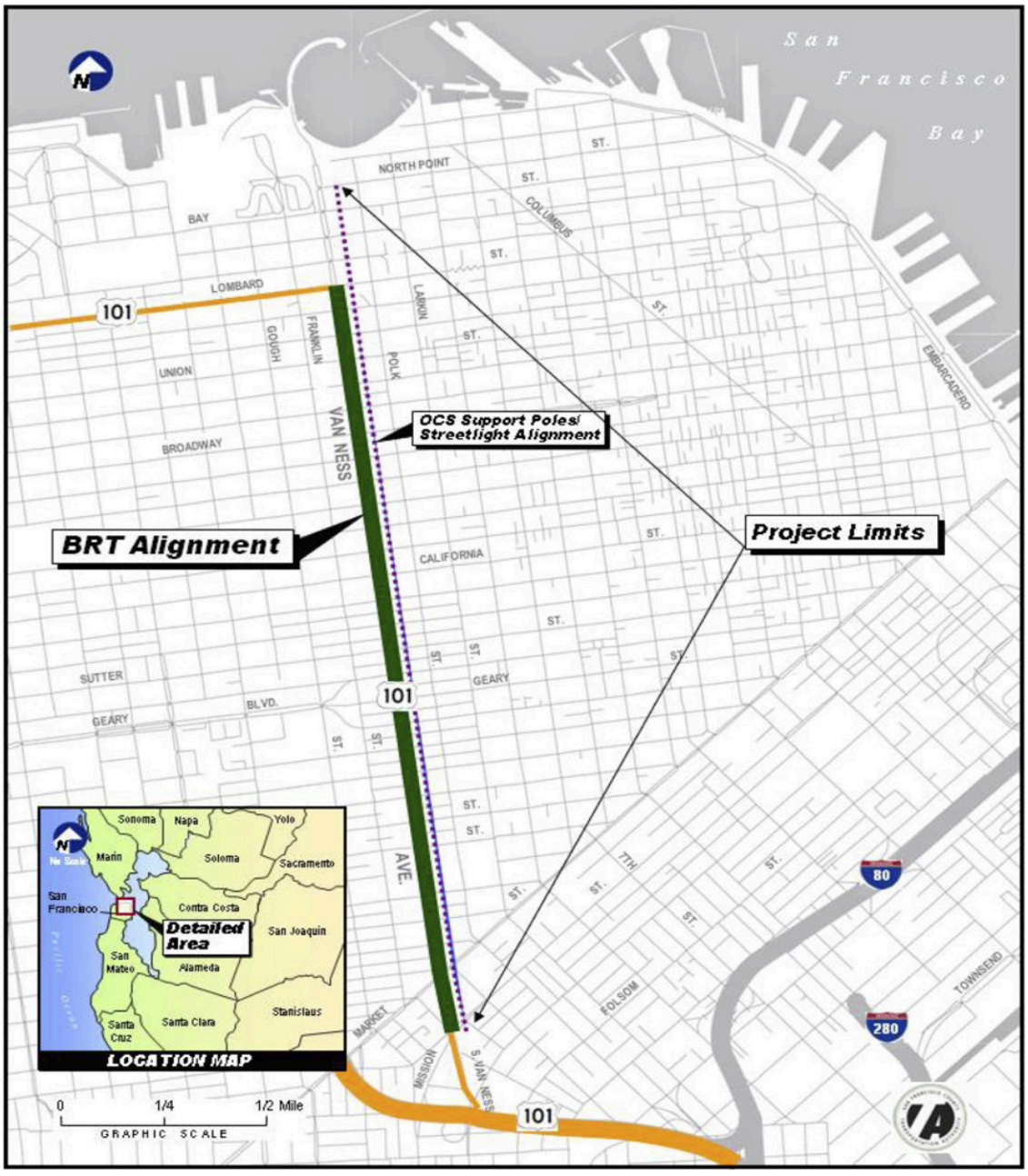
The Van Ness Avenue corridor serves as both a vital connector of San Francisco neighborhoods and a regional link for travel between Marin, San Francisco, and San Mateo Counties. Van Ness Avenue is one of the busiest north-south corridors in the City, spanning two miles from Lombard Street to Mission Street. In 2003, 75% of San Francisco voters approved Proposition K, a sales tax to provide rapid transit service on Van Ness Avenue.[1]

In September 2013, the Board of Supervisors, acting as the San Francisco County Transportation Authority Commission, unanimously approved the Van Ness Bus Rapid Transit Project (BRT), the core of the Van Ness Project. The overall cost to revive this aging corridor is approximately $346 million.

[1] Department of Elections, "November 4, 2003 Consolidated Municipal Election," *City and County of San Francisco*, https://sfelections.sfgov.org/results-summary-nov-2003

Figure 1 below illustrates the location of the project:

Figure 1. Location of Van Ness BRT



The stated goals of the project were to:

- Improve the level of service for existing transit passengers
- Establish an efficient north-south link in San Francisco's transit network
- Create an identity of the Van Ness corridor through landscaping and urban design that integrates transit infrastructure with adjacent land uses
- Develop standards for implementing Bus Rapid Transit Services citywide[2]

[2] San Francisco County Transportation Authority, *Van Ness BRT Feasibility Study*, Section 1.1. PDF file. https://www.sfcta.org/sites/default/files/2019-02/Van%20Ness%20BRTFeasibilityStudy_Dec_2006.pdf

Bus Rapid Transit is designed to have better capacity and reliability than a conventional bus system. The system includes roadways that are dedicated to buses and gives priority to buses at intersections where they interact with other traffic. Design features of the system are intended to reduce delays caused by passengers boarding or leaving buses or paying fares. It combines the capacity and speed of a rail transit system with the flexibility, lower cost, and simplicity of a bus system.

Upon breaking ground in 2016, the project was expected to be completed by the end of 2019. This timeline included a complete replacement and movement of underground utilities, but shortly after breaking ground, many issues with this replacement were discovered. As of the release date of this report, the expected completion date has been extended into 2022.

The Civil Grand Jury's interest in examining the Van Ness Project stemmed from the continued delay. This is not the first major transportation project in San Francisco to experience such a significant delay, and the Jury's investigation sought to identify any underlying deficiencies in the process that could be remedied for future projects.

Methodology

The Civil Grand Jury (the Jury) traced the history of the Van Ness Project from inception to current status, including a review of various plans, studies, environmental impact reports, and funding sources. The Jury held a series of interviews with City officials and employees from various departments. Non-City employees involved in the project in various capacities were invited to respond to inquiries as well.

The Jury also reviewed numerous public documents related to the project, including board meeting minutes, the City's Capital Plan, contracts and contract modifications, and various directives and memoranda of understanding. This included an examination of more detailed project documents provided by interviewees, such as utility drawings, maps, timelines, and specifications. Further guidance from various state, federal, and private sources of information, such as earlier Civil Grand Jury reports, as well as industry standards for construction, contracting, and underground work, and safety protocols for infrastructure projects were also reviewed.

All of these sources of information were used to validate and verify statements made during interviews to provide a detailed view of the history and timeline of the project. Facts that the Jury could corroborate from multiple sources were then used to determine the findings and recommendations included in this report.

For purposes of reviewing project costs, the Jury considered both the initial construction contract, originally valued at $193 million, and the full project budget, originally estimated at $309 million, which includes internal costs, allocation from budget contingencies, and other items. The full project budget is presented in Appendix A.

Discussion

The Van Ness Project is a case study in how mistakes can compound through the course of a major project. For purposes of this investigation, the Jury reviewed the history of the project in three phases:

1. Project planning and design, between 2004 and 2014
2. Contracting and preconstruction, between 2014 and 2016
3. Construction, since 2016

The City missed multiple opportunities throughout the first two phases to identify and minimize the risks inherent in a project of this complexity and magnitude. These misses resulted in significant delays during the third phase.

Missed opportunities include the following:

- Project design—the impacts of key design decisions were not explored adequately
- Contracting—the contracting process did not value technical expertise sufficiently
- Preconstruction—the preconstruction deliverables were not established and evaluated appropriately

These missed opportunities impacted the construction phase adversely, to the point that the City was unable to manage the project effectively after ground was broken.

As a result of these missteps, the total cost of the project has increased from $309 million (including $28 million of contingency budgets) to a current estimate of $346 million, an increase of 12% overall and 23% exclusive of contingencies. This cost increase includes both construction costs (additions to the primary contract) and ongoing costs incurred directly by the City as a result of the extended project timelines (e.g., dedicated personnel costs). The duration of construction has also increased from three years to nearly six years.

Project Planning and Design

San Francisco Municipal Transportation Agency (SFMTA) has told the public repeatedly that aged underground utilities caused the project delays. While this is technically true, it fails to acknowledge that adequate assessment of the utilities during the planning and design phase of the project would have resulted in a more accurate project timeline and would have avoided setting unrealistic completion dates. Despite extensive study and analysis on the project as a whole, design choices for the Van Ness BRT were made without adequate knowledge of Van Ness Avenue's subsurface infrastructure.

Initial Feasibility and Project Design

The Van Ness Project was part of the 1995 Four Corridor Plan[3] created by the San Francisco County Transportation Authority Commission, and Proposition K's specified expenditure plan included Bus Rapid Transit on Van Ness Avenue.[4] After passage of Proposition K in 2003, the SFMTA began formal planning for the project.

While multiple City agencies participated in the Van Ness Project, SFMTA became the formal project owner. SFMTA completed their feasibility study in 2006 followed by a draft Environmental Impact Report (EIR)[5] in 2011. This draft report identified three possible designs:[6]

1. Side-lane BRT with street parking
2. Center-lane BRT with right-side boarding and dual medians
3. Center-lane BRT with left-side boarding and a single median

Design options were circulated for public review and comment over a seven-week period in 2011. As part of the approval process for the Environmental Impact Report, the National Environmental Policy Act requires selection of a Locally Preferred Alternative, and the center lane right-side boarding design was selected. As a result of the public review and comment period, the chosen design was modified slightly from one of the draft design options.

Once the design selection was made, it was incorporated into the final Environmental Impact Report which was approved in 2013. This design choice would have significant implications for the project.

Impact of Center-Lane BRT Design

Construction was scheduled to begin in October 2016 with substantial completion by October 2019, but the choice of the center-lane BRT rendered the original project timeline infeasible before construction even began. Water and sewer lines were located in the center of Van Ness Avenue, and if they were left in place below the BRT lanes, future maintenance on these lines could not be performed without significant disruption to BRT service.

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3 San Francisco County Transportation Authority, *The Four Corridor Plan*, PDF file. https://ia800400.us.archive.org/21/items/fourcorridorplan95sanf/fourcorridorplan95sanf.pdf

4 City and County of San Francisco, *Legal Text of Proposition K*, PDF file. http://www.amlegal.com/pdffiles/sanfran/2003-11-04-PropK.pdf

5 Environmental impact assessments ensure that considerations of possible environmental impacts of a proposed project are considered and mitigated. The report is a technical tool that identifies, predicts, and analyzes impact on the physical environment as well as social, cultural, and health impacts.

6 Both the National Environmental Policy Act and the California Environmental Quality Act require consideration of a range of reasonable alternatives, including a no-build alternative.

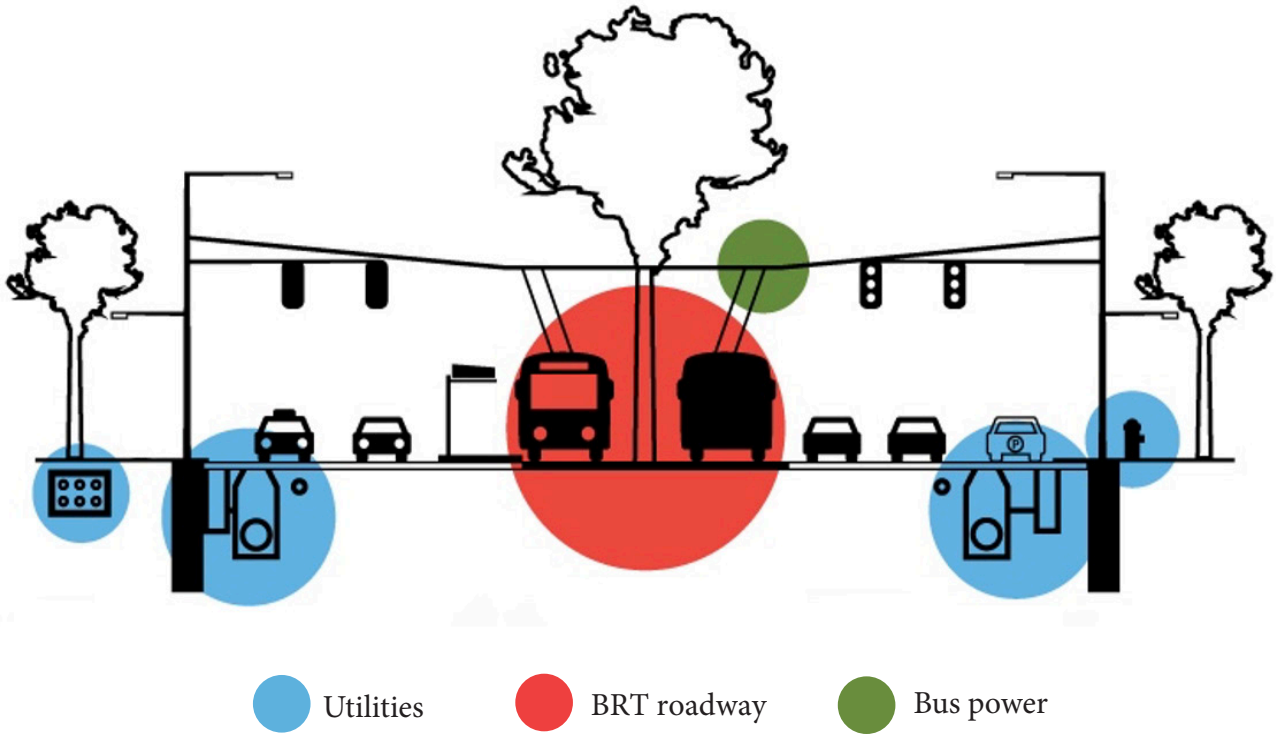
Future maintenance would be complicated because:

1. In order to perform repairs and maintenance on the water and sewer lines, technicians would have to dig through the newly-constructed BRT lanes, and this would take the BRT out of service.

2. The overhead contact system[7] would need to be deenergized or removed temporarily due to Occupational Safety and Health Administration (OSHA) requirements for a 20-foot overhead clearance when working near a power line.[8]

The overhead contact system is illustrated in Figure 2 below. The Van Ness BRT buses will run on electrical power, and the lines supplying the power to the buses are located directly above the BRT lanes. With the side-lane BRT design, the electrical lines would also be on the side, and work on the original water and sewer lines under the center median could be performed without affecting the overhead lines.

Figure 2. Overhead Contact System in a Center-Lane BRT Design[9]



These two complications thrust the Water, Power, and Sewer divisions of the San Francisco Public Utilities Commission (SFPUC) into a larger role in the overall project. SFPUC's work plan at the time included maintenance of the water system, but there was no near-term plan for maintenance or replacement of the sewer lines.

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7 The overhead lines and wires used to transmit electrical energy to buses.

8 Occupational Safety and Health Administration, *Laws and Regulations, Standard 1926.1408*, https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1408

9 San Francisco Municipal Transportation Agency, *Construction Phases*, https://www.sfmta.com/projects/van-ness-improvement-project

Had the side-lane BRT design been selected, there would not have been an immediate need to move both the water and sewer lines. SFMTA determined, however, that the long-term goals of the Van Ness Project would be better achieved through the center-lane design, despite the need to move the existing water and sewer lines. Long-term benefits of the center-lane design include elimination of conflicts with right-turning vehicles and bicycles, exclusive signaling for transit vehicles, and improvement of pedestrian crossings through breaking up the wide street. Additionally, improved access to underground utilities located under the side lanes will make SFPUC repairs and maintenance less disruptive to traffic in the future. So while the side-lane BRT would have prevented the subsequent issues with the underground infrastructure, SFMTA determined that it would have reduced the benefits of the BRT considerably.

Ultimately, SFMTA's selection of the center-lane design required relocation of the water and sewer infrastructure, and this complication was not addressed adequately during the planning process. While the 2006 feasibility study mentioned the center location of the sewer lines,[10] it did not acknowledge that the sewer lines would need to be moved to allow for future repairs and maintenance.

Another oversight in the planning and design process was that the status of the underground infrastructure was largely unknown. The critical resource for underground work is a utility map which shows the location and identification of pipes, lines, and cables buried below the ground. Determining the accuracy of the utility map is a key component in planning a large-scale construction project like Van Ness. There are multiple ways to identify what is underground, such as potholing, ground-penetrating radar, and simply walking along the street and noting critical indicators, such as manhole covers. This assessment did not occur during the planning phase of the project, and much of it was not even done until after construction actually started.

Methods for Derisking the Underground Work

Derisking is the process of making a project more predictable by reducing the possibility that something can go wrong. In a construction project of this complexity and magnitude, derisking should begin as early in the process as possible. In regard to the underground work in particular, there are three methods of derisking that could have been performed during planning and design. These include:

1. Potholing
2. Ground-penetrating radar
3. Surface inspection

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[10] San Francisco County Transportation Authority, *Van Ness BRT Feasibility Study*, Section 2.4.1. PDF file. https://www.sfcta.org/sites/default/files/2019-02/Van%20Ness%20BRTFeasibilityStudy_Dec_2006.pdf

Potholing is the practice of digging a series of test holes to expose underground utilities in order to ascertain their horizontal and vertical locations. This practice is generally viewed as an essential phase of underground construction and is a critical step in assessing the accuracy of utility maps. It is most useful when performed during the planning and design phases of a construction project. SFPUC requested exploratory potholing well in advance of construction, a standard practice on their own projects, but it did not occur during the planning phase for the Van Ness Project.

Ground-penetrating radar is a less-invasive means of assessing the accuracy of utility maps. This method uses radar pulses to image the subsurface and is particularly useful in identifying underground utilities. While ground-penetrating radar was done eventually, it was well after construction started and only after it became evident that the utility maps were inaccurate.

Surface inspection is a third method for determining accuracy of the utility map. This includes walking up and down the road and comparing the utility indicators, such as manhole covers or removable plates, to the map. For example, a significant finding during construction was a large Pacific Gas & Electric (PG&E) vault located between Vallejo Street and Pacific Avenue. This vault was not identified on the City's utility map. However, this could have been identified as an inaccuracy on the map by walking along the street, seeing a manhole cover, and noting that it was not on the map.

Extensive assessment of the utility map during the planning process, using any method, would have yielded a more accurate project plan.

Contracting and Preconstruction

In recent years, the Construction Manager/General Contractor (CMGC) model has gained traction as an approach to manage increasingly complex public-sector construction projects. Multiple modes of transportation have entered roadways, cities have become more densely populated, infrastructure has aged, and regulations have become more stringent. The CMGC engagement model is intended to drive innovation, improve design quality, control costs, and optimize construction schedules by introducing expert input at all stages of the project while also providing continuity in the form of a single contractor relationship.

The CMGC process includes two phases:

1. Design and preconstruction
2. Construction

During the design and preconstruction phase, the contractor partners with the project owner to identify risks, refine the project design and schedule, and provide cost projections. Once the design and preconstruction phase is complete, the contractor and project owner negotiate a price for the construction contract, and the construction phase begins, with the same contractor typically serving as the contractor during the construction period.

The City began using the CMGC model in 2007, specifically with building projects undertaken by San Francisco Public Works, including the Academy of Sciences and the rebuild of San Francisco General Hospital. In fact, the 2014–15 Civil Grand Jury praised the City's use of the CMGC model to deliver major construction projects on time and within projected budgets.[11] Before the Van Ness Project, however, a CMGC contract had not been used on a transportation infrastructure project or on any project that involved multiple City agencies.

SFMTA chose the CMGC model for the Van Ness Project even though they had not used it before, and their inexperience with this type of contract led to the potential benefits (stemming from the close relationship between the City and contractor) being minimized, and the potential sticking points (stemming from a reliance on flexibility and good faith as opposed to exacting specifications) being exacerbated.

In particular, industry best practices recommend engaging with the contractor as early as possible in the design process, and preferably when the design is no more than 30% complete. In the case of the Van Ness Project, City engineers continued design work while the bidding process for the CMGC contractor was taking place, and the design was closer to 70% complete by the time the preconstruction contract was awarded. As a result, the selected contractor had much less input into the project design than the CMGC approach intended, thereby minimizing the advantages of this contract model.

Bidding and Contract Selection

A CMGC contract for design and preconstruction is awarded typically on either a qualifications-based selection process or a best-value selection process. The industry standard is the qualifications-based process, where construction cost is not a criterion for contract selection.[12] For the Van Ness Project, however, SFMTA used the best-value selection process. The selection rubric provided a total of 180 possible points, where 120 were allocated to technical qualifications and 60 were allocated to price.[13] This allocation was, in fact, enough to result in the selection of the bid that was not the most technically qualified.

SFMTA received preconstruction bids from two teams of contractors. Each team included the general contractor as well as subcontractors that would be responsible for the largest components of the project. Most notably, these teams included the subcontractors slated to perform the underground utility work. Walsh Construction (Walsh), the eventual winner of the preconstruction bid, included Synergy Project Management (Synergy) as their subcontractor for the underground work.

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11 City and County of San Francisco Civil Grand Jury, *San Francisco's City Construction Program: It Needs Work*. PDF file. https://civilgrandjury.sfgov.org/2014_2015/14-15_CGJ_Report_SF_Construction_Program_It_Needs_Work_7_16_15.pdf

12 Associated General Contractors of America and the National Association of State Facilities Administrators, *CM/GC Guidelines for Public Owners*. PDF file. https://www.agc.org/sites/default/files/Files/Programs%20%26%20Industry%20Relations/CM_GC_Guidelines.pdf

13 The cost bid included the contractor's price for the preconstruction period as well as their fixed fee for the construction period.

Walsh scored lower in technical qualifications but submitted the lower bid in terms of cost ($10.4 million in fixed fees versus $18.5 million). This $8.1 million difference in the preconstruction cost bid was just enough to result in Walsh earning the overall higher score on SFMTA's rubric. Walsh was therefore awarded the preconstruction contract and ultimately the entire construction contract, valued initially at $193 million. A summary of the scoring is presented in Figure 3 below, and the full scoring is presented in Appendix B.

Figure 3. Preconstruction Bid Scoring

SFMTA's use of the best-value selection process resulted in selecting a contractor who was, in SFMTA's own evaluation, less technically qualified, based on a bid that comprised less than 5% of the construction contract value and around 3% of the total project cost. Ironically, even this "best-value" point allocation was only allowed through a special legislative allowance approved by the Board of Supervisors.[14] Outside of the Van Ness Project, the City's Administrative Code at the time required cost to be weighted at 65% or greater of the total scoring.[15] While this has since been amended to allow cost considerations to be weighted as low as 40%, this requirement is still not in line with industry best practice.

[14] City and County of San Francisco, *Ordinance 255-14*, https://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0255-14.pdf

[15] City and County of San Francisco, *Administrative Code Section 6.68*, https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-2999#JD_6.68

Preconstruction Processes and Deliverables

The expected outcome of the preconstruction phase was a defined set of deliverables consisting of various design and timeline-projection artifacts as well as cost estimates for the actual construction work. These deliverables did not, however, include significant on-the-ground derisking or validation as is expected in the industry.[16] Given the inherent risk associated with the underground work, based primarily on the complexity of the Van Ness corridor and the age of the utilities, failure to include an accurate assessment of the underground infrastructure during the preconstruction phase was another missed opportunity for the City.

The possibility of undisclosed utilities was recognized during preconstruction via a risk register, a tool used to identify potential risks, rank them, and determine mitigation strategies. But undisclosed utilities were identified as only a moderate risk despite the relative age and complexity of the Van Ness corridor. The City's only accompanying mitigation strategy was the allocation of additional contingency dollars.[17] This was the last chance to introduce potholing or an equivalent method that could have uncovered the reality of the underground utility situation, but the cited mitigation strategy did not include any actual derisking work.

In fact, discrepancies of all magnitudes existed between the utility maps and the actual underground infrastructure, and these were not discovered until construction began.

Walsh did complete the deliverables as they were defined. This included production of the construction artifacts, a construction plan, and successful community outreach and permit management. In particular, their work in dealing with the complexities of CalTrans policies was extremely noteworthy.[18] These are all valuable outputs of the CMGC model. Unfortunately, these deliverables were insufficient to prepare for the work that was ahead. A summary of all preconstruction deliverables is provided in Appendix C.

Walsh's performance during the preconstruction phase was deemed sufficiently satisfactory to proceed with the full construction contract. While the City could have put the construction work out for a separate bid, it chose not to, as is customary with the CMGC model. After negotiations, the City approved a modification to the preconstruction contract adding $193 million to its value and formally naming Walsh as the general contractor.[19]

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16 American Society of Civil Engineers, *Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data*. PDF file. http://www.dot.ga.gov/PartnerSmart/utilities/Documents/ASCE%2038-02.pdf

17 On a scale of zero to five, with zero being no risk and five being the highest risk, undisclosed utilities were assigned the following: probability of occurring = 3, impact to cost = 2, and impact to schedule = 2.

18 A portion of Van Ness Avenue is part of US Route 101, and thus under the jurisdiction of CalTrans which must approve all work conducted on that section of the corridor.

19 San Francisco Municipal Transportation Agency, *Resolution No. 180821-115*. PDF file. https://www.sfmta.com/sites/default/files/agendaitems/2016/8-16-16%20Item%2011%20Contract%20Amendment%20-%20Van%20Ness%20Project.pdf

Construction Contract

An additional complication arose from the way that costs were shared between City departments, and this resulted in a significant delay to the project. Although SFPUC is the owner of the underground utilities, it was not involved sufficiently in the decisions made during the contracting phases of the project. SFMTA, as the project owner, entered into the construction contract on behalf of itself and SFPUC.

After the contract was signed, SFMTA entered into a cost-sharing arrangement with SFPUC. Under the terms of the arrangement, SFPUC became responsible for an estimated $54 million of the project costs related to streetlight, water, and sewer replacement.[20] Because of this arrangement, SFPUC assumed a more prominent interest in directing how these funds would be spent.

As noted previously, Walsh's chosen subcontractor for the underground work was Synergy, and this became a point of contention. SFPUC engineers had estimated the cost of the underground work at $16 million. Synergy's bid, however, was for $20 million, and the City was unable to settle on a mutually acceptable price between SFPUC and Walsh for its chosen subcontractor. Walsh decided to remove Synergy from the project and rebid the work rather than agree to perform this work for $16 million. With construction ready to proceed, Walsh was now without a subcontractor to perform this core work causing an immediate delay in the project.

Unfortunately, this decision backfired. When the work was rebid, only one subcontractor submitted a bid for the entirety of the underground work, and this bid was much higher than Synergy's $20 million bid. Left without any other choice, Walsh awarded the work to Ranger at a cost of $30 million.[21] This $10 million increase decimated Walsh's expected profit on the contract and set the stage for a series of disputes between Walsh and the City that took years of disagreement, haggling, mediation, and legal action to resolve.

The delay in the start of construction while Walsh searched for a new subcontractor was significant. Originally, the construction work on underground utilities was projected to begin in February 2017, but it actually started in October 2017 due to this complication. Even more devastating was the damage to the relationship between Walsh and the City, which ran counter to the partnership the CMGC model intended to create.

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20 City and County of San Francisco Public Utilities Commission, *Resolution 17-0234*. PDF file. https://sfpuc.sharefile.com/share/view/s0a2c9058d6941e7a

21 Synergy became ineligible to rebid due to its inability to obtain sufficient bonding. Walsh covered the bonding in the initial bid but not in the rebid.

Construction

The result of the missteps in the planning, design, contracting, and preconstruction phases became evident once construction began. Inadequate management of the project during the construction phase further exacerbated these mounting issues, and avoidable problems continued to plague the project. The issues became more and more difficult to resolve as a result of the deteriorating relationship between Walsh and the City.

Construction Delays at the Outset

As discussed previously, the City failed to assess the underground infrastructure sufficiently, so that as soon as Walsh broke ground, it became evident that some of the utility maps were inaccurate. Once Walsh realized they could not rely on the utility maps, they approached the City with a contract modification to perform potholing.

This became another significant point of contention, with the City arguing that potholing was required per the contract and Walsh arguing that the needed potholing was much more substantial than what was specified in the contract. The disagreement ultimately came down to the technical specifications in the contract which used the terms "exploratory" and "incidental" interchangeably.

This was resolved eventually through professional mediation and a contract modification, and the time taken to resolve this dispute delayed the project further.

Differing site conditions were found on virtually every block of the project, to the point that almost no work could be performed until the potholing disagreement was resolved. Walsh proceeded with digging on each block in hopes of finding a zone where construction could proceed. As a result, multiple blocks were torn up and the flow of traffic disrupted, but no tangible progress was being made. This did not go unnoticed by the public, most notably residents and businesses along the corridor.

As a stop-gap measure while mediation and negotiations were taking place, Walsh used ground-penetrating radar to assist in identifying the location of the underground utilities. While helpful, this was not an adequate substitute for advance potholing because the ground-penetrating radar was not sophisticated enough to distinguish between utility lines and densely-packed soil.

Project Management

It is possible that the impact of the failures to foresee problems could have been mitigated with effective and flexible project management once the problems actually arose. Unfortunately, this did not happen. As a result of the now-contentious relationship between Walsh and the City and a lack of in-the-field City presence during early phases of construction, the City had difficulties managing shifting conditions within the parameters of the CMGC contract.

After the subcontractor re-bidding episode and resulting delays, Walsh had seen its profit margin erased almost entirely by the time the project started and, therefore, was unwilling to absorb further risk. When practical issues came up—for instance, when poorly-documented utility lines were discovered—the contractor's incentive was to pause work while it pursued contract modifications to ensure compensation for the unplanned work. In turn, the City generally allowed this to happen by focusing on adjudicating and upholding the letter of the contract rather than prioritizing expeditious or creative workarounds.

Instead of the productive partnership with aligned incentives promised by a CMGC contract model, the City and Walsh had lost trust in each other, and progress on the actual task at hand was the casualty of their distraction. Compounding these problems, Walsh's project management team saw significant turnover in the early phases of the project, with three different project managers at the helm between preconstruction and mid-2019. Between that churn and the City not having a clear point person in the field, there was no opportunity for personal trust to form at the individual level.

As arguments over specific technical complications accumulated, Walsh eventually requested creation of a formal Dispute Resolution Board. Ongoing disagreements were eventually resolved through the dispute resolution process, and only after both Walsh and the City agreed to additional in-the-field support did construction begin proceeding at a reasonable pace.

An additional failure in project management arose over the provision of pedestrian monitors. Similar to the disagreement over potholing, the dispute over pedestrian monitors stemmed from ambiguous language in the contract. The contract failed to make the appropriate distinction between traffic flaggers and pedestrian monitors. One is focused on controlling the flow of vehicles, and the other is focused on the safety of foot traffic. As a result, Walsh was required to provide traffic flaggers per the contract but not pedestrian monitors.

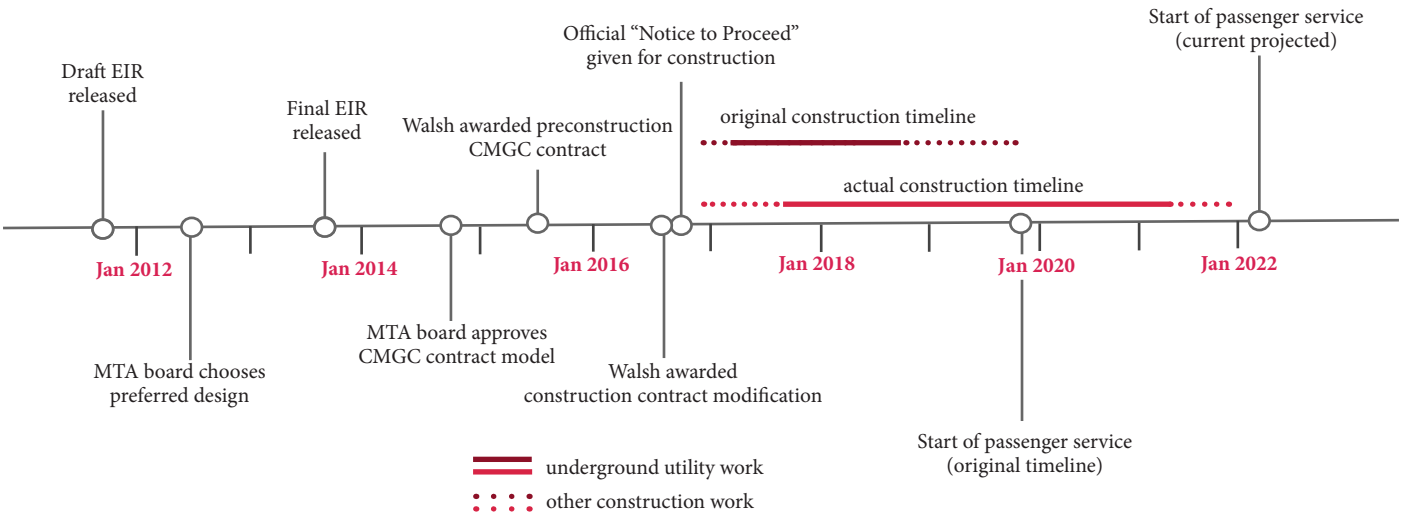
During the negotiation of the construction contract, the City agreed to provide the pedestrian monitors but then failed to do so. When the need for them became apparent for safety reasons, Walsh provided the monitors and then sought a contract modification to be paid for them. This is yet another disagreement that took years to resolve, and while it seems relatively minor in relation to the entire project, it is another example of a disagreement that could not be resolved in a timely manner.

Details of the construction contract and subsequent modifications are presented in Appendix D.

Final Project Timeline

Both the original timeline and the current projected timeline for the Van Ness Project are presented in Figure 4 below, and the full timeline is presented in Appendix E.

Figure 4. Abridged Timeline of the Van Ness Improvement Project



Conclusion

Given the importance and prominent visibility of the corridor, the Van Ness Project has been watched closely by the public from its beginning. The ongoing delay in project completion and the multiple reported completion dates have damaged the public's confidence in SFMTA to keep its promises. It is understandable that a project of this magnitude and complexity would take many years to plan and construct. But the missteps during the planning and preconstruction phases that eventually impacted construction adversely affected users of the roadway as well as residents and businesses along the corridor.

The Jury identified multiple missed opportunities to predict the cost and duration of the project accurately. Mistakes that happened early in the planning and design phases were compounded as the project progressed. While it is true that the unexpected condition of the underground infrastructure is the primary cause of the delay, more work could have been done to anticipate what actually lay beneath the surface, and much of the delay could have been avoided.

Although it is too late to correct these deficiencies on the Van Ness Project, the City should take steps to ensure the same mistakes do not occur in the future. The Jury's findings and recommendations are listed below.

Findings

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.

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.

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 mitigation strategy in the official risk register.

F4. Project timelines could not be estimated accurately because documents did not reflect the extent and location of underground utilities accurately.

F5. The evaluation rubric for preconstruction contract bids weighted cost too heavily, as compared to technical expertise, even after project-specific legislation allowed for a lower weight to be assigned to cost.

F6. Practical work during preconstruction that could have derisked the subsequent construction phase of the project was insufficient.

F7. Review of preconstruction deliverables did not sufficiently measure the contractor's preparedness for construction, which resulted in both inaccurate cost estimates and timelines.

F8. The effectiveness of the CMGC contract was greatly reduced because the general contractor was brought into the design process too late.

F9. Underspecification in technical requirements led to additional costs for work that could have been predicted and included in the original contract.

F10. Contention over underspecified or unclear contract terms and technical requirements led to a deterioration in the relationship between the City and Walsh, the general contractor.

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.

F12. The contentious relationship between Walsh, the general contractor, and the City made it difficult to resolve problems as they arose, despite close collaboration being one of the potential advantages of the CMGC contract.

F13. Lack of an in-the-field point of contact between Walsh and the City during early stages of construction led to delays and increased costs on the project.

F14. Confusion related to the contractual requirements for pedestrian monitoring contributed to the deterioration of the relationship between Walsh, the general contractor, and the City.

Recommendations

R1. 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.

R2. 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.

R3. 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.

R4. 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 should be required to be performed before final construction terms or prices are agreed to.

R5. 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.

R6. The adopted CMGC management policy should specifically include the industry best practice of awarding the contract before project design continues past 30% completion.

R7. By June 2022, the Board of Supervisors should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion in awarding CMGC contracts.

R8. SFMTA should establish a policy for review of technical quality of preconstruction and design deliverables, to be used in all CMGC or design contracts signed after January 2022, including in-the-field validation of key assumptions of site conditions by City engineers.

R9. Beginning January 1, 2022, SFMTA should assign to every CMGC project a dedicated in-the-field contractor liaison to facilitate collaborative problem resolution, and sufficient support staff to monitor actual progress and site conditions.

R10. By June 2022, the City should adopt a policy that any public communication about a planned or in-progress capital project that includes disruption of public services or right-of-way should include itemized assessments of risk to projected costs and duration.

R11. Beginning immediately, and in all future capital or maintenance projects that require pedestrian monitors, the City should ensure that associated costs are either specifically included in the primary construction contract, or explicitly planned for and funded by the City, before construction begins.

Request for Responses

Pursuant to Penal Code sections 933 and 933.05, the Civil Grand Jury requests responses as follows:

From these City agencies within 60 days:

- From the Office of the Mayor:

  Findings 1,2,3,4,5,6,7,8,9,10,11,12,13,14

  Recommendations 1,2,3,4,5,6,7,8,9,10,11

- From the General Manager of San Francisco Public Utilities Commission:

  Findings 1,2,3,4,6,8,9,11

  Recommendations 1,2,3,4,5

- From the San Francisco Public Utilities Commission:

  Findings 1,2,3,4,6,8,9,11

  Recommendations 1,2,3,4,5

- From the San Francisco Municipal Transportation Agency:

  Findings 1,2,3,4,5,6,7,8,9,10,11,12,13,14

  Recommendations 1,2,4,5,6,7,8,9,10,11

- From the Office of the SFMTA Board of Directors:

  Findings 1,2,3,4,5,6,7,8,9,10,11,12,13,14

  Recommendations 1,2,4,5,6,7,8,9,10,11

From the following governing body within 90 days:

- From the Board of Supervisors:

  Findings 1,2,3,4,5,6,7,8,9,10,11,12,13,14

  Recommendations 1,2,3,4,5,6,7,8,9,10,11

Invited Responses

The Civil Grand Jury invites responses from the below City agency as follows:

- From San Francisco Public Works:

  Findings 1,2,3,5,6,8

  Recommendations 1,2,4,5,6,7

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Appendix A

Total Project Budget (At Beginning of Construction)

Description	Amount
Environmental phase	$6,000,000
Civil engineering phase	8,900,000
Design phase	17,800,000
Construction phase:	
Construction contract	193,000,000
Contingency for design errors and omissions	1,200,000
Shared contingency	16,100,000
SFMTA-specific contingencies	10,500,000
Owner-furnished during construction	10,600,000
Owner soft costs during construction:	
SFMTA/SFPW project/construction management	21,100,000
SFMTA/SFPW engineering support	7,100,000
SFMTA operations	400,000
SFMTA outreach	1,000,000
Consultant services	1,500,000
Bus substitution	8,000,000
Startup and testing	2,200,000
Buses	4,000,000
Total project budget[22]	$309,400,000

[22] This was the working budget until the contingency funds were exhausted. As of the release date of this report, the expected total project budget has increased to $345,900,000. This is largely the result of additional owner soft costs incurred from the project delay.

Appendix B

Preconstruction Bid Scoring

Proposer	Written Proposal	Oral Presentation	Price	Total
Available Points	90	30	60	180
Walsh Construction	69.53	17.17	60	146.70
Van Ness Corridor Constructors	82.27	27	33.6	142.87
Per the Request for Proposals, SFMTA assigned a score of 60 to the lowest proposed price. Total points for the other proposer were calculated by dividing the higher price into the lowest price in order to determine a percentage. That percentage was then multiplied by 60 in order to arrive at the points awarded for that higher price.				

Appendix C

Preconstruction Deliverables

Task Order Number	Task	Description
5	Supplemental Archeological Mitigation Plan	Prepare a Supplemental Archeological Mitigation Plan acceptable to the California State Historic Preservation Office.
7	Value Engineering Report	Provide, and submit a written report of value engineering and constructability recommendations based on the 65% Design drawings in Appendix P.1 [of the preconstruction contract] and the 95% final design drawings.
8	Construction Plan	Submit a preliminary and a final Construction Plan to SFMTA. The preliminary plan will be reviewed by all interested parties and used to establish the final plan. In each plan, the CM/GC shall address proposed construction phasing; staging; sequencing of work; duration of work within work zones; field office needs; parking requirements during construction; construction equipment storage and use of public roadways; coordination of work with the public, including utility disruptions; protection of private and public properties; dirt/debris mitigation; storm water drainage management; temporary facilities; construction zone pedestrian and vehicular traffic management, including signage; noise and vibration control; work hours, including number of shifts and weekend work; temporary road closures or detours; emergency vehicle provisions; maintaining access to all properties; public and worker safety protections; construction restrictions during special events; and security and maintenance of construction work zones. The final plan will be used as a basis for establishment of the Guaranteed Maximum Price (GMP) and the management of the construction following Notice to Proceed (NTP)
9	Construction Recycling Plan	Submit a report in compliance with San Francisco's construction recycling ordinance, identifying materials that may be cost-effectively recycled during construction, including an estimate of potential cost increases or decreases from the baseline estimate (Recycling Plan).
11	Contracting Plan (SBE)	Work with SFMTA to finalize a Contracting Plan that maximizes Small Business Enterprise (SBE) opportunities, in accordance with the SBE program identified in Appendix B [of the preconstruction contract]. Prepare for implementation of the SBE Trucking Set-Aside program. Include a proposed management plan to oversee SBE program implementation.
12	Long-Lead Items	Identify any long-lead items immediately after completion of 100% final design so that the milestone schedule can be met.
13	Contracting Plan (Construction)	Work with SFMTA to finalize and submit a Contracting Plan for accomplishment of all construction, including systems work. Recommend packaging of the work to facilitate bidding and award of trade contracts. The Contracting Plan shall at a minimum present the number of packages, a description of the scope of work for each package, the sequence and schedule for procurement, the Engineer's Estimate for each trade work package, and an outreach plan. With respect to work that the CM/GC and Core Subcontractors will be performing, explain how competitive pricing will be accomplished.

Appendix C (continued)

Preconstruction Deliverables

Task Order Number	Task	Description
14	CPM Schedule	Prepare, submit, and maintain for SFMTA approval a detailed, baseline, cost-loaded Critical Path Method (CPM) schedule using Primavera 6 that can be integrated into the SFMTA's Capital Projects Control System. The schedule will be used for schedule management during design and construction, and progress payments during construction.
16	Cost Estimate	Prepare and submit to SFMTA construction cost estimates of the 65% and 95% final design and construction documents. If SFMTA's preliminary construction cost estimate is exceeded, identify feasible cost-reducing options, including projected cost savings offset with any additional design costs, to bring construction costs within SFMTA's budget.
17	Safety Plan	Prepare and submit for SFMTA approval a public and worker safety plan (Safety Plan), in cooperation with and subject to approval by SFMTA's Safety Division, for use during construction.
18	QA/QC Plan	Prepare and submit for SFMTA approval a Project-specific Quality Assurance Process/Quality Control Plan, in compliance with SFMTA's QA/QC program, for use during construction, as explained in the Technical Specifications.
19	HazMat Plan	Prepare and submit for SFMTA approval a plan to handle both anticipated and unanticipated hazardous materials that may be encountered during construction (HazMat Plan).
20	Workforce Development Plan	Work with SFMTA to finalize a Workforce Development Plan in accordance with SFMTA's workforce training and hiring program requirements, including a construction management trainee plan.
21	Stormwater Plan	Prepare and submit a plan to manage stormwater runoff during construction in accordance with the requirements of all applicable federal, state and local governing agencies, including Caltrans and the City's PUC (Stormwater Plan).
22	Safety Certification Plan	Work with SFMTA as requested to prepare a Safety Certification Plan for use during and for closeout of construction.
23	Risk Management Plan	Work with SFMTA to prepare and submit a Risk Management Plan, including risk identification, allocation and mitigation. This first draft of the Plan shall be based on 65% drawings and the final draft shall be based on 95% drawings. Review site conditions, site surveys, and soils reports. Advise the SFMTA as to anticipated site challenges (other than those that would properly be addressed through CM/GC means and methods) and recommended mitigation measures.

Appendix D

Contract and Contract Modifications

Contract Modification Number	Date Approved	Description	Dollar Amount	Additional Time
Original Contract		Preconstruction services	$800,000	
1	August 16, 2016	Construction services	$193,027,555	5 years
2	August 21, 2018	Changes to Overhead Contact System and trolley/light pole foundations	$4,463,161	0
3	July 5, 2018	Creation of Dispute Resolution Board (DRB)	$0	0
4	September 28, 2018	Revision to plan specifications for sewer, water, landscaping, traction power, streetlights, and roadway	$3,376,341	0
5	October 16, 2018	Traffic signal modifications	$2,606,044	0
6	April 13, 2019	Extra field work for various items, specification changes to sewer system, and amendment of DRB process	$4,013,224	0
7	July 16, 2019	Resolution of claims related to delays resulting from water and sewer work	$4,819,650	279 days
8	August 20, 2019	Provision for potholing	$1,709,202	0
9	February 18, 2020	Design changes to sidewalk gradings and catch basins	$633,003	0
10	May 19, 2020	Design changes to sewer, water, traction power, sidewalk, and scheduling services	$2,187,655	0
11	July 24, 2020	Allowance for Safe Work Practices due to COVID-19	$282,000	0
12	December 15, 2020	Provision for pedestrian monitors	$2,589,381	0
		Current contract cost with modifications	**$220,507,216**	

Appendix E

Project Timeline

Date	Description
November 2003	Proposition K is passed at the ballot
December 2006	Feasibility Study on Van Ness BRT completed
October 2011	Draft EIR released
May 2012	MTA Board officially chooses preferred design
September 2013	Final EIR approved
October 2014	MTA Board approves using CMGC contract model
July 2015	Walsh awarded preconstruction CMGC contract
August 2016	Walsh awarded construction contract modification
October 2016	Official "Notice to Proceed" given for construction
December 2016	Construction actually begins
February 2017	Construction to begin on underground utilities (original projection)[23]
October 2017	Construction actually begins on underground utilities
November 2018	Underground utility construction to finish (original projection)
October 2019	Substantial completion of construction (original projection)
Late 2019	Start of passenger service (original projection)
February 2021	Underground utility construction actually finishes
January 2022	Substantial completion of construction (current projection)
Early 2022	Start of passenger service (current projection)

[23] Highlighted cells represent projections made at the time construction began.

CITY AND COUNTY OF SAN FRANCISCO

2020-2021 CIVIL GRAND JURY

FOR IMMEDIATE RELEASE

Contacts: Ellie Schafer, Foreperson, (415) 551-3635
Simone Manganelli, Committee Chairperson, (415) 551-3635

VAN NESS AVENUE: WHAT LIES BENEATH

San Francisco, CA, June 28, 2021 – Today, the 2020-21 San Francisco Civil Grand Jury released its report on the Van Ness Improvement Project. The Jury's interest in investigating the project stemmed from the often-asked question: "Why is the Van Ness project taking so long?"

Conceived in 1995 and approved by voters in a bond measure in 2003, the Van Ness Project will be the first of San Francisco's planned Bus Rapid Transit systems. Spanning nearly two decades to design and build, the promised start date has been pushed back repeatedly. Bus service is now slated to begin in 2022, three years later than promised. The cost of the project has also increased to $346 million, $37 million over budget.

The City says the delays were driven by unexpected findings under the surface of Van Ness, but the Jury found that better planning and investigation of the subsurface infrastructure prior to the start of construction would have lessened the delays and cost overruns. The Jury further found that problems with the construction contract led to numerous lengthy disputes between the City and the general contractor. Those disputes halted numerous blocks of work on Van Ness. Additionally, inadequate management of the project prevented issues from being resolved efficiently, further delaying actual construction progress.

The Jury's report describes the underlying issues in planning, design, construction, and project management, and provides recommendations for avoiding these issues in future transit projects.

The Superior Court selects 19 San Franciscans to serve year-long terms as Civil Grand Jurors. The Jury has the authority to investigate City and County government by reviewing documents and interviewing public officials and private individuals. At the end of its inquiries, the Jury issues reports of its findings and recommendations. Agencies identified in the report must respond to these findings and recommendations within either 60 or 90 days, and the Board of Supervisors conducts a public hearing on each Civil Grand Jury report after those responses are submitted.

Civil Grand Jury reports may be viewed online at http://civilgrandjury.sfgov.org/report.html.

###

Van Ness Avenue: What Lies Beneath

San Francisco Civil Grand Jury, June 2021 Report

Executive Summary

- The Van Ness Project illustrates organizational shortcomings the City faces in delivering major public works projects. In particular:
  - Planning and design processes failed to capture the scope of the project adequately.
  - Contracting processes failed to instill accountability.
  - Ongoing project management failed to remediate problems efficiently and effectively.
- These shortcomings created opportunities for mistakes years before breaking ground and throughout the construction process, and many of them were foreseeable and avoidable.
- Costs: original estimate $281 million, extra $28 million in contingency
- Current estimate for cost: $346 million, 23% over budget
- Original estimate for duration: three years of construction, Oct 2016-2019
- Current timeline: 5½ years, passenger service to start in “Early 2022”

Key Findings

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.

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 mitigation strategy in the official risk register.

F4. Project timelines could not be estimated accurately because documents did not reflect the extent and location of underground utilities accurately.

F5. The evaluation rubric for preconstruction contract bids weighted cost too heavily, as compared to technical expertise, even after project-specific legislation allowed for a lower weight to be assigned to cost.

Key Findings (cont'd)

F6. Practical work during preconstruction that could have derisked the subsequent construction phase of the project was insufficient.

F7. Review of preconstruction deliverables did not sufficiently measure the contractor's preparedness for construction, which resulted in both inaccurate cost estimates and timelines.

F8. The effectiveness of the CMGC contract was greatly reduced because the general contractor was brought into the design process too late.

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.

Key Findings (cont'd)

F12. The contentious relationship between Walsh, the general contractor, and the City made it difficult to resolve problems as they arose, despite close collaboration being one of the potential advantages of the CMGC contract.

F13. Lack of an in-the-field point of contact between Walsh and the City during early stages of construction led to delays and increased costs on the project.

Key Recommendations

R1. 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.

R2. 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.

R4. 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 should be required to be performed before final construction terms or prices are agreed to.

Key Recommendations (cont'd)

R5. 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.

R6. The adopted CMGC management policy should specifically include the industry best practice of awarding the contract before project design continues past 30% completion.

R7. By June 2022, the Board of Supervisors should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion in awarding CMGC contracts.

R8. SFMTA should establish a policy for review of technical quality of preconstruction and design deliverables, to be used in all CMGC or design contracts signed after January 2022, including in-the-field validation of key assumptions of site conditions by City engineers.

Key Recommendations (cont'd)

R9. Beginning January 1, 2022, SFMTA should assign to every CMGC project a dedicated in-the-field contractor liaison to facilitate collaborative problem resolution, and sufficient support staff to monitor actual progress and site conditions.

R10. By June 2022, the City should adopt a policy that any public communication about a planned or in-progress capital project that includes disruption of public services or right-of-way should include itemized assessments of risk to projected costs and duration.

Key Responses from Departments

- Mayor and SFMTA agree with R7, but both say that implementation lies with the Board of Supervisors. (PUC/PW were not required to respond to R7.)
    - R7. By June 2022, the Board of Supervisors should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion in awarding CMGC contracts.
- Many "requires further analysis" or "Has not yet been implemented but will be implemented in the future" responses do not include a timeframe, which is not compliant with California Penal Code Section 933.05
    - Mayor's response to R3, R7, R8, SFPUC's response to R2, R3, SFMTA's response to R7, R8
    - See our Continuity Report from June 2021
- Many responses indicate that the MTA and contractor "share responsibility for delays", but do not acknowledge MTA was the project's owner and ultimate responsibility lies with them
- Mayor and MTA's response to R11 was "has been implemented", but contract modification 12 was executed and $2.5M was paid to Walsh over a dispute.
    - If pedestrian monitors were covered in the existing contract, contract modification 12 would not have been needed

Government and Audit Oversight Committee

September 30, 2021

Project Background

Van Ness Avenue is the backbone of civic life in San Francisco and one of the most important thoroughfares connecting the region. This project will make the street accessible and enjoyable for everyone through:

- The city's first Bus Rapid Transit (BRT) system, which aims to improve travel times by 32% and reliability by up to 50%.
- Improve pedestrian safety to support Vision Zero goals.
- Utility maintenance, including repaving the street and replacing water and sewer systems to ensure reliability.
- Public improvements like more efficient street lighting, new sidewalk lighting and landscaping.

Project Update

Recent milestones:

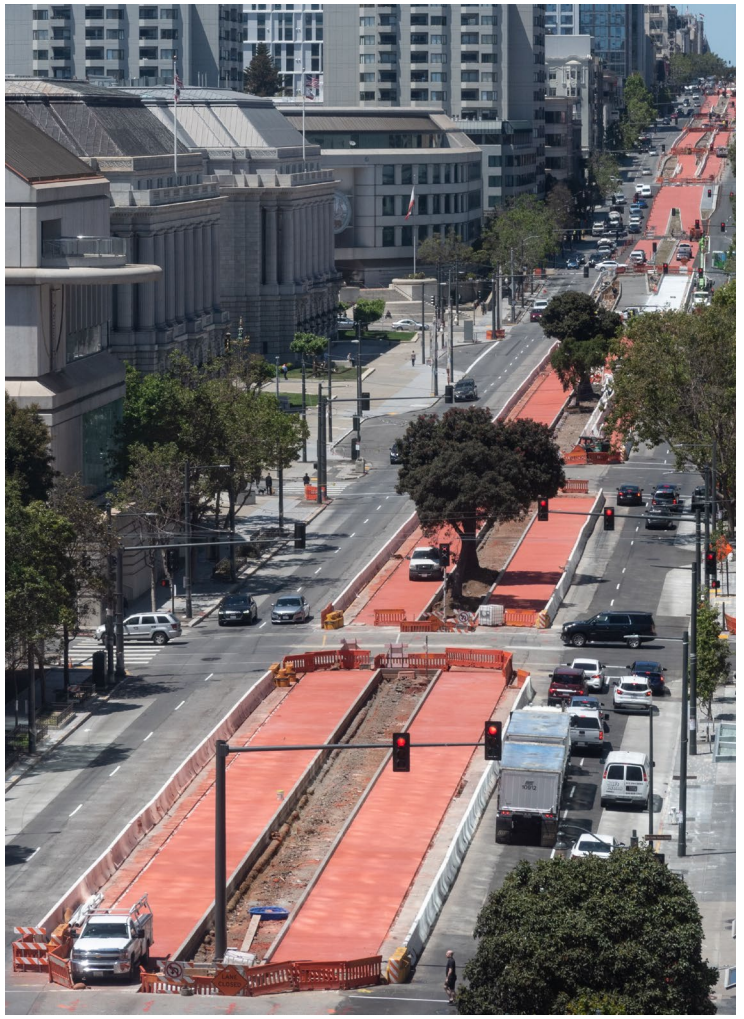
- Utilities phase is complete
- Red transit lanes have been finished
- S. Van Ness & Mission intersection closure successful
- Traffic signals completed (except for one pending)

Current work:

- Bulbouts, sidewalk repair, brick pavers
- Irrigation and tree planting
- Muni overhead lines

Project Forecast

- Construction forecasted to be finished by end of 2021
- BRT testing and beginning of revenue service to begin in first half of 2022
- Planning underway for ribbon-cutting



Actions Taken: SFMTA

As a standard practice, the SFMTA continuously reviews and improves project delivery processes

- New risk management and communication procedures
  - As current practice, every project, regardless of size, has a written risk identification and mitigation process
- More complete potholing
  - Ensuring the contractor performs timely and more detailed underground assessments on all capital projects and improving communications with utilities
- Industry-standard best practices for project management and contracting for Construction Management/General Contracting (CM/GC) model
  - Agency will review and adopt applicable practices
- Additional technical review for CM/GC contracts
  - Agency will implement new processes to ensure technical review

Actions Taken: SFMTA (cont'd)

Improvements to project delivery, both prior to the Civil Grand Jury report and underway during VN BRT, have led to examples of successful project delivery:

- L Taraval Project
- Geary Rapid Project
- 16th Street Transit Priority Project
- Vision Zero Quick Build Program

Actions Taken: SFPUC

- SFPUC utilizes best practices on capital projects regarding the use of exploratory potholing;
- SFPUC performs analysis to determine best delivery method for utility work coupled with larger multi-department projects;
- SFPUC keeping detailed digital as-built documentation for all of our infrastructure projects. Analyzing how to best obtain digital as-built documentation from other entities;
- SFPUC actively implementing industry best practices for CM/GC contracts.

Moving Forward

- SFMTA acknowledges concerns about project delay and increased costs and is working with the contractor to continue to improve construction efficiency.
- We appreciate the hard work done by the CGJ and the opportunity to constantly reflect on our practices and see how we can be more effective. We've made several changes over the past several years and are seeing those changes have significant impacts on other projects.
- We look forward to working with the Board and our sister agencies to further improve citywide project delivery, including working towards improving the contract award process.

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

DATE: September 2, 2021

TO: Members of the Board of Supervisors

FROM: for Angela Calvillo, Clerk of the Board

SUBJECT: 2020-2021 Civil Grand Jury report, entitled "Van Ness Avenue: What Lies Beneath"

We are in receipt of the following required responses to the San Francisco Civil Grand Jury report released June 28, 2021, entitled: "Van Ness Avenue: What Lies Beneath." Pursuant to California Penal Code, Sections 933 and 933.05, named City Departments shall respond to the report within 60 days of receipt, or no later than August 27, 2021.

For each finding, the Department response shall:

1) agree with the finding; or
2) disagree with it, wholly or partially, and explain why.

As to each recommendation, the Department shall report that:

1) the recommendation has been implemented, with a summary explanation; or
2) the recommendation has not been implemented but will be within a set timeframe as provided; or
3) the recommendation requires further analysis. The officer or agency head must define what additional study is needed. The Grand Jury expects a progress report within six months; or
4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation.

The Civil Grand Jury Report identified the following City Departments to submit responses (attached):

- 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;

jec:lw:ams

(Continues on next page)

These department responses are being provided for your information, as received, and may not conform to the parameters stated in California Penal Code, Section 933.05 et seq. The Government Audit and Oversight Committee will consider the subject report, along with the responses, at a hearing in September of 2021.

c:

Sophia Kittler, Office of the Mayor
Andres Power, Office of the Mayor
Sally Ma, Office of the Mayor
Rebecca Peacock, 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
Michael Carlin, Acting 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, 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

San Francisco
Water Power Sewer
Operator of the Hetch Hetchy Regional Water System

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

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,

Sophenia Maxwell

Sophie Maxwell
President
San Francisco Public Utilities Commission

cc: Mayor London Breed

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.

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]	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.

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]	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 relability 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.

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]	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.

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.

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.

SAN FRANCISCO PUBLIC WORKS

Carla Short, Interim Director | Director's Office
carla.short@sfdpw.org | T. 628.271.3078 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

August 23, 2021

Dear Foreperson Schafer and Grand Jurors:

Thank you for inviting San Francisco Public Works to comment on the Civil Grand Jury report, *Van Ness Avenue: What Lies Beneath* (June 28, 2021). Public Works shares your goal of using lessons learned to improve how we deliver capital projects for public benefit. We appreciate this opportunity to share our insight and experience.

The ultimate goals of the Van Ness Corridor Transit Improvement Project are to improve public transit for passengers and implement bus rapid transit services. How best to move people around San Francisco is wholly within the expertise of our colleagues at SFMTA. What Public Works can share is our expertise in working in, under and on San Francisco streets and sidewalks to deliver infrastructure improvement projects.

Public Works has a special role in delivering a wide range of building and infrastructure projects

Public Works is responsible for maintaining streets and sidewalks and, by law, being *the* provider of construction services for almost all City agencies.[1] This gives us a unique responsibility and perspective. Our design, construction and project management professionals pride themselves on consistently delivering a diverse portfolio of major capital projects on time and on budget. Working in every part of the City, as well as on properties outside of San Francisco under City jurisdiction, has allowed our staff to develop expertise and institutional knowledge that consistently deliver quality projects.

Our staff of more than 70 architects have planned, designed and built the SFPD Crime Lab, Moscone Center, Zuckerberg San Francisco General Hospital and Trauma Center, public libraries, SFFD fire houses and museums. They are currently managing 177 projects budgeted at greater than $2.1 billion. The more than 190 engineers on our Infrastructure team have delivered major improvements along such corridors as to Geary Boulevard, Lombard Street, 19th Avenue, Polk Street, Cesar Chavez and Second Street. In 2021 alone, our Infrastructure Division received bids for 28 projects valued at more than $225 million. Our landscape architects are integral to all of the above projects and have helped improve parks, playgrounds and recreation centers, including recent renovations of Margaret Hayward playground, George Christopher playground, Joe DiMaggio playground and Glen Canyon Park.

[1] Under San Francisco Administrative Code Chapter 6, the departments permitted to engage in construction are SFMTA, PUC, SFO, RPD, the Port and Public Works. All other construction is managed by Public Works on behalf of client departments.

Public Works has a track record of successful project delivery

More than 100 years ago, Public Works built a transformational gravity-based system to get water from Hetch Hetchy to San Francisco and has been delivering capital projects ever since. The department's experience and institutional knowledge include professional design, project management, construction management and maintenance. Having these functions centralized in one department allows for efficient and effective project delivery – from concept to final completion.

What Public Works brings are processes of quality control based on foundations of both technical principles, adoption of best practices, and the institutional knowledge of hundreds of engineers, architects and inspectors.

Public Works is among the most audited department in the City, and it helps us deliver better projects

Due to the diversity of our project portfolio and our commitment to continuous improvement, San Francisco Public Works welcomes being among the most audited department in the City. Our projects and practices are regularly audited by the Civil Grand Jury, the Budget and Legislative Analyst and the City Services Auditor of the Office of the Controller, which have conducted more than 30 audits of our practices over the last 10 years.

Major construction projects are inherently risky and complicated, especially when they involve multiple agencies, a busy corridor supporting competing interests and underground work in one of the densest cities in the United States. As policymakers consider revisions to how construction departments do business, we recommend that they proceed with these principles in mind:

- **Policy should be flexible enough to promote innovation and accountability, but not so prescriptive as to slow projects or be inflexible.** Industry practices constantly change in response to the market and the best policies allow quick adaptation.

- **Continue the practice of construction professionals driving revisions to Chapter 6, which governs contracting policies and procedures.** In partnership with the City Attorney and Controller, Chapter 6 is revised regularly, and changes are driven by professional construction experts at all of the departments. In updating our code to account for technological innovation and provide flexibility and accountability, we incorporate lessons from our own experience, industry best practices and changes in state and federal law.

- **Continue to invest in collaborative partnering.** Construction departments and industry associations strive to make San Francisco recognized as an Owner of Choice by the construction industry. We do this by identifying process improvements and empowering project teams to resolve issues in the field at the lowest possible level before issues can fester and balloon. Small investments in partnering for each project result in tangible reductions in cost and schedule overruns.

- **Invest in and appreciate our professionals.** Managing construction projects requires more than attempting to use best practices. Public Works combines best practices and mandatory minimum trainings hours with staff who already have extensive institutional knowledge. Promote adoption of integrated project delivery methods, such as the Construction Manager/General Contractor (CM/GC) process. Public Works pioneered the use of CM/GC in San

Francisco in building the California Academy of Sciences and Zuckerberg San Francisco General Hospital and Trauma Center. Based on our experience, we long have practiced the nuances of CM/GC projects, including identifying underground obstructions prior to full excavation to minimize unexpected finds.[2] The procedures of Public Works and the framework of practices within the Building Design and Construction Division illustrate processes of Quality Control and Assurance based on a foundation of technical principles.

- **There would be benefits to project delivery if one experienced City department had control and management of undergrounding activities in the right of way – one city, one entity and one system of managing it.** One entity should collect and maintain a record of everything that is put in the road and everything that is taken out, especially by corporations (e.g., PG&E, Comcast, AT&T), but also government entities, including the SFPUC and the Department of Technology. Establishing under one entity a well-documented central clearing point for everyone who puts something into the ground or takes it out of the road would minimize risk and confusion.

We look forward to applying the lessons of the SFMTA's Van Ness Corridor Transit Improvement Project to advance how we as a city do business.

Sincerely,

Carla Short
Interim Director, San Francisco Public Works

[2] As a long-standing practice, Public Works coordinates with public and private utility agencies for all projects in the public right of way, requiring that they submit drawings of all of their surface and subsurface facilities within the project footprint. Drawings include active, inactive and abandoned facilities. Then, utility composite drawings are prepared and compared against the proposed scope of work to identify potential conflicts and to coordinate the appropriate agencies for resolution of conflicts. The Public Works project team also works closely with private utilities during the design phase of major projects to account for utilities, whether active, deactivated or abandoned. Additional risk assessment tools, such as exploratory potholing, slot trenching and field measurements, may be utilized on a project-by-project basis to identify underground obstructions.

OFFICE OF THE MAYOR
SAN FRANCISCO

LONDON N. BREED
MAYOR

August 27, 2021

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 933 and 933.05, the following is in response to the 2020-2021 Civil Grand Jury Report, *Van Ness Avenue: What Lies Beneath* (Report). We would like to thank the members of the 2020-2021 Civil Grand Jury for their interest in and feedback on the planning, design, construction, and project management of the Van Ness Improvement Project (Project).

We take this report seriously and recognize that both the City and the project contractor could have applied better project controls and handled the project delivery issues more effectively. While we have implemented several lessons learned from the Project with good success in recent capital projects, more work and effort are needed to improve project delivery, especially on major capital projects.

We recognize that the Project delays have been frustrating, and we are taking action to fully analyze the delays and understand what occurred so that we do not experience similar challenges in the future. We know that this Project is behind schedule—causing challenges for our transportation system, residents, commuters, and business owners along the route, and adding unexpected costs to an already significant capital investment. We also acknowledge that many of the significant project delays were due to underground infrastructure replacement needs and challenges with existing infrastructure. Our analysis has shown that these delays were both avoidable and unavoidable, but with the full perspective we now have, we recognize that due to existing infrastructure underground and other factors, the potential impact of utility replacement was higher than initially assessed.

As we work to deliver more transportation and utility projects in the City, we need to ensure that they do not experience similar delays. As such, we have separately conducted our own internal reviews of the Project and have incorporated key lessons learned into successful projects throughout the City. We strive to make our City government more efficient and we are committed to improving delivery of future major capital projects. For example, as a City, we have taken steps to ensure 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.

We support and agree with the Report's recommendations to have better contractor evaluation and selection criteria in the future to improve this important partnership and to better achieve the desired project outcomes. Over the last few years, local legislation has been passed which has enabled departments to use alternative project delivery including best-value contracting methods. This helps departments place more of an emphasis on certain priority components of projects such as timeline goals or technical expertise. However, we recognize that additional steps may be needed

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
SAN FRANCISCO, CALIFORNIA 94102-4681
TELEPHONE: (415) 554-6141

to ensure technical expertise is sufficiently prioritized in large capital projects. It is also critical that projects like this one have a designated point of contact in the field, which is why all of our projects assign a Resident Engineer whose primary duty is to serve as the liaison on the ground with the contractor and the rest of the project team.

Our responses explain some areas where we disagree either partially or wholly with the Jury's findings. In particular, we believe the Report does not fully reflect the roles and responsibilities of a construction manager/general contractor (CM/GC) on a capital construction project as complex as the Van Ness Improvement Project.

We agree that a benefit of using the CM/GC model is to provide the contractor with the ability to work directly with the designers and have additional time to familiarize itself with the project and its challenges prior to the start of construction, and this was a primary reason the City utilized a CM/GC model on this project. The San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Public Utilities Commission (SFPUC) follow industry-standard best practices in the management of their CM/GC projects. With this Project, the City anticipated that use of the CM/GC model would provide the contractor with a sufficient time period to be involved in the pre-construction phase and prepare adequately for the construction phase. However, throughout the project, a variety of significant challenges arose with the contractor and subcontractors, and we believe the contractor may not have adequately prepared itself for construction during the year-long preconstruction period.

We agree with the Civil Grand Jury's goal to deliver capital projects on time and within budget. The agencies are pursuing remedies to most of the findings, in some cases by implementing the Civil Grand Jury's specific recommendations, in other cases using alternate, industry-standard best practices to improve project delivery. For example, various lessons learned involving utility coordination are already being applied to projects, including the first segment of the L Taraval project. Also, risk assessments are being conducted at various phases of major capital projects, and I am directing that both the SFMTA and PUC conduct further analysis to determine how to best assess and disclose derisking activities.

The City appreciates the time the Civil Grand Jury spent looking into this Project, and the efforts of the Jury to ensure that projects like Van Ness are delivered on time and on budget moving forward.

Detailed responses from the Mayor's Office, the SFMTA and the SFPUC are attached.

Each signatory prepared its own responses and is able to respond to questions related to its respective response.

Sincerely,

London N. Breed
Mayor

Michael Carlin
Acting General Manager, Public Utilities Commission

Jeffrey P. Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

Report Title [Publication Date]	**F#**	**Finding**	**Respondent Assigned by CGJ [Response Due Date]**	**Finding Response** (Agree/ Disagree)	**Finding Response Text**
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.	Mayor [August 27, 2021]	Disagree partially	We acknowledge that there were significant project delays due to underground infrastructure replacement needs and challenges with existing infrastructure; however, these delays were both avoidable and unavoidable. Many of the initial delays on the Project occurred during construction of the underground phase of the Project. 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). 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.	Mayor [August 27, 2021]	Disagree partially	The potential impacts of utility replacement on the cost and duration of the project were considered in pre-construction. During the design phase, the City performed potholing and required PG&E to relocate gas mains and an electrical ductbank. Also, the City included a standard requirement in the Specifications that the Contractor perform significant amounts of potholing 30 days in advance of any installation. In addition, the contract included specific allowances to cover additional or unforeseen costs related to utility installation. That said, we acknowledge that this project had significant delays due to these challenges, which were unfortunately very disruptive due to the scale of the project.
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.	Mayor [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. Ultimately, and with the full perspective we now have, we recognize that due to the challenges encountered, existing infrastructure underground, and other factors, the potential impact of utility replacement was higher than initially assessed. The Contractor failed to perform the

Report Title [Publication Date]	**F#**	**Finding**	**Respondent Assigned by CGJ [Response Due Date]**	**Finding Response** (Agree/ Disagree)	**Finding Response Text**
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.	Mayor [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, and 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.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F5	The evaluation rubric for preconstruction contract bids weighted cost too heavily, as compared to technical expertise, even after project-specific legislation allowed for a lower weight to be assigned to cost.	Mayor [August 27, 2021]	Agree	Such contracts should be evaluated using a best value rubric, with technical expertise weighted high. At the time, the Agency was unable to lower the points given to cost in the legislation submitted to the Board of Supervisors. Over the last few years local legislation has been passed which has enabled departments to use alternative project delivery including best-value contracting methods. In 2015 legislation authorized departments to select CM/GCs based on qualification and cost, as long as the cost criteria is at least 40% of the overall selection, a decrease from the previous requirement that it be 65%. Additionally, in 2016 legislation enabled departments to use best-value contracting methods; this helped departments place more of an emphasis on certain priority components of projects such as timeline goals or technical expertise. However, we recognize that additional steps may be needed to ensure technical expertise is sufficiently prioritized in large capital projects.

Report Title [Publication Date]	F#	Finding	Respondent Assigned by CGJ [Response Due Date]	Finding Response (Agree/ Disagree)	Finding Response Text
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.	Mayor [August 27, 2021]	Disagree partially	Preliminary investigation undertaken such as potholing and collecting as-built drawings were performed by SFMTA and the project team during the design phase. Ground-penetrating radar (GPR) during the design phase had several issues with accuracy and reliability of the data. Additional potholing by private utilities could have been beneficial. But 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. This would result in disruptions in both traffic flow and public transit services. Given that Van Ness Avenue is a State highway, this would have been extremely difficult to implement during pre-construction. Typically, this level of potholing is reserved for the construction phase when traffic can be effectively closed/diverted. With the benefit of hindsight, we recognize that increased practical work during preconstruction on this particular project may have mitigated some of the ultimate project delays, though it would have resulted in longer periods of traffic flow and transit service interruption due to needed closures of intersections.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F7	Review of preconstruction deliverables did not sufficiently measure the contractor's preparedness for construction, which resulted in both inaccurate cost estimates and timelines.	Mayor [August 27, 2021]	Disagree partially	We agree that a benefit of using the CM/GC model is to provide the contractor with the ability to work directly with the designers and have additional time to familiarize itself with the project and its challenges prior to the start of construction, and this was a primary reason the City utilized a CM/GC model on this project. Unfortunately, in this case the contractor did not adequately prepare itself for construction during the year-long preconstruction period. For example, a careful review of the Storm Water Pollution Prevention Plan (SWPPP) and the construction sequencing plan for sewer work would have shown that the contractor was not prepared to begin work. The timeline for underground work provided by the contractor's subcontractor during preconstruction did not align with the timeline provided by the subcontractor who eventually performed the work. It is unclear to what extent better preparedness by the contractor would have resulted in more accurate cost estimates and timelines. In addition, other key issues listed in F4 contributed to the challenge to forecast accurate cost estimates and timelines.
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.	Mayor [August 27, 2021]	Disagree partially	We agree it would have been better to have the contractor on board earlier in the design phase. That said, 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 City anticipated this was a sufficient time period for the Contractor to be involved in the pre-construction phase and prepare adequately for the construction phase. The CMGC construction contract with the Guaranteed Maximum Price was issued by SFMTA with the Contractor's concerns and input addressed. Since the primary contractor 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. The contractor did not make the best use of its subcontractors.

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Van Ness Avenue : What Lies Beneath [June 28, 2021]	F9	Underspecification in technical requirements led to additional costs for work that could have been predicted and included in the original contract.	Mayor [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]	F10	Contention over underspecified or unclear contract terms and technical requirements led to a deterioration in the relationship between the City and Walsh, the general contractor.	Mayor [August 27, 2021]	Disagree wholly	Language that was used in the contract was standard to all City contracts. The City worked diligently to enforce the contract in a fair and reasonable manner. The contractor did not raise any concerns about ambiguity or confusion during the year of pre-construction services or during negotiations. The CM/GC has the responsibility to raise and resolve such concerns during pre-construction. What actually led to deterioration in the relationship, in the City's view, was the contractor's concerns about the bid for the utility work.
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.	Mayor [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 the Walsh nothing on this issue. The price difference was not due to poor cost estimating, but to unexpected market conditions.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F12	The contentious relationship between Walsh, the general contractor, and the City made it difficult to resolve problems as they arose, despite close collaboration being one of the potential advantages of the CMGC contract.	Mayor [August 27, 2021]	Disagree partially	Once the contractor realized that its guaranteed maximum price would not cover the cost of the utility work, the relationship became strained and the contractor became uncooperative. It appeared that the contractor was more focused on recovering the potential loss from the increased utility costs than performing a collaborative and successful project. To illustrate this, the contractor hired additional personnel to focus on claims, and used field staff to assist with the claims process rather than devoting resources to the project. The contractor's lack of experienced field staff required the City to hire a utility coordinator and other staff to facilitate the contractor's coordination with third party utilities and to resolve basic field issues. As a CM/GC, it was the contractor's responsibility to coordinate day-to-day activities with third party utilities. In spite of the challenging situation, field staff maintained a professional relationship.

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Van Ness Avenue : What Lies Beneath [June 28, 2021]	F13	Lack of an in-the-field point of contact between Walsh and the City during early stages of construction led to delays and increased costs on the project.	Mayor [August 27, 2021]	Disagree wholly	There is one specific Resident Engineer (RE) for each project, including the Van Ness Project. The City's RE was (and is) the point of contact with the contractor. During construction, all flows through resident engineer for a single point of contact to avoid confusion. In addition to the RE, this project had a complete team of City staff who were dedicated to this project only. The RE, who has been on the Project from the beginning, along with the owner's construction management team, have always been co-located with the contractor's team. Notably, the high turnover of the contractor's management team made it difficult to coordinate with the contractor, and necessitated the City bringing the contractor up to speed at various times (and likely contributed to the delay and increased costs on the Project). The contractor's unwillingness to pothole and perform other advance investigation in a timely fashion contributed more to delays in resolving field challenges than any lack of City staff. The CM/GC should lead the field fact-finding and discovery with very little owner assistance to resolve basic field issues and coordination matters. During the construction, City staff had to supplement the contractor's team directly, performing contractor work in support of the overall effort and mitigate potential delays.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F14	Confusion related to the contractual requirements for pedestrian monitoring contributed to the deterioration of the relationship between Walsh, the general contractor, and the City.	Mayor [August 27, 2021]	Disagree wholly	The City does not believe that the contractual requirements for pedestrian monitoring and flaggers are confusing. In the interest of public safety, the City agreed to reimburse Walsh for pedestrian monitors if (1) the contractor provided the flaggers required under the contract for pedestrian control and (2) the contractor provided advance notice to the City of the need for pedestrian monitors to support the flaggers at a particular location.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
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.	Mayor [August 27, 2021]	Has been implemented	This process is implemented for all SFMTA and SFPUC major capital projects and projects of particular technical complexity, and is in Section 4 (Detailed Design Phase) of the MTA's Project Operations Manual.
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.	Mayor [August 27, 2021]	Requires further analysis	Additional analysis is required on this recommendation to determine how to best assess and disclose of derisking activities. This analysis will be conducted within the next year.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R3 [for F4]	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.	Mayor [August 27, 2021]	Requires further analysis	The SFPUC's standard project procedure requires the maintenance of detailed as-built digital documentations on their 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.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
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 should be required to be performed before final construction terms or prices are agreed to.	Mayor [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	As a City, we already take steps to ensure that all projects that involve underground work include as part of the design process the use of exploratory potholing, or another equivalent industry best-practice. However, one policy for all projects is impractical and each department must make a determination on a project-by-project basis based on the risk assessment.
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.	Mayor [August 27, 2021]	Has been implemented	SFMTA will review recommended best practices for future CM/GC projects and apply them, as applicable and as appropriate. It is up to the individual department to determine the applicability of "best practices" to their projects. For example, SFPUC already implements industry-standard best practices in management of their CMGC projects.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R6 [for F8]	The adopted CMGC management policy should specifically include the industry best practice of awarding the contract before project design continues past 30% completion.	Mayor [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	While it is optimal to bring in a CMGC contractor on or before 30%, it is equally important to have a qualified, experienced contractor who is able to provide the required services. In the case of a horizontal CMGC project, the technical capability and local experience of the contractor are also important.

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Van Ness Avenue : What Lies Beneath [June 28, 2021]	R7 [for F5]	By June 2022, the Board of Supervisors should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion in awarding CMGC contracts.	Mayor [August 27, 2021]	Requires further analysis	We agree with this recommendation, but implementation of the recommendation resides with the Board of Supervisors. In 2015, legislation authorized departments to select CM/GCs based on qualification and cost, as long as the cost criteria is at least 40% of the overall selection, a decrease from the previous requirement that it be 65%. Additionally, in 2016 legislation enabled departments to use best-value contracting methods; this helped departments place more of an emphasis on certain priority components of projects such as timeline goals or technical expertise. However, we recognize that additional steps may be needed to ensure technical expertise is sufficiently prioritized in large capital projects.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R8 [for F7, F9, F10]	SFMTA should establish a policy for review of technical quality of preconstruction and design deliverables, to be used in all CMGC or design contracts signed after January 2022, including in-the-field validation of key assumptions of site conditions by City engineers.	Mayor [August 27, 2021]	Has not yet been implemented but will be implemented in the future	A more formalized process of reviewing and commenting on pre-construction deliverables would be beneficial in the future. The SFMTA will establish the policy for all future CMGC-type projects.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R9 [for F12, F13]	Beginning January 1, 2022, SFMTA should assign to every CMGC project a dedicated in-the-field contractor liaison to facilitate collaborative problem resolution, and sufficient support staff to monitor actual progress and site conditions.	Mayor [August 27, 2021]	Has been implemented	It is a long-standing practice in the City that a Resident Engineer is assigned prior to the start of construction on every capital project as the single point of contact with the contractor in the field, and that this is their primary job responsibility during the scope of the project. The Van Ness project includes a complete support staff of City employees (SFMTA, SFPUC, DPW and consultants) to monitor actual progress and site conditions. Future CMGC projects will continue this practice.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R10 [for F1, F2, F6, F9]	By June 2022, the City should adopt a policy that any public communication about a planned or in-progress capital project that includes disruption of public services or right-of-way should include itemized assessments of risk to projected costs and duration.	Mayor [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	A majority of SFMTA projects are funded by the FTA, which requires the project to assess and monitor project risks in construction on a periodic basis. The department can provide a general list of project risks in public communications, to inform the public of the project status and projected substantial completion. Publishing itemized costs association with changes risk or project duration could negatively impact the bidding or negotiation process.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R11 [for F14]	Beginning immediately, and in all future capital or maintenance projects that require pedestrian monitors, the City should ensure that associated costs are either specifically included in the primary construction contract, or explicitly planned for and funded by the City, before construction begins.	Mayor [August 27, 2021]	Has been implemented	This recommendation has been implemented in the Van Ness BRT Project, and will continue to be implemented in the future for all contracts that require pedestrian monitors.

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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.	General Manager, San Francisco Public Utilities Commission [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.	General Manager, San Francisco Public Utilities Commission [August 27, 2021]	Disagree partially	The potential impacts of utility replacement on the cost and duration of the project were considered in pre-construction. During the design phase, the City performed potholing and required PG&E to relocate gas mains and an electrical ductbank. Also, the City included a standard requirement in the Specifications that the Contractor perform significant amounts of potholing 30 days in advance of any installation. In addition, the contract included specific allowances to cover additional or unforeseen costs related to utility installation.
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.	General Manager, San Francisco Public Utilities Commission [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
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.	General Manager, San Francisco Public Utilities Commission [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.	General Manager, San Francisco Public Utilities Commission [August 27, 2021]	Disagree partially	Preliminary investigation undertaken such as potholing and collecting as-built drawings were performed by SFMTA and the project team during the design phase. Ground-penetrating radar (GPR) during the design phase had several issues with accuracy and reliability of the data. Additional potholing by private utilities could have been beneficial. But 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. This would result in disruptions in both traffic flow and public transit services. Given that Van Ness Avenue is a State highway, this would have been extremely difficult to implement during pre-construction. Typically, this level of potholing is reserved for the construction phase when traffic can be effectively closed/diverted.
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.	General Manager, San Francisco Public Utilities Commission [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.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F9	Underspecification in technical requirements led to additional costs for work that could have been predicted and included in the original contract.	General Manager, San Francisco Public Utilities Commission [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.	General Manager, San Francisco Public Utilities Commission [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 the Walsh nothing on this issue. The price difference was not due to poor cost estimating, but to unexpected market conditions.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
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.	General Manager, San Francisco Public Utilities Commission [August 27, 2021]	Has been implemented	This has been implemented for all SFPUC major capital projects and project of particular technical complexity. (PUC)
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.	General Manager, San Francisco Public Utilities Commission [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 F4]	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.	General Manager, San Francisco Public Utilities Commission [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.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R4 [for F1, F4, F6]	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 should be required to be performed before final construction terms or prices are agreed to.	General Manager, San Francisco Public Utilities Commission [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, F11]	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.	General Manager, San Francisco Public Utilities Commission [August 27, 2021]	Has been implemented	The SFPUC is actively implementing best practices on CM/GC projects.

Report Title [Publication Date]	**F#**	**Finding**	**Respondent Assigned by CGJ [Response Due Date]**	**Finding Response** (Agree/ Disagree)	**Finding Response Text**
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.	Director, San Francisco Municipal Transportation Agency [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.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree partially	The potential impacts of utility replacement on the cost and duration of the project were considered in pre-construction. During the design phase, the City performed potholing and required PG&E to relocate gas mains and an electrical ductbank. Also, the City included a standard requirement in the Specifications that the Contractor perform significant amounts of potholing 30 days in advance of any installation. In addition, the contract included specific allowances to cover additional or unforeseen costs related to utility installation.
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.	Director, San Francisco Municipal Transportation Agency [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.

Report Title [Publication Date]	**F#**	**Finding**	**Respondent Assigned by CGJ [Response Due Date]**	**Finding Response** (Agree/ Disagree)	**Finding Response Text**
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.	Director, San Francisco Municipal Transportation Agency [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.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F5	The evaluation rubric for preconstruction contract bids weighted cost too heavily, as compared to technical expertise, even after project-specific legislation allowed for a lower weight to be assigned to cost.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Agree	Such contracts should be evaluated using a best value rubric, with technical expertise weighted high. At the time, the Agency was unable to lower the points given to cost in the legislation submitted to the Board of Supervisors.
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.	Director, San Francisco Municipal Transportation Agency [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]	F7	Review of preconstruction deliverables did not sufficiently measure the contractor's preparedness for construction, which resulted in both inaccurate cost estimates and timelines.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree partially	It is correct that the contractor may not have adequately prepared itself for construction during the year-long preconstruction period. For example, a careful review of the Storm Water Pollution Prevention Plan (SWPPP) and the construction sequencing plan for sewer work would have shown that the contractor was not prepared to begin work. The timeline for underground work provided by the contractor's subcontractor during preconstruction did not align with the timeline provided by the subcontractor who eventually performed the work. It is unclear to what extent better preparedness by the contractor would have resulted in more accurate cost estimates and timelines. In addition, other key issues listed in F4 contributed to the challenge to forecast accurate cost estimates and timelines.

Report Title [Publication Date]	**F#**	**Finding**	**Respondent Assigned by CGJ [Response Due Date]**	**Finding Response** (Agree/ Disagree)	**Finding Response Text**
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.	Director, San Francisco Municipal Transportation Agency [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.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F9	Underspecification in technical requirements led to additional costs for work that could have been predicted and included in the original contract.	Director, San Francisco Municipal Transportation Agency [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]	F10	Contention over underspecified or unclear contract terms and technical requirements led to a deterioration in the relationship between the City and Walsh, the general contractor.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree wholly	Language that was used in the contract was standard to all City contracts. The City worked diligently to enforce the contract in a fair and reasonable manner. The contractor did not raise any concerns about ambiguity or confusion during the year of pre-construction services or during negotiations. The CM/GC has the responsibility to raise and resolve such concerns during pre-construction. What actually led to deterioration in the relationship, in the City's view, was the contractor's concerns about the bid for the utility work.
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.	Director, San Francisco Municipal Transportation Agency [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 the Walsh nothing on this issue. The price difference was not due to poor cost estimating, but to unexpected market conditions.

Report Title [Publication Date]	**F#**	**Finding**	**Respondent Assigned by CGJ [Response Due Date]**	**Finding Response** (Agree/ Disagree)	**Finding Response Text**
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F12	The contentious relationship between Walsh, the general contractor, and the City made it difficult to resolve problems as they arose, despite close collaboration being one of the potential advantages of the CMGC contract.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree partially	Once the contractor realized that its guaranteed maximum price would not cover the cost of the utility work, the relationship became strained and the contractor became uncooperative. It appeared that the contractor was more focused on recovering the potential loss from the increased utility costs than performing a collaborative and successful project. To illustrate this, the contractor hired additional personnel to focus on claims, and used field staff to assist with the claims process rather than devoting resources to the project. The contractor's lack of experienced field staff required the City to hire a utility coordinator and other staff to facilitate the contractor's coordination with third party utilities and to resolve basic field issues. As a CM/GC, it was the contractor's responsibility to coordinate day-to-day activities with third party utilities. In spite of the challenging situation, field staff maintained a professional relationship.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F13	Lack of an in-the-field point of contact between Walsh and the City during early stages of construction led to delays and increased costs on the project.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree wholly	The City's Resident Engineer (RE) was (and is) the point of contact with the contractor. The RE, who has been on the Project from the beginning, along with the owner's construction management team, have always been co-located with the contractor's team. Notably, the high turnover of the contractor's management team made it difficult to coordinate with the contractor, and necessitated the City bringing the contractor up to speed at various times (and likely contributed to the delay and increased costs on the Project). The contractor's unwillingness to pothole and perform other advance investigation in a timely fashion contributed more to delays in resolving field challenges than any lack of City staff. The CM/GC should lead the field fact-finding and discovery with very little owner assistance to resolve basic field issues and coordination matters. During the construction, City staff had to supplement the contractor's team directly, performing contractor work in support of the overall effort and mitigate potential delays.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F14	Confusion related to the contractual requirements for pedestrian monitoring contributed to the deterioration of the relationship between Walsh, the general contractor, and the City.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree partially	The City does not believe that the contractual requirements for pedestrian monitoring and flaggers are confusing. In the interest of public safety, the City agreed to reimburse Walsh for pedestrian monitors if (1) the contractor provided the flaggers required under the contract for pedestrian control and (2) the contractor provided advance notice to the City of the need for pedestrian monitors to support the flaggers at a particular location.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
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.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Has been implemented	This process is implemented for all major capital projects and projects of particular technical complexity, and is in Section 4 (Detailed Design Phase) of the MTA's Project Operations Manual.
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.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	The SFMTA believes that such information may allow bidders to take advantage of the bid process.
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 should be required to be performed before final construction terms or prices are agreed to.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	One policy for all projects is impractical. Each department must make a determination on a project-by-project basis based on the risk assessment. Currently, all major City projects that involve underground work in main corridors do incorporate potholing, or other equivalent appropriate industry practices, to identify unknown underground obstructions. The City is also working more closely with private utilities (e.g., PG&E, Comcast, ATT) during design phase of major projects to account for their utilities, whether active, deactivated, or abandoned.

Report Title [Publication Date]	R# [for F#]	Recommendation	Respondent Assigned by CGJ [Response Due Date]	Recommendation Response (Implementation)	Recommendation Response Text
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.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	SFMTA will review recommended best practices for future CM/GC projects and apply them, as applicable and as appropriate. It is up to the individual department to determine the applicability of "best practices" to their projects.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R6 [for F8]	The adopted CMGC management policy should specifically include the industry best practice of awarding the contract before project design continues past 30% completion.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	While it is optimal to bring in a CM/GC contractor on or before 30%, it is equally important to have a qualified, experienced contractor who is able to provide the required services. In the case of a horizontal CM/GC project, the technical capability and local experience of the contractor are also important.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R7 [for F5]	By June 2022, the Board of Supervisors should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion in awarding CMGC contracts.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Requires further analysis	The SFMTA agrees with this recommendation, but implementation of the recommendation resides with the Board of Supervisors.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R8 [for F7, F9, F10]	SFMTA should establish a policy for review of technical quality of preconstruction and design deliverables, to be used in all CMGC or design contracts signed after January 2022, including in-the-field validation of key assumptions of site conditions by City engineers.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Has not yet been implemented but will be implemented in the future	A more formalized process of reviewing and commenting on pre-construction deliverables would be beneficial in the future. The SFMTA will establish the policy for all future CMGC-type projects.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R9 [for F12, F13]	Beginning January 1, 2022, SFMTA should assign to every CMGC project a dedicated in-the-field contractor liaison to facilitate collaborative problem resolution, and sufficient support staff to monitor actual progress and site conditions.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Has been implemented	It is a long-standing practice in the City that a Resident Engineer is assigned prior to the start of construction on every capital project as the single point of contact with the contractor in the field. The Van Ness project includes a complete support staff of City employees (SFMTA, SFPUC, DPW and consultants) to monitor actual progress and site conditions. Future CMGC projects will continue this practice.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R10 [for F1, F2, F6, F9]	By June 2022, the City should adopt a policy that any public communication about a planned or in-progress capital project that includes disruption of public services or right-of-way should include itemized assessments of risk to projected costs and duration.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	A majority of SFMTA projects are funded by the FTA, which requires the project to assess and monitor project risks in construction on a periodic basis. The department can provide a general list of project risks in public communications, to inform the public of the project status and projected substantial completion. Publishing itemized costs association with changes risk or project duration could negatively impact the bidding or negotiation process.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R11 [for F14]	Beginning immediately, and in all future capital or maintenance projects that require pedestrian monitors, the City should ensure that associated costs are either specifically included in the primary construction contract, or explicitly planned for and funded by the City, before construction begins.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Has been implemented	This recommendation has been implemented in the Van Ness BRT Project, and will continue to be implemented in the future for all contracts that require pedestrian monitors.

August 24, 2021

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 933 and 933.05, the Board of Directors of the San Francisco Municipal Transportation Agency (SFMTA) responds to the 2020-2021 Civil Grand Jury Report, Van Ness Avenue: What Lies Beneath (Report). We would like to thank the members of the 2020-2021 Civil Grand Jury for their constructive feedback in the planning, design, construction, and project management of the Van Ness Improvement Project (Project).

The SFMTA Board of Directors appreciates the time the Civil Grand Jury spent looking into this Project and issuing the Report. We acknowledge the concerns about project delay and increased costs and their effect on our transportation system, residents, and business owners along the corridor, and on commuters. The Board takes this report seriously and recognizes that the City, including the agency and our contractor, could have applied better project controls and handled the project delivery issues more effectively. While the agency has implemented several lessons learned from the Project with good success in recent capital projects, we acknowledge that more work and effort are needed to improve project delivery, especially on major capital projects.

The SFMTA Board is committed to support the SFMTA staff to make necessary improvements in project delivery. We support and agree with the Report's recommendations to have better contractor evaluation and selection criteria in the future to improve this important partnership and to better achieve the desired project outcomes. To this end, at the August 17 Board Meeting, the Board approved the attached response to the Findings and Recommendations and gave direction to staff that there is an urgency for the SFMTA to take steps to make improvements in our project delivery process. The Board is looking forward to working with its staff to apply the lessons learned from this and other recent projects to improve its capital project delivery going forward.

Sincerely,

Gwyneth Borden
Chair, SFMTA Board of Directors

CC: SFMTA Board of Directors
Jeffrey Tumlin, Director of Transportation

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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.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree partially	Many of the initial delays on the Project occurred during construction of the underground phase of the Project; however, some of these delays were avoidable and some were 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.

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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.	Director, San Francisco Municipal Transportation Agency [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.
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.	Director, San Francisco Municipal Transportation Agency [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.	Director, San Francisco Municipal Transportation Agency [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.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F5	The evaluation rubric for preconstruction contract bids weighted cost too heavily, as compared to technical expertise, even after project-specific legislation allowed for a lower weight to be assigned to cost.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Agree	Such contracts should be evaluated using a best value rubric, with technical expertise weighted high. At the time, the Agency was unable to lower the points given to cost in the legislation submitted to the Board of Supervisors

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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.	Director, San Francisco Municipal Transportation Agency [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 relability 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]	F7	Review of preconstruction deliverables did not sufficiently measure the contractor's preparedness for construction, which resulted in both inaccurate cost estimates and timelines.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree partially	It is correct that the contractor may not have adequately prepared itself for construction during the year-long preconstruction period. The timeline for underground work provided by the contractor's subcontractor during preconstruction did not align with the timeline provided by the subcontractor who eventually performed the work. It is unclear to what extent better preparedness by the contractor would have resulted in more accurate cost estimates and timelines. In addition, other key issues listed in F4 contributed to the challenge to forecast accurate cost estimates and timelines.

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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.	Director, San Francisco Municipal Transportation Agency [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.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F9	Underspecification in technical requirements led to additional costs for work that could have been predicted and included in the original contract.	Director, San Francisco Municipal Transportation Agency [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.

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Van Ness Avenue : What Lies Beneath [June 28, 2021]	F10	Contention over underspecified or unclear contract terms and technical requirements led to a deterioration in the relationship between the City and Walsh, the general contractor.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree wholly	Language that was used in the contract was standard to all City contracts. The City worked diligently to enforce the contract in a fair and reasonable manner. The contractor did not raise any concerns about ambiguity or confusion during the year of pre-construction services or during negotiations. The CM/GC has the responsibility to raise and resolve such concerns during pre-construction. What actually led to deterioration in the relationship was the contractor's concerns about the bid for the utility work being substantially higher than originally estimated and thereby reducing its profit margin.
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.	Director, San Francisco Municipal Transportation Agency [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.

Report Title [Publication Date]	**F#**	**Finding**	**Respondent Assigned by CGJ [Response Due Date]**	**Finding Response** (Agree/ Disagree)	**Finding Response Text**
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F12	The contentious relationship between Walsh, the general contractor, and the City made it difficult to resolve problems as they arose, despite close collaboration being one of the potential advantages of the CMGC contract.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree partially	Once the contractor realized that its guaranteed maximum price would not cover the cost of the utility work, the relationship became strained and the contractor became uncooperative. It appeared that the contractor was more focused on recovering the potential loss from the increased utility costs than performing a collaborative and successful project. To illustrate this, the contractor hired additional personnel to focus on claims, and used field staff to assist with the claims process rather than devoting resources to the project. The contractor's lack of experienced field staff required the City to hire a utility coordinator and other staff to facilitate the contractor's coordination with third party utilities and to resolve basic field issues. As a CM/GC, it was the contractor's responsibility to coordinate day-to-day activities with third party utilities. In spite of the challenging situation, field staff maintained a professional relationship.

Report Title [Publication Date]	**F#**	**Finding**	**Respondent Assigned by CGJ [Response Due Date]**	**Finding Response** (Agree/ Disagree)	**Finding Response Text**
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F13	Lack of an in-the-field point of contact between Walsh and the City during early stages of construction led to delays and increased costs on the project.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree wholly	The City's Resident Engineer (RE) was (and is) the point of contact with the contractor. The RE, who has been on the Project from the beginning, along with the owner's construction management team, have always been co-located with the contractor's team. Notably, the high turnover of the contractor's management team made it difficult to coordinate with the contractor, and necessitated the City bringing the contractor up to speed at various times (and likely contributed to the delay and increased costs on the Project). The contractor's unwillingness to pothole and perform other advance investigation in a timely fashion contributed more to delays in resolving field challenges than any lack of City staff. The CM/GC should lead the field fact-finding and discovery with very little owner assistance to resolve basic field issues and coordination matters. During the construction, City staff had to supplement the contractor's team directly, performing contractor work in support of the overall effort and mitigate potential delays.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	F14	Confusion related to the contractual requirements for pedestrian monitoring contributed to the deterioration of the relationship between Walsh, the general contractor, and the City.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Disagree partially	The City does not believe that the contractual requirements for pedestrian monitoring and flaggers are confusing. In the interest of public safety, the City agreed to reimburse Walsh for pedestrian monitors if (1) the contractor provided the flaggers required under the contract for pedestrian control and (2) the contractor provided advance notice to the City of the need for pedestrian monitors to support the flaggers at a particular location.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
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.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Has been implemented	Project risk assessment and mitigation are long-standing practices that are implemented for major capital projects and projects of particular technical complexity as listed in Section 4 (Detailed Design Phase) of the MTA's Project Operations Manual (POM).
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.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	Speaking for the Agency and not the City as a whole, the SFMTA believes that such information may allow bidders to take advantage of the bid process, as it could allow contractors to unbalance bids or give them an unfair advantage in negotiations.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
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 should be required to be performed before final construction terms or prices are agreed to.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	Speaking for the Agency, and not the Board of Supervisors, the SFMTA believes that one policy for all projects, across all departments, is impractical. Each department must make a determination on a project-by-project basis based on the risk assessment. Currently, all major City projects that involve underground work in main corridors do incorporate potholing, or other equivalent appropriate industry practices to identify unknown underground obstructions. The City also works closely with private utilities (e.g., PG&E, Comcast, ATT) during design phase of major projects to account for their utilities, whether active, deactivated, or abandoned.
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.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	"Best practices" are a list of general recommendations based on general industry practices. Speaking for the Agency, and not the Board of Supervisors, the SFMTA will review recommended best practices for future CM/GC projects and apply them, as applicable and as appropriate. It is up to the individual department to determine the applicability of "best practices" to their projects.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R6 [for F8]	The adopted CMGC management policy should specifically include the industry best practice of awarding the contract before project design continues past 30% completion.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	While it is optimal to bring in a CM/GC contractor on or before 30%, it is equally important to have a qualified, experienced contractor who is able to provide the required services. In the case of a horizontal CM/GC project, the technical capability and local experience of the contractor are also important.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R7 [for F5]	By June 2022, the Board of Supervisors should amend Section 6.68 of the Administrative Code to remove the mandatory cost criterion in awarding CMGC contracts.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Requires further analysis	The SFMTA agrees with this recommendation, but implementation of the recommendation resides with the Board of Supervisors.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R8 [for F7, F9, F10]	SFMTA should establish a policy for review of technical quality of preconstruction and design deliverables, to be used in all CMGC or design contracts signed after January 2022, including in-the-field validation of key assumptions of site conditions by City engineers.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Has not yet been implemented but will be implemented in the future	A more formalized process of reviewing and commenting on pre-construction deliverables would be beneficial in the future. The SFMTA will establish the policy for all future CMGC-type projects.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R9 [for F12, F13]	Beginning January 1, 2022, SFMTA should assign to every CMGC project a dedicated in-the-field contractor liaison to facilitate collaborative problem resolution, and sufficient support staff to monitor actual progress and site conditions.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Has been implemented	It is a long-standing practice in the City that a Resident Engineer is assigned prior to the start of construction on every capital project as the single point of contact with the contractor in the field. The Van Ness project includes a complete support staff of City employees (SFMTA, SFPUC, PW and consultants) to monitor actual progress and site conditions. Future CMGC projects will continue this practice.

Report Title [Publication Date]	**R# [for F#]**	**Recommendation**	**Respondent Assigned by CGJ [Response Due Date]**	**Recommendation Response** (Implementation)	**Recommendation Response Text**
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R10 [for F1, F2, F6, F9]	By June 2022, the City should adopt a policy that any public communication about a planned or in-progress capital project that includes disruption of public services or right-of-way should include itemized assessments of risk to projected costs and duration.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Will not be implemented because it is not warranted or is not reasonable	A majority of SFMTA projects are funded by the FTA, which requires the project to assess and monitor project risks in construction on a periodic basis. The department can provide a general list of project risks in public communications, to inform the public of the project status and projected substantial completion. Publishing itemized costs association with changes risk or project duration could negatively impact the bidding or negotiation process.
Van Ness Avenue : What Lies Beneath [June 28, 2021]	R11 [for F14]	Beginning immediately, and in all future capital or maintenance projects that require pedestrian monitors, the City should ensure that associated costs are either specifically included in the primary construction contract, or explicitly planned for and funded by the City, before construction begins.	Director, San Francisco Municipal Transportation Agency [August 27, 2021]	Has been implemented	This recommendation has been implemented in the Van Ness BRT Project, and will continue to be implemented in the future for all contracts that require pedestrian monitors.

FROM:
Mary Miles (SB #230395)
Attorney at Law for Coalition for Adequate Review
364 Page St., #36
San Francisco, CA 94102

TO:
John Carroll, Clerk, and Members of
Government Audit and Oversight Committee
San Francisco Board of Supervisors
Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

BY EMAIL TO: john.carroll@sfgov.org

DATE: September 30, 2021

PUBLIC COMMENT SUPPORTING APPROVAL OF ALL GRAND JURY REPORT RECOMMENDATIONS AND FINDINGS ON THE 2020-2021 CIVIL GRAND JURY REPORT ENTITLED "VAN NESS AVENUE: WHAT LIES BENEATH" GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE, SEPTEMBER 30, 2021, AGENDA ITEMS 8 AND 9

This Comment SUPPORTS approval of all recommendations and findings of the Grand Jury's Report entitled "Van Ness Avenue: What Lies Beneath." Due to time constraints, the documents supporting this Comment are not all included, but as time permits will be submitted to the Board before its final disposition.

The Grand Jury's meticulous, fact-supported investigation has resulted in a valuable document of the errors that have resulted in the disaster of the City's Van Ness Bus Rapid Transit ("VNBRT") Project. Those errors fall squarely on the San Francisco Municipal Transportation Agency ("MTA"), which designed, contracted, and implemented the VNBRT Project that cuts through the cultural and geographic center of San Francisco, killing businesses, cultural amenities, restaurants, and quality of life for every resident, visitor and traveler on Van Ness Avenue/US Highway 101.

Incredibly, MTA, through its Director, Jeffrey Tumlin, disagrees with and refuses to adopt several of the Grand Jury's Recommendations, and, as to those he agrees with, provides no timeline for when they will be implemented.

Mr. Tumlin refuses to implement Grand Jury Recommendations R2, R4, R5, R6, and R10. This Board should assure that those Recommendations are adopted and implemented. The Board should also support and recommend adoption of the Grand Jury's Findings.

I. THIS BOARD SHOULD APPROVE AND ORDER MTA TO IMPLEMENT ALL OF THE GRAND JURY'S RECOMMENDATIONS REGARDLESS OF MR. TUMLIN'S REFUSAL TO DO SO

This Board should approve and order MTA to implement all of the Grand Jury's Recommendations, including those that Mr. Tumlin refuses to implement as follows.

R2: "By June 2022, the City should adopt a policy that all capital project sponsors publish, before proceeding to their construction phase, an itemized assessment of derisking activities actually performed." (Ref. to Findings F1, F2, F3, F4, F6, F9]

TUMLIN RESPONSE: "Will not be implemented...Speaking for the Agency and not the City as a whole, the SFMTA believes that such information may allow bidders to take advantage of the bid process, as it could allow contractors to unbalance bids or give them an unfair advantage in negotiations."

PUBLIC COMMENT: Mr. Tumlin's answer is dead wrong, and even contradicts his own answers, which blame the contractor instead of MTA for the failure to notice the risks involved in the MTA's "LPA" project. Tumlin falsely claims that MTA "gave significant consideration to the potential impacts of utility replacement during the planning process." Tumlin then blames the contractor for not doing "significant amounts of potholing 30 days in advance of any installation."

In 2013 MTA created its Locally Preferred Alternative ("LPA") of the VNBRT Project, long before it contracted for implementation of the Project. The LPA received *no* environmental review, since MTA planned it in total secrecy and announced it *after* the close of public comment on the Project EIR/EIS. (EXH. A.)

The "LPA," unlike other alternatives, planned a center-running BRT instead of a side-running BRT. The LPA thus required removing all of the utilities located in the center of Van Ness Avenue/US Highway 101, including water, sewer, and other lines that would have to be replaced because of the weight of buses running in the center of the highway. (EXH. A.)

The LPA also required removing all of the unique, 100-year-old street lamps that lined Van Ness, and installation of ugly generic poles with faux deco lamps in their place so that trolley wires could be supported to the center (instead of the sides) of Van Ness. The LPA also required removing all of the trees in the median and on the sidewalks, and nearly all of the parking on Van Ness. MTA was directly responsible for the delays caused by MTA's LPA "option," which was shoved down the public's throat by MTA and City's SFCTA with no opportunity for public comment or accountability. MTA made no effort to accurately account for the additional time and expense of its disastrous LPA BRT on Van Ness, before, during, or after the Walsh Contract, signed in 2015.

Mr. Tumlin's worry about the possibility that contractors might "take advantage of the bid process" or get "an unfair advantage in negotiations" is exactly what happened here-- *without* the Grand Jury's excellent recommendation that City agencies, including MTA should, before proceeding with construction publish "an itemized assessment of derisking activities actually performed." (R2)

Here, the Walsh Corporation took advantage of the flawed CM/GC contract to take advantage of the entire process by submitting a low bid for a first phase consisting of *no*

construction but only paper planning, assuring award of both phases of the Contract, and only after that submitting a high bid for the actual construction work with *no competitive bidding for the actual construction*, a bid that Walsh (and MTA) later claimed did not cover the full additional cost of constructing MTA's LPA VNBRT.

The fact that Walsh took advantage of MTA's inexperience at CM/GC contracts, is precisely why the Grand Jury's Recommendation R2 is important and necessary, contrary to Tumlin's claim.

This Board should protect the public from any repetition of MTA's mistakes by adopting the Grand Jury's Recommendation R2.

R4: "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 should be required to be performed before final construction terms or prices are agreed to." (Ref: F1, F4, F6, F7.)

TUMLIN RESPONSE: "Will not be implemented because it is not warranted or is not reasonable. Speaking for the Agency, and not the Board of Supervisors, the SFMTA believes that one policy for all projects, across all departments, is impractical. Each department must make a determination on a project-by-project bases based on the risk assessment. Currently, all major City projects that involve underground work in main corridors do incorporate potholing, or other equivalent appropriate industry practices to identify unknown underground obstructions. The City also works closely with private utilities (e.g., PG&E, Comcast, ATT) during design phase of major projects to account for their utilities, whether active, deactivated, or abandoned."

PUBLIC COMMENT: Tumlin rejects the Grand Jury's highly reasonable and completely warranted Recommendations, which recommend that finding out where the underground utilities are must occur at the design level and precede any agreement on construction terms or prices.

The problem of *not* doing so is painfully illustrated by the saga of claimed *surprises* encountered underneath the surface of Van Ness Avenue, requiring years of delay and tens of millions to deal with, *after* Walsh had torn apart the entire surface of Van Ness. At that point neither Walsh nor MTA apparently had a clue of what lay beneath that devastated landscape. Due to MTA's LPA, that entire landscape and everything below it had to be replaced and moved so that MTA could have its LPA VNBRT Project.

Mr. Tumlin provides no justification for not adopting the protective safeguards in RF, and this Board should adopt R4 over his senseless refusal and order MTA and other City agencies to implement it to avoid another disaster like the VNBRT Project.

R5: "By June 2022, and before entering into future CMGC relationships, the Board of Supervisors should direct all City departments to adopt, publish, and enforce all future contracts industry-standard best practices for management of CMGC projects." (Refs. F8, F10, F11, F12, F13.)

TUMLIN RESPONSE: "Will not be implemented because it is not warranted or is not reasonable. 'Best practices' are a list of general recommendations based on general industry

practices. Speaking for the Agency, and not the Board of Supervisors, the SFMTA will review recommended best practices for future CM/GC projects and apply them, as applicable and appropriate. It is up to the individual department to determine the applicability of 'best practices' to their projects."

PUBLIC COMMENT: After blaming the Contractor for delays and expenses that were caused by adopting MTA's "LPA" without knowing or disclosing what lay beneath the surface of Van Ness Avenue, and MTA's CM/GC Contract with Walsh, Tumlin now refuses to implement the common sense R-5 Recommendation of the Grand Jury to assure best practices *before* any future CM/GC contracts.

This Board should adopt Recommendation R5 and require MTA to implement it to prevent further disastrous errors by MTA on major construction contracts.

R10 "By June 2022, the City should adopt a policy that any public communication about planned or in-progress capital project that includes disruption of public services or right-of-way should include itemized assessments of risk to projected costs and duration." (Ref. F1, F2, F6, F9)

TUMLIN RESPONSE: "Will not be implemented because it is not warranted or is not reasonable. A majority of SFMTA projects are funded by the FTA, which requires the project to assess and monitor project risks in construction on a periodic basis. The department can provide a general list of project risks in public communications, to inform the public of the project status and projected substantial completion. Publishing itemized costs association with changes risk or project duration could negatively impact the bidding or negotiation process." (*sic*)

PUBLIC COMMENT: Mr. Tumlin, an unelected official with zero accountability to the public, refuses to implement the Grand Jury's Recommendation R10 to make MTA accountable on this Project and other large capital projects by itemized assessments of risk to projected costs and duration. This Board should overrule Mr. Tumlin, adopt Grand Jury Recommendation R10, and order MTA to comply with it forthwith.

SUMMARY: The Grand Jury's excellent Report and reasoned recommendations should be taken as an accurate and constructive summation of the mess MTA has made of the Van Ness corridor, why MTA is to blame, and why the Grand Jury's recommendations should be approved and implemented as directed. This Board should reject Mr. Tumlin's refusal to implement several Grand Jury Recommendations, should adopt those recommendations, and should order MTA to implement those recommendations as directed or sooner.

II. MTA'S CONTENTIOUS DISAGREEMENT WITH THE GRAND JURY'S FINDINGS IS WITHOUT MERIT OR SUPPORT IN THE FACTUAL RECORD OF THE VAN NESS BRT PROJECT. THIS BOARD SHOULD ADOPT AND IMPLEMENT ALL OF THE GRAND JURY'S FINDINGS

This Comment OBJECTS to MTA's "Finding Responses" to the Grand Jury Report. For the following reasons MTA's responses to the Grand Jury Report should be rejected, and those Findings should be adopted by this Board.

A. MTA'S Responses Should Have Been Drafted By A Neutral Entity With Expertise, Not By The Director Of The MTA

The contentious and argumentative "responses" of MTA Director Jeffrey Tumlin are inappropriate on their face and fail to address the documented and valid findings and recommendations of the Grand Jury.

In view of Mr. Tumlin's role in the Van Ness BRT Project that is the subject of the Grand Jury's Report, his responses conflict with his ethical obligations and the neutrality required to objectively respond to the Grand Jury's findings and they fail to serve the public.

1. Tumlin Has A Conflict Of Interest On The Van Ness BRT Project

Before being appointed MTA Director in November, 2019, Mr. Tumlin was the director and principal of a private profit-making entity, Nelson\Nygaard global consulting firm that was instrumental in creating studies of transportation, traffic, transit, and parking studies under contract and/or subcontract for the City and County of San Francisco's ("City's") Planning Department on their Market-Octavia Project.

City Planning's Market-Octavia Project first proposed the Van Ness BRT Project as part of the "community benefits plan" of the Market-Octavia Project. Mr. Tumlin signed several of those Nelson\Nygaard studies. (See, *e.g.*, *Better Neighborhoods 2002 Market/Octavia Study Area Existing Conditions Report,* August 2001.) Nelson\Nygaard also prepared the transit analyses in the *Market & Octavia Plan EIR Transportation Study,* pages 15-50. That Study recommended the VNBRT Project. (*Id.*, Appendix, Market & Octavia Neighborhood Plan Transportation Project List, page 3.)

In 2020, in his new role as Director of MTA, while riding his electric bicycle, flipping off and cursing at drivers stuck in the congested traffic there that resulted from the Market-Octavia Project, Mr. Tumlin denounced the transportation centerpiece of that Project, "Octavia Boulevard." [1]

2. Since Being Appointed MTA Director, Tumlin Has Himself Signed Contracts Extending The Time And Agreeing To Millions More Under The CM/GC Contract For The Van Ness BRT Project

Remarkably, Mr. Tumlin, while still at the helm of the private for-profit Nelson\Nygaard consulting firm, was hired by the City in November, 2019, as Director of SFMTA at a base salary of $342,483 per year in public money. (See MTA Board, Nov. 19, 2019, Staff Report and Res. No. 191119-44; Form 700 (Statement of Economic Interests), January 15, 2020, Jeffrey Tumlin, [showing income of more than $100,000 from Nelson\Nygaard].)

MTA originally insisted on the flawed CM/GC Contract with a Chicago-based contractor Walsh Construction ("Walsh"). MTA had no prior experience with a CM/GC Contract for a capital Project as large as the VNBRT Project.

The CM/GC Contract was a recipe for disaster, since it issued an RFP only for its initial phase, which was to spend a year creating a paper plan for the later construction phase. The

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[1] (San Francisco Chronicle, April 2, 2020: Michael Rosen, "'We screwed this one up' SFMTA director Jeffrey Tumlin weighs in on Octavia Boulevard," 'We screwed this one up': SFMTA director Jeffrey Tumlin weighs in on Octavia Boulevard (sfgate.com); *Wired*, April 1, 2020: Adam Rogers, "Build Cities for Bikes, Buses, and Feet--Not Cars," HTTPS://WWW.WIRED.COM/STORY/CITIES-WITHOUT-CARS-SAN-FRANCISCO-JEFF-TUMLIN/?UTM_SOURCE=ONSITE-SHARE&UTM_MEDIUM=EMAIL&UTM_CAMPAIGN=ONSITE-SHARE&UTM_BRAND=WIRED

Contract would then proceed to the construction phase, for which there was ***no competitive bidding.*** By bidding low on the first, "planning" phase of the Contract, Walsh cleverly secured from MTA the lucrative second (construction phase) of the CM/GC Contract.

The Grand Jury recommends that MTA should not again use a CM/GC contract. Yet Tumlin now rejects that recommendation. (MTA Responses, R5, R6.)

That Contract with Walsh was awarded to the lowest bidder for an initial year-long "study," which included *no construction.* MTA then awarded Walsh the second part of the CM/GC Contract for the actual construction of the Project with *no competitive bidding* as a "modification" of the CM/GC Contract.

In the long, fantastically destructive and expensive saga of the VNBRT Project, Tumlin's status as MTA Director enabled him to sign contracts *extending the time and awarding more public money* to the Walsh Construction Corporation, long after it was clear that Walsh construction had misled MTA with the CM/GC contract. Incredibly, the Board of Directors of MTA unanimously approved all of Tumlin's actions amending the Walsh Contract. (See, "Contract Modification No. 9," February 18, 2020 [awarding Walsh another $633,003.16]; "Contract Modification No. 10,: May 19, 2020 [another $2,187,655.23 to Walsh].)

The Walsh Contract, of course, does *not* include the *thousands* of staff hours of City's MTA, SFCTA, PUC, DPW, and City Attorneys, and it does *not* include the cost of the consultants hired to do the environmental impact report/statement ("EIR/EIS") and City attorneys. If those expenses were included, the cost of the VNBRT Project would easily exceed a half billion public dollars.

Now, Mr. Tumlin defends the delays resulting from the construction of the VNBRT Project, ignoring MTA's central role in them and the additional cost of the Project that was directly due to MTA's demand that the Project be placed in the *center* of Van Ness Avenue/US Highway 101 instead of on the sides of Van Ness. MTA's demand for a "Locally Preferred Alternative" ("LPA"), was a political decision that directly resulted in removing all of the water, sewer, and electrical infrastructure on the full two miles of the VNBRT Project, from Lombard to Mission Street.

MTA further insisted on the flawed and later botched CM/GC Contract with Walsh. That Contract with Walsh Construction was awarded to the lowest bidder on the initial part, which included *no construction*, and then awarded with *no competitive bidding* Walsh hundreds of millions for the construction work.

Mr. Tumlin should be recused from any participation in responding to the Grand Jury findings. In view of the above circumstances, he should play no role in responding to the Grand Jury's findings.

B. MTA'S Responses To The Grand Jury's Findings Are Inaccurate And Unsupported By the Factual Record Of The Van Ness BRT Project

F1 Finding: "The delays in completion of the Van Ness BRT Project were caused primarily by avoidable setbacks in replacement of the water and sewer infrastructure.

TUMLIN'S RESPONSE: "Disagree partially. Many of the initial delays on the Project occurred during construction of the underground phase of the Project; however, some of these delays were avoidable and some were unavoidable."

COMMENT: ***All* of the delays and higher costs were clearly avoidable, since they were built into MTA's design and were disclosed long before the Walsh CM/GC Contract**

MTA was fully aware of the expense and delays, because they were disclosed both in the EIR/EIS on the VNBRT Project and in public comment on the Project in 2013-- long before the contract with Walsh in 2015. (See EXHIBIT A, Public Comment; see also SFCTA Res. No. 14-18, September 10, 2013 [adopting VNBRT Project]; MTA Board Resolution 15-108, awarding CM/GC Contract No. 1289 to Walsh on July 7, 2015.)

The BRT Project was never accurately described, but instead was promoted initially as "alternatives." *After* environmental review was closed, MTA came up with what it called a "Locally Preferred Alternative" ("LPA"), a variation with a center-running alternative devised in secrecy and never included in the Project's environmental review. (EXH. A, pp. 5-9, 13, 17, 33, 34.)

The LPA required the total wreckage of Van Ness Avenue/US Highway 101 that ensued, since it required the (otherwise unnecessary) removal of water and sewer lines running through the center of Van Ness Avenue. The EIS states that existing center infrastructure would not stand the weight of the proposed LPA in the center.

The LPA also required replacement of the electrical infrastructure, so that trolley wires could reach transit in the center instead of on the sides of Van Ness.

Thus, for MTA's LPA BRT, the graceful 100-year-old lamp posts were to be demolished and replaced with ugly generic metal posts to accommodate lines to the center instead of sides of the highway for the buses. The LPA also required removing all of the vegetation in the center medial of Van Ness, many of the trees on both sides of Van Ness, and nearly all of the parking on Van Ness.

These facts were well-known to the City's MTA (which devised the LPA), the SFCTA (the lead agency), and this Board, since public comment was submitted *before* the Project approval by both MTA and SFCTA in 2013. (See EXHIBIT A.)

The Grand Jury's Finding F1 is correct, since all of the delays caused by replacement of the water and sewer lines could have been avoided by choosing the option of a side-running BRT instead of the LPA.

The LPA was approved in 2013, ***before*** the flawed contract with Walsh was signed in 2015.

TUMLIN'S RESPONSE (cont'd): "The City and the contractor often share responsibility for delays, and some of the delays were due to third parties."

COMMENT: What third parties does Mr. Tumlin blame? And why? The LPA VNBRT Project was highly controversial. Indeed the City's Public Utilities Commission and Department of public Works raised serious concerns and repeatedly stated their opposition to a center median BRT. The Mayor's Office of ADA/Disability Access also raised significant concerns and opposed it. (EXH. A, p. 10.) But those were City agencies, not "third parties."

TUMLIN'S RESPONSE (cont'd): "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 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*."

COMMENT: This Board should not approve MTA's response without receiving the complete "analysis" that is "currently underway" referred to by Tumlin.

In fact, this Board should carefully examine the entire history of the award of the Walsh contract, which was unlike other MTA contracts that preceded it on major capital projects. Instead, the contract began as a CM/GC contract that would have two phases. In the first phase the contract recipient would bid on an initial phase to come up with its approach to the actual construction. In its bid, Walsh, unlike the other bidder, planned to tear up the entire two-mile length of Van Ness Avenue from Lombard to Mission Street for the entire duration of the construction, instead of working on block-long segments. That proposal alone should have given MTA/the City pause in awarding Walsh the contract.

Walsh slightly underbid its competitor for the first phase, with MTA awarding the *whole* CM/GC contract based solely on Walsh's low bid for the first phase. Thus, by submitting the lower of two bids or the initial paper phase, Walsh enjoyed a year of drawing pictures of Van Ness Avenue at $800,000 in public expense, but did no actual work on the construction.

Under the CM/GC Contract, MTA then awarded Walsh the lucrative construction contract ***with no competitive bidding***. Instead, the MTA Board adopted a Resolution No. 16-110 to simply "*modify*" the CM/GC Contract to award Walsh another $193,027,555 for the construction. (See MTA Board Resolution No. 16-110, August 16, 2016.)

Thereafter, the trashing of two miles through the center of San Francisco ensued for six long years, while businesses failed, including restaurants, movie theaters, and other businesses where no one could park or approach. MTA chose that course by designing and approving its LPA, instead of the much less impactful side-running alternative, or the No-Project alternative.

At least one knowledgeable MTA official reported on Walsh's failure to timely fulfill its contractual obligations. Incredibly, MTA paid compensation to Walsh for that failure.

This Board should *not* approve MTA's/Tumlin's response and should agree and adopt the Grand Jury's Finding F1.

F2: Finding: "The potential impact of utility replacement on the cost and duration of the overall project was given insufficient consideration in the initial planning process."

TUMLIN RESPONSE: "Disagree partially The SFMTA gave significant consideration to the potential impacts of utility replacement during the planning process."

COMMENT: Tumlin's response is false. MTA adopted the LPA *after* the planning and environmental review process, with full knowledge of its drawbacks

The Project's false goal was to slow vehicle traffic and cause congestion so that buses would compete in speed with the slowed vehicle transportation. (EXH. A.)

Mr. Tumlin falsely claims that the contractor participated in the design of the "Locally Preferred Alternative" ("LPA"). The LPA was the result of a collaboration in total secrecy between the MTA and SFCTA.

The LPA received *no* environmental review and was proposed and adopted *after* the close of public comment on the EIS/EIR on the Project.

The LPA was approved by SFCTA in September, 2013, which dictated the course of the construction of the Van Ness BRT Project.

The CM/GC Contract with Walsh was approved by the MTA Board on July 7, 2015. MTA though MTA had *no* experience with that type of contract on any comparably large capital project. The CM/GC contract was flawed on its face. MTA issued an RFP on the initial phase of the Project and awarded it to Walsh based not on a construction bid but on a bid for planning the construction on paper with no on-ground excavation or planning.

MTA then awarded another nearly $200 million to Walsh for the construction phase on August 16, 2016, with no *competitive bidding*, but under the CM/GC contract, only a "modification" of the 2015 Contract. Thus, under MTA's CM/GC Contract, by submitting the lowest bid for the initial phase, the Chicago-based Walsh corporation would get the second (construction) phase regardless of costs for the second phase.

Mr. Tumlin's responses entirely ignore that MTA manufactured their "LPA," which was *not* reviewed in SFCTA's EIS/EIR, and was *not* publicly released until after public comment was closed on the EIR. Endorsed by the San Francisco Bicycle Coalition, the "LPA" demanded that four travel lanes on Van Ness Avenue (Highway 101) and the entire center median would be converted into a red-painted 4-lane expanse of pavement, the Van Ness BRT.

According to the EIS/EIR on this Project, the replacement of the pipelines located in the center of Van Ness Avenue would not have required replacement if the side-running alternatives had been adopted. By creating its LPA, MTA assured massive reconstruction and relocation of sewer and water lines, which would not have been necessary with the side-running alternatives, or the no project alternative.

This Board should approve the Grand Jury's F2 Finding and reject Mr. Tumlin's unsupported disagreements.

F3 Finding: "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."

TUMLIN RESPONSE: "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."

COMMENT: It is true that the contractor knew the overall LPA Project design from the start, since that was the Project approved by MTA and SFCTA. The LPA Project, however, was the reason why vast infrastructure replacement was required, including relocating two miles of sewer and water lines, electrical infrastructure and streetlamps, removal of trees and irreplaceable artifacts, to place the BRT in the center of Van Ness/US Highway 101, instead of on the sides.

The LPA, unlike the side-running alternatives, also required destruction of the historic lampposts that had lined Van Ness for 100 years, to replace them with generic higher posts to support wires reaching buses in the center instead of the sides of Van Ness Avenue. Thus the delays were built into City's LPA.

That huge restructuring would not have been necessary with the side-running BRT alternatives or with the No Project alternatives. However, the City, not the contractor was responsible for that mistaken decision.

MTA's creation of the LPA design should itself have been preceded by specific exploration and perfect understanding of where those pipes were located. Instead of that necessary knowledge, MTA chose the LPA alternative *without* that critical knowledge, and *without* the input of City engineers, and then MTA proceeded to contract its implementation with a risky CM/GC Contract.

Even the City's Public Utilities agency ("SFPUC") and Department of Public Works expressed grave misgivings about the LPA design early in the process. (EXH. A, p. 10.) The lack of funding for the much more expensive LPA Project, was also apparent, *before* Walsh (the chosen Contractor) began its full-scale tearing up of the entire two miles of Van Ness Avenue from Lombard to Mission Street, beginning with bulldozing the entire center median.

After Walsh's immediate and rapid destruction of the entire Project area, actual construction came to a halt.

The City failed to enforce and continued to "modify" the Contract at least 10 times, it allowing delays and awarding more millions, and even funded bonds. Construction was delayed for *years* due to Walsh's disagreement about who would pay electrical and other subcontractors.

F4 Finding: "Project timelines could not be estimated accurately because documents did not reflect the extent and location of underground utilities accurately."

TUMLIN: "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."

COMMENT: See Comment to F1, F2, and F3, *ante.* The design of the Project that was a "product of City staff" dictated the expense, delays and "timeline" of the construction.

The CM/GC contract then contributed to the disastrous result of the City's foolish, politically motivated planning, which had nothing to do with infrastructure, but only delaying cars. There should have been no "unknowns" when City approved the LPA in 2013 and signed the Contract in 2015.

TUMLIN: "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 different 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...Contractor's initial construction sequence plan was also unrealistic. Al these issues contributed to an inaccurate project timeline projection."

COMMENT: There is no excuse for Mr. Tumlin's unsubstantiated claim that MTA suddenly "realized" it had inaccurate and incomplete information before MTA created, promoted, and approved the LPA. As noted, MTA was fully aware that the LPA required total excavation and replacement of water, sewer, and electrical infrastructure on Van Ness *before* it approved the Project in 2013, and *before the City approved the CM/GC contract with Walsh* in 2015, and *before* construction began. (EXH. A, p 10.)

After MTA released the RFP for the CM/GC Contract, two bids were received, one from Ghilotti, and one from Walsh. The RFP is only for the first phase of a two-part CM/GC contract. By underbidding Ghilotti on the *first* phase, which included *no construction* but only design drawings and public relations, Walsh won the contract. The actual *construction* contract was never released for bidding but was **awarded to Walsh with** *no competitive bidding* under the CM/GC contract, as a contract "modification."

MTA's politically-motivated rush to begin constructing the Project and its lack of experience with CM/GC contracts directly led to the ensuing disaster on Van Ness. As the Grand Jury notes, MTA should bear the blame for getting the City into a hopeless position requiring the City (the public) to pay and pay again for 10 contract modifications.

Meanwhile restaurants and businesses, and cultural amenities, including a premier art movie theater, closed, nearly all the trees were removed, irreplaceable artifacts were demolished, and the historic streetlamps were demolished to make way for the garish 4-lane red-cement BRT expanse, with generic ugly stock fixtures marking San Francisco as permanently tasteless.

F5 Finding: "The evaluation rubric for preconstruction contract bids weighted cost too heavily, as compared to technical expertise, even after project-specific legislation allowed for a lower weight to be assigned for cost."

TUMLIN: "Agree. Such contracts should be evaluated using a best value rubric, with technical expertise weighted high. At the time, the Agency was unable to lower the points given to cost in the legislation submitted to the Board of Supervisors."

COMMENT: Although Tumlin agrees, as should this Board, MTA was fully aware of what it was getting into with the CM/GC contract. Indeed, public comment warned of the inevitable problem with the contract.

F6 Finding: "Practical work during preconstruction that could have derisked the subsequent construction phase of the project was insufficient."

TUMLIN: "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."

COMMENT: Tumlin's claim ignores that 1) MTA failed to do the necessary exploratory work *before approving the LPA*; and 2) Walsh had a full year under the paid CM/GC contract to do exploratory work.

After approving the Project in 2013, and after approving the Walsh Contract in 2015, with its year of public funding, Walsh held meetings in pizzerias on Van Ness with MTA's official spokesperson, Kate McCarthy,[2] in which Walsh's public relations flack, Jay Sims, rolled out 8-foot-long colored maps of the *surface* of Van Ness Avenue.

In those gatherings, both Walsh's representative and Ms. McCarthy refused and failed to answer any questions about the actual on-ground construction, infrastructure beneath Van Ness, timeline, expense, and funding of the Project, or Walsh's "plan" to bulldoze the entire length and every single intersection of Van Ness Avenue from Lombard to Mission Street, reducing the median strip and the entire Avenue to rubble and making it largely impassable with no turning at any intersections for the past six years.

F7 Finding: "Review of preconstruction deliverables did not sufficiently measure the contractor's preparedness for construction, which resulted in both inaccurate cost estimates and timelines."

TUMLIN: "Disagree partially. It is correct that the contractor may not have adequately prepared itself for construction during the year-long preconstruction period. The timeline for underground work provided by the contractor's subcontractor during preconstruction did not align with the timeline provided by the subcontractor who eventually performed the work. It is unclear to what extent better preparedness by the contractor would have resulted in more accurate cost estimates and timelines. In addition, other key issues listed in F4 contributed to the challenge to forecast accurate cost estimates and timeliness."

COMMENT: MTA entered into a CM/GC Contract with Walsh that *paid* Walsh for a full-year to prepare to construct MTA's new "LPA" Project. Both parties were aware of what that LPA Project involved vast excavation and construction of new pipelines, electrical utilities, and anti-car features such as bulbouts. MTA failed to assess Walsh's total *failure* to create an accurate estimate of the construction costs of the Project.

A timeline of at least five years was stated in the EIR on the LPA Project, and MTA was fully aware of that, even if the CM/GC Contract stated *no* time deadline. When Walsh failed to deliver, MTA then signed more 10 more Contract modifications *extending* the time and *increasing the cost*, and incredibly even paid Walsh for the delays.

This Board should approve Finding F7.

F8 Finding: "The effectiveness of the CMGC contract was greatly reduced because the general contractor was brought into the design process too late."

TUMLIN: "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

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[2] Ms. McCarthy's only "transportation" experience consisted of being an officer of the San Francisco Bicycle Coalition, a private corporation advocating against motor vehicles and for bicycle riding.

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."

COMMENT. See Comment on F9.

F9 Finding: "Underspecification in technical requirements led to additional costs for work that could have been predicted and included in the original contract."

TUMLIN: "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."

COMMENT: Mr. Tumlin fails to state that MTA had NO experience with CM/GC contracts, which were not the usual contract on major infrastructure projects like the Van Ness BRT LPA Project.

MTA's LPA Project was designed by MTA "engineers." That incredible expenditure of staff time, the expenditures for MTA's years of "public relations," even leasing an office on Van Ness.

The time spent by staff of MTA and SFCTA on the EIS/EIR have never been accounted for on the Project. With those expenditures, the cost is close to one billion dollars, including the millions paid to Walsh. The time/expense of the Walsh contract for the "pre-construction" phase) and for demolishing Van Ness Avenue for the BRT Project, certainly should have and still should be accurately accounted for. Further, Walsh's battle with its subcontractors should have early on led to cancellation of the contract by MTA.

TUMLIN (cont'd): "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 claims 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 an did not request any clarification/changes at that tie. Contractor raised issues with technical requirements after the construction started."

COMMENT: Both MTA and Walsh were or should have been well aware of Caltrans requirements. MTA actually *paid* Walsh 20% of Walsh's demands for costs, more after Walsh failed to deliver due to its disagreement with its subcontractors on costs.

This Board should adopt the Grand Jury's F9 Finding.

F10 Finding: "Contention over underspecified or unclear contract terms and technical requirements led to a deterioration in the relationship between the City and Walsh, the general contractor."

TUMLIN: "Disagree wholly. Language that was used in the contract was standard to all City contracts. The City worked diligently to enforce the contract in a fair and reasonable manner. The contractor did not raise any concerns about ambiguity or confusion during the year of pre-construction services or during negotiations. The CM/GC has the responsibility to raise and

resolve such concerns during pre-construction. What actually led to deterioration in the relationship was the contractor's concerns about the bid for the utility work being substantially higher than originally estimated and thereby reducing its profit margin."

COMMENT: MTA knew or should have known the estimated cost of the "utility work," *i.e.*, removing and completely replacing water, sewer and electrical utilities in the center and sides of Van Ness Avenue/US Highway 101. Instead those figures were not brought to bear because the CM/GC contract when signed contained no construction specifications, but bound MTA to Walsh doing the construction without those cost estimates and with no competitive bidding for the construction work. As a result, Walsh underbid the initial (non-construction phase), knowing the City was bound to a general total for the construction phase. Any good-faith negotiation should have had a realistic cost estimate of the construction, and there should have been competitive bidding on the construction.

F11 Finding: "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."

TUMLIN: "Disagree wholly. The City supported the contractor's decision to remove its underground utility contractor, Synergy. The relationship 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 resolve by the City paying Walsh nothing on this issue. The price difference was not due to poor cost estimating, but to unexpected market conditions."

COMMENT: The failure to make reality-based estimates of the cost of the work to be done, whether by Walsh or its subcontractors, or, as noted in F13 by the City itself, places the blame on MTA and Walsh. Whether or not Walsh delivered, as Mr. Tumlin admits (F13), the City had to pay for its own staff to deal with Walsh's failure. ("City staff had to supplement the contractor's team directly, performing contractor work") [Tumlin Response F13] Thus the taxpayer paid for the failure of both parties to make a reality-based contract.

The City with its vast experience should have been well aware of the cost of replacing water, sewer and electrical utilities to implement its LPA Van Ness BRT project, *before it approved that Project.* Indeed, under the law the City was required to obtain full funding for the Project *before approving it*, which took place in 2013, *before* the CM/GC contract with Walsh.

F12 Finding: "The contentious relationship between Walsh, the general contractor, and the City made it difficult to resolve problems as they arose, despite close collaboration being one of the potential advantages of the CMGC contract."

TUMLIN: "Disagree partially. Once the contractor realized that its guaranteed maximum price would not cover the cost of the utility work, the relationship because strained and the contractor became uncooperative. It appeared that the contractor was more focused on recovering the potential loss from the increased utility costs than performing a collaborative and successful project."

COMMENT: Why would a private profit-oriented contractor collaborate on a potential loss? The statement makes an absurd presumption.

TUMLIN (cont'd): "To illustrate this, the contractor hired additional personnel to focus on claims, and used field staff to assist with the claims process rather than devoting resources to the project. The contractor's lack of experienced field staff required the City to hire a utility coordinator and other staff to facilitate the contractor's coordination with third party utilities and to resolve basic field issues. As a CM/GC, it was the contractor's responsibility to coordinate day-to-day activities with third party utilities. In spite of the challenging situation, field staff maintained a professional relationship."
COMMENT: See COMMENT on F11.

F13 Finding: "Lack of an in-the-field point of contact between Walsh and the City during early stages of construction led to delays and increased costs on the project."

TUMLIN: "Disagree wholly. The City's Resident Engineer (RE) was (and is) the point of contact with the contractor. The RE, who has been on the Project from the beginning, along with the owner's construction management team, have always been co-located with the contractor's team. Notably, the high turnover of the contractor's management team made it difficult to coordinate with the contractor, and necessitated the City bringing the contractor up to speed at various times (and likely contributed to the delay and increased costs on the Project)."

COMMENT: Mr. Tumlin offers no names and no support for this statement. See also, Comment on F6.

TUMLIN (cont'd.): "The unwillingness to pothole and perform other advance investigation in a timely fashion contributed more to delays in resolving field challenges than any lack of City staff."

COMMENT: If Walsh was unwilling to "pothole and perform investigation" at the pre-construction stage, the City should have terminated the contract with Walsh for the construction phase of the Project.

TUMLIN (cont'd): "The CM/GC should lead the field fact-finding and discovery with very little owner assistance to resolve basic field issues and coordination matters." "During the construction, City staff had to supplement the contractor's team directly, performing contractor work..."
COMMENT: And where is the accounting of the public expense of that City staff work?

N. F14 Finding: "Confusion related to the contractual requirements for pedestrian monitoring contributed to the deterioration of the relationship between Walsh, the general contractor, and the City."

TUMLIN: "Disagree partially. The City does not believe that the contractual requirements for pedestrian monitoring and flaggers are confusing. In the interest of public safety, the City agreed to reimburse Walsh for pedestrian monitors if (1) the contractor provided the flaggers required under the contract for pedestrian control and (2) the contractor provided advance notice to the City of the need for pedestrian monitors to support the flaggers at a particular location."

COMMENT: Because Walsh proposed during the preconstruction phase to tear up of all of Van Ness Avenue at once for the duration of the work, instead of working block-by-block, pedestrian monitoring and flaggers were necessary for the entire length of the Project construction area, obviously increasing costs for the dangerous, ugly disaster.

The "Finding Response Text" ignores that MTA and SFCTA's LPA, which required excavation of water, sewer, and utility lines to implement its most environmentally damaging "alternative."

CONCLUSION

The Grand Jury's Report on the Van Ness BRT Project presents a factual expose of many events that have gone wrong, both with failure of MTA to realistically and efficiently plan and contract for a major capital Project, and pinpoints MTA's failure to understand or even try to find out what lay beneath the surface of the once-grand Highway. The result has been years of delay, visual blight, and traffic congestion impacts that will negatively affect travel in the center of San Francisco for generations.

The Board of Supervisors and this Committee should approve all of the Grand Jury's recommendations and order MTA to implement them.

DATED: September 30, 2021

Mary Miles

EXHIBIT A

Mary Miles, Attorney at Law (SB #230395)
for Coalition for Adequate Review
364 Page St., #36
San Francisco, CA 94102
(415) 863-2310

TO:
Maria Lombardo, Acting Director
Erika Cheng, Clerk of the SFCTA Board
and
Board of the San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, CA 94103

Van Ness BRT EIS/EIR
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, CA 94103
vannessbrt@sfcta.org

Leslie Rogers, Region IX Administrator
Federal Transit Administration
U.S. Department of Transportation
201 Mission Street, Suite 1650
San Francisco, CA 94105

BY E-MAIL

DATE: September 10, 2013

RE: San Francisco County Transportation Board Meeting, September 10, 2013, Agenda Item #3

PUBLIC COMMENT ON FINAL ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT (FEIS/FEIR), CEQA FINDINGS, AND PROPOSED LEGISLATION ON VAN NESS AVENUE BUS RAPID TRANSIT PROJECT

This is public comment on the Final EIS/EIR ("FEIR"), proposed "CEQA Findings," and proposed legislation on the Van Ness Avenue Bus Rapid Transit Project ("BRT") Project ("the Project"). Please assure that a copy of this comment is distributed to each member of the Board of the San Francisco County Transportation Authority ("SFCTA") in advance of the SFCTA Board Meeting of September 10, 2013 (Agenda Item 3), and place a copy of this Comment in all applicable files on the Project. Please consider this Comment before any deliberations on certifying the Project EIR and approving any findings, statement of overriding considerations, or legislation approving the Project or any part of it.

The FEIR and the proposed Project violate the California Environmental Quality Act ("CEQA") (Cal. Pub. Resources Code ["PRC"] §§21000 *et seq.*, CEQA's regulatory Guidelines (14 Cal. Code Regs. §§15000 *et seq.*["CEQA Guidelines"]), the National Environmental Policy Act ("NEPA") (42 U.S.C. §§4371 *et seq.*), its implementing regulations and Executive Orders (*e.g.,* 40 CFR 1500 *et seq.*, etc.), and other statutes and regulations that apply to the review, funding, and approval of the Project (*e.g.,* 49 USC §303; 23 USC 106, 109, 138, 325, 326, 327; 23 CFR 771 *et seq.*, etc.) This commenter has also submitted Comment on the DEIS/DEIR ("DEIR"), which is incorporated by reference in this Comment. FEIR at II: Individuals, pp.106-121 (I-40).

BROWN ACT VIOLATION: The SFCTA failed to comply with the Brown Act, which requires posting the Agenda of this meeting at least 72 hours in advance of the meeting in "a location that is freely accessible to members of the public and on the local agency's Internet Web site." Cal. Gov. Code §54954.2(a)(1). The agency did not post the meeting Agenda 72 hours in advance of the meeting in a location that is freely accessible to the public. SFCTA's office is not "freely accessible to members of the public" and is not accessible at all on weekends. The agency did not provide by electronic mail a copy of the Agenda at least 72 hours in advance of the meeting, and only sent a notice that the meeting would take place, e-mailed on Friday, September 6, 2013, which did not include the Agenda. In any event, the Agenda had to be posted in a publicly accessible location in addition to any web site posting. Cal.Gov. Code §54954.2(a)(1). This Board therefore must continue the Item and all actions on it until after legally required public notice has been provided.

The proposed "CEQA Findings" and hundreds of pages of other "enclosures" and "addenda" were not legally noticed or publicly available before this hearing. These materials were not noticed, even to those, like this commenter, who have repeatedly requested notice of all proceedings and environmental review of this Project. They were posted as links to a link to the "agenda" that itself was not lawfully noticed—again not directly available without navigating the internet—with no web version of the agenda or links available until after business hours on September 6, 2013, giving the public less than legally adequate notice--in fact less than 48 hours of notice for this meeting scheduled on September 10, 2013 at 11:00 a.m. Although this commenter has asked for public notice and copies of all environmental documents in advance of their approval, none were provided. The documents are hundreds of pages of cross-referenced materials, precluding public access and comment on the proposed actions in violation of NEPA and CEQA. Under these circumstances, there is no requirement of exhausting administrative remedies in the event of litigation, because the materials were not timely available to the public for practical purposes. Any approval by this Board without allowing meaningful opportunity for public input and review is itself evidence of a preordained determination to adopt the Project in a fashion that precludes public input.

Due to the inadequate notice and inadequate public comment period, unavailability of materials referenced in the environmental documents, including supporting studies, unavailability of agency staff, the large volume of paper generated since the close of public comment on the DEIR, the massively revised FEIR, the addition *after* the close of comment on the DEIR of a "Locally Preferred Alternative" ["LPA"] that was *not* included in the DEIR, and thousands of pages of "technical memos," this Comment is necessarily incomplete. However, commenters do not waive further comment on this Project, including issues not addressed in this

Comment. Further, where as here public comment is curtailed by inadequate information and is futile, since a foregone conclusion of approval has already been assumed in every document and in agency actions, the public may not be held to a requirement of exhaustion of administrative remedies in future litigation, because such remedies do not exist for practical purposes.

Since the agencies have provided inadequate time and information, this comment is necessarily incomplete, does not include all issues and violations of NEPA and CEQA in the defective FEIS and the agencies' procedures, and is not organized in order of importance. This commenter, however, does not waive any issue by its absence or due to the inadequate time to fully address it in this Comment.

1. Introductory comments

The Van Ness BRT ("the Project") proposes to make existing San Francisco ("Muni") bus traffic "compete" with vehicle traffic on federal and state highway, US 101, which is also an historic major street in San Francisco. The two existing Muni lines on Van Ness Avenue, Routes 47 and 49, carry 16,000 passengers per day, make 14 stops in each direction on the two-mile Project segment, with an average speed of approximately 5.2 miles per hour. FEIR, p.3-21, 24. The Project's stated "purpose and need" are to increase bus speed by slowing other modes of traffic that include 44,500 vehicles per day on the segment and more than 126,000 vehicles in the Project area corridor, which includes Gough, Franklin, Polk, Larkin, and Hyde Streets. FEIR, p.3-44, §3.3.2.2, p.3-3. According to the FEIR, within the Project area "study" corridor, the two Muni lines carry 14% of travelers, while vehicles carry 86%. FEIR, p.3-3. That figure, however, mistakenly assumes that vehicles carry only the driver, when in fact many vehicles carry more than one passenger, including the 11% of San Francisco commuters who carpool,[1] taxis, shuttle and tour buses, and vehicles carrying passengers.

To achieve its "purpose and need" of slowing traffic other than the two Muni lines, each of the "alternatives" for building the Project reduces traffic capacity on Van Ness Avenue by one-third by eliminating two traffic lanes from the existing six lanes that carry 44,500 vehicles per day. FEIR, p.3-44, §3.3.2.2. The FEIR admits that the vehicles now occupying six lanes on US Highway 101/Van Ness Avenue would be diverted to other streets causing significant traffic impacts, but claims without any supporting evidence that many would abandon vehicle travel and ride the two Muni lines or use bicycles. FEIR, p. 3-10.

The Project proposes slowing vehicle (meaning all non-Muni-bus) traffic to make the two Muni lines more "competitive" with other travel modes on US Highway 101/Van Ness Avenue, such as cars, trucks, taxis, and even shuttle buses ("Google" or Bauer buses), which will not be allowed in the BRT lanes. The Project proposes to achieve its combined goal by eliminating two traffic lanes, all left-turn lanes, most parking, and many right-turn lanes on US101/Van Ness Avenue to slow, obstruct, and force diverting vehicle traffic so that it is as slow as existing bus traffic.

The Project also proposes to speed up Muni Lines 47 and 49 by eliminating *half of the existing bus stops on Van Ness Avenue*, making bus stops 1,150 feet apart (nearly 1/4 mile), instead of the current 700 to 800 feet apart. FEIR, p.3-112. The FEIR observes that not having to

[1] San Francisco County Transportation Authority ("SFCTA"): *Countywide Transportation Plan ["CWTP"]*, p. 41.

stop for passengers would increase the speed of the two bus lines. However, removing bus stops to speed up Muni lines does not require removing traffic lanes and parking to create BRT lanes in the middle of US Highway 101/Van Ness Avenue.

Other Project features include: *eliminating nearly all of the parking on Van Ness Avenue* and hundreds of parking spaces on cross-streets; eliminating *all left-turns*; eliminating many existing right turns; installing bulbouts at 64 intersections to obstruct right turns by vehicles, trucks and buses (FEIR, p.3-108); removing all existing mature trees and other vegetation in the median to install a paved center-median BRT; removing the existing historic streetlamps and installing generic utility posts with two glaring *faux* deco street lamps on each; installing freeway-style overhanging signs; installing large, garish bus stop areas in the median; spending millions to install otherwise unnecessary new sewer lines to accommodate the increased weight of buses traveling in the center of the avenue; painting the pavement occupying the central half of the avenue a garish red color (FEIR, pp.4.4-27,29,31); permitting buses to pass one another in the remaining traffic lanes on US Highway 101/Van Ness Avenue FEIR at p.10-5, §10.2.4.1.; and requiring additional bus traffic in the remaining traffic lanes *Id.* FEIR at p.10-5, §10.2.4.1.

These measures would not in the "near term" accomplish the Project's "purpose" of buses "competing" with other traffic but would *slow down other modes of traffic* "resulting in a significantly reduced speed gap between modes" on Van Ness Avenue. FEIR at p.3-27-28, §3.2.2.3, Figure 3.2-6. Once past the verbiage, the Project's actual "purpose and needs" are twofold: 1) to obstruct and slow all traffic except Muni buses on routes 47 and 49; and 2) to marginally increase the speed of Muni buses on routes 47 and 49. Without all those stops for passengers and by delaying all other traffic, the two Muni lines will supposedly increase their speed to 7 miles per hour, while other vehicles would be delayed not just on Van Ness Avenue but on cross streets and on parallel streets, particularly Franklin and Gough Streets. Thus, the Project's improper purpose is in fact to deliberately create traffic congestion throughout the area to make the two Muni lines "competitive" with other travel modes.

The FEIR admits that the Project would cause significant impacts measured by level of service ("LOS") in the "near term" and degrade three important intersections from satisfactory to unsatisfactory LOS: Gough/Hayes (existing LOS D 45.9 seconds delay would be degraded to LOS E, 74.6 seconds delay); Franklin/O'Farrell (existing LOS D, 39.3 seconds delay to LOS E, 55.9 seconds delay); and Franklin/Market/Page (existing LOS C, 27.2 seconds delay to LOS F, 103.7 seconds delay); and that LOS at Gough/Green would decline from existing LOS F with 76.5 seconds delay to 108.1 seconds delay with the LPA. FEIR, p.3-60, Table 3.3.9. The projected impacts in 2035 include longer delays on these intersection and delays on several other intersections. FEIR, p.3-67, Table 3.3.14.

The FEIR claims that passengers on Muni routes 47 and 49 would gain up to 1.8 minutes of bus time if they travel the entire 2-mile length of the BRT on Van Ness. The FEIR does not account for added travel time to walk twice as far to get on a bus. There is no commitment to acquire more buses to meet the needs of its claimed 40% increase in passengers. Buses would pass one another presumably occupying one of two traffic lanes remaining in each direction. FEIR at p.10-5, §10.2.4.1.

According to the FEIR, the 44,500 vehicles with an unstated number of passengers who do not take the #47 and #49 buses would experience delays in 2015 on US Highway 101/Van

Ness Avenue and on Gough, Franklin, Polk, Larkin, and Hyde Streets (combined) of 2.3 miles per hour southbound, and 1.2 miles per hour northbound. FEIR, p.3-54, Tables 3.3-5, 3.3-6. By 2035, those travelers would be delayed by 6.1 miles per hour southbound, and by 7.4 miles per hour northbound. Vehicles diverted to Franklin Street with an existing average speed of 10.5 miles would lose 4.3 miles per hour and travel at only 6.2 miles per hour.

The net human loss in traveling time in all vehicles except Muni buses would far exceed the minimal "improvement" for most passengers on Muni Lines 47 to 49, which would be less than two minutes if their origins and destinations happened to be on the Project's 2-mile length of Van Ness Avenue. Private buses like "Google" and other "employer shuttle service" or commute buses, tour buses, medical shuttle services, and taxis would not be allowed in the BRT lanes and would continue to occupy remaining traffic lanes on Van Ness Avenue. FEIR at 3-33, §3.2.3; Vol.II: Master Response 3; I-1. The Golden Gate bus lines would continue to travel in the remaining traffic lanes or in the BRT lanes, but all but two of its stops would be eliminated on Van Ness Avenue, leaving only two stops, one at Chestnut Street, and one at Geary. FEIR, p.3-32. Thus, while up to 16,000 existing local Muni bus passengers would allegedly gain up to 1.8 minutes on Van Ness Avenue, that gain would be at the expense of significant time lost by the vast majority of travelers.

Further, much of the time gained by the 16,000 Muni passengers would be attributable to measures that could be implemented *without* the Project, such as the proposed elimination of half of the Muni bus stops on Van Ness Avenue (FEIR, p.10-31, §10.4.1.1), replacing existing buses with new buses with lower floors , new bus stops that would show real time bus arrivals (many of which have already been installed, more efficient boarding and ticket purchase, and other features unrelated to removing traffic lanes, turning pockets, and parking. However, the FEIR fails to consider and analyze alternatives that would include these features but would not include eliminating lanes, turning, and parking.

After close of public comment, the lead agency created a "locally preferred alternative" ("LPA") that was not in the DEIR. FEIR, p.2-3-2-4, §2.1.4. The LPA was then approved by the lead agency, the San Francisco County Transportation Authority ("SFCTA") and by the implementing agency, the San Francisco Municipal Transportation Agency ("SFMTA"), without receiving any environmental review or public comment.

The LPA, unlike any center-median "alternative" in the DEIR, will eliminate nearly all of the parking on Van Ness Avenue. That fact is hidden in a footnote that contradicts the happy-talk promotion of the LPA in other documents, all of which falsely claim that eliminating parking would be minimal with the center-median BRT proposals. The FEIR, unlike the DEIR, discloses that the LPA *would permanently remove nearly all of the parking on both sides of Van Ness Avenue*, including existing passenger loading zones, blue zones, and yellow loading zones--more than any alternative analyzed in the DEIR. FEIR at pp.4.2-13-17, fn.65, §§4.2.4.2-4, Tables 4.2-8 & 9; 10-31-32, §10.4.1.1. This change in the Project Description requires recirculating an accurate DEIR, not a final environmental document, because the public has been misled by all previous information in the DEIR and other documents.

The LPA would place the BRT in the existing median of Van Ness Avenue, occupying two existing traffic lanes plus the entire median and turning pocket areas, creating a red asphalt expanse that would otherwise equal four traffic lanes, changing the character of Van Ness

Avenue from a grand avenue that is an historic major highway and City thoroughfare to a busway. FEIR, Ch. 10. The LPA and all center BRT alternatives also remove all left turn lanes ("pockets") on the entire length of Van Ness Avenue, and prohibit right turns at several intersections.

The LPA and other center-BRT designs require that City rebuild the sewer system on Van Ness Avenue to accommodate the weight of the vehicles in the center of the avenue, and reconstruct the existing drainage system that would also be affected by the proposed bulbouts.

The LPA requires removing the historic streetlamps lining Van Ness Avenue and replacing them with higher generic highway-style poles with two glaring lamps at different levels on each pole to accommodate OCS wires for existing electric buses that would have to be realigned to the center of the avenue. The LPA would remove nearly all of the existing mature trees and vegetation from the median, and the LPA and other "build" alternatives would install large highway-style overhanging signs along the avenue.

The LPA and other "build" alternatives also include large bulbouts obstructing right turns at many intersections by vehicles, buses, and trucks. The LPA would remove nearly all of the mature trees in the median and replace the median green with large garish visual clutter, including huge new bus stops with glaring advertisements, light fixtures, and "art" installations. The LPA would, contrary to the City's General Plan, paint the entire expanse of the huge asphalt centerpiece a garish red in case the public was unable to locate it otherwise.

The FEIR also admits that, since the Project eliminates nearly half of the bus stops on Van Ness Avenue, that the average distance between BRT stops under the LPA "was determined to be 1,150 feet," more than 1/5 of a mile, affecting accessibility to buses for the disabled, seniors, and others. FEIR atp.10-31, §10.4.1.1. Thus, the marginal increase in Muni speed would also come at the expense of reducing access for many people.

The FEIR admits that the Project's reduction of one-third of traffic capacity on Van Ness Avenue would result in vehicles traveling on parallel streets causing significant impacts, but claims with *no* supporting evidence that many travelers would abandon vehicle travel entirely, would switch to traveling on the two Muni lines, travel on distant corridors, or ride bicycles to reach their destinations. See, *e.g.,* FEIR II:80. That speculation is completely unsupported by evidence, as pointed out in several public comments. See, *e.g.,* FEIR II:78-79, 98-99,115. The FEIR admits that it has "revised" the "text in Section 3.1.2.2" to "include more conditional language: '*up to* 50% of the new transit riders could be former drivers.'" FEIR II:102, emphasis added. There is no coherent analysis or quantified data on origin to destination travel, even though the Project proposes to significantly affect travel on a major US Highway, regional, and City traffic corridor. The FEIR fails to accurately account for the significant delays to the one-third of travelers who now use the two traffic lanes on Van Ness Avenue/US Highway 101 and treats those delays and the Project's significant impacts dismissively with no attempt at mitigation.

The FEIR contains the same defects in its analyses of impacts as the DEIR, including the failure to collect accurate data on existing conditions, selectively choosing only a few intersections for analysis, and omitting accurate baseline descriptions of the five parallel streets that are already congested where it proposes to divert traffic. The FEIR omits any accurate LOS analyses of traffic impacts on cross streets, spillover traffic, and segregates the few impacts it

finds from the obvious impacts *those* impacts will in turn cause on other intersections. These failures to accurately analyze the Project's significant impacts are defects that cannot survive judicial scrutiny under CEQA and NEPA.

The FEIR states that in order to fulfill its "purpose and need" to obstruct vehicle traffic, it "assumes" a "finding of significant and unavoidable impact under CEQA." FEIR, p.7-25. However, that assumption directly violates CEQA.

The FEIR claims that the Project would require up to 58 months (5 *years*) of construction during which time up to four lanes of traffic and bus service would be obstructed and delayed. FEIR, p. 9-6. Although the FEIR claims that only a few blocks at a time would undergo construction, those obstructions would cumulatively affect the heavy traffic on US Highway 101/Van Ness Avenue and other streets and the existing transit for the entire duration of construction.

This Project proposes eliminating more than one-third of the capacity of a major Federal highway and north-south corridor through San Francisco. Even if it were supported by the local public, and there is no evidence that it is, an allegedly "locally preferred" alternative should not, as proposed, control the analyses and outcome of this Project. NEPA and CEQA require avoiding and mitigating significant impacts, not as here deliberately creating them by slowing traffic to make vehicle travel more difficult, time-consuming, and polluting.

2. Public Comment Has Been Undermined by the Lead Agencies' Failure to Provide Adequate Notice and the Opportunity to Comment on Both the DEIR and the FEIR. The "CEQA Findings" Were Not Publicly Noticed or Available to the Public Before the Board's Hearing.

NEPA requires that "high quality" information, including "[a]ccurate scientific analysis, expert agency comments, and *public scrutiny*" be available *"before* decisions are made and *before* actions are taken, and that agencies must "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 CFR 1500.1(b) (emphasis added), 1500.2(d).

The FEIR is dated "July, 2013," but in fact was not released until after a July 11, 2013 e-mailed announcement that did not contain the FEIR. A two-page "Memorandum" was in the envelope, stating at the end: "How may I comment on it? The Authority Board will consider certification of the Final EIS/EIR and project approval in early September 2013 (the final date is to be determined). The San Francisco Municipal Transportation Agency will consider project approval at their September 17, 2013 Board meeting. Following these actions, the FTA will consider issuance of a Record of Decision (ROD). Compliant with the national Environmental Policy Act, any comments submitted before August 12, 2013 will be considered by the FTA before issuance of the ROD." In short, *no* dates were provided for submitting comments to the approving agencies, except that the public had to submit a comment for future (undated) FTA consideration by August 12, 2013. This commenter asked the FTA for a 30-day time extension for public comment, receiving a 15-day extension to August 27, 2013. That time is still inadequate and arbitrary, since *no* date has been specified for issuing the ROD or the approvals that precede it.

The due date for public comment was not in the e-mailed announcement. The documents themselves are impractical for downloading due to their immense size.

Several days after the e-mailed "Update," a CD arrived in the mail claiming to contain the FEIR, though it did not contain any of the newly added or previous studies such as the "Vehicular Traffic Analysis Technical Memorandum (CHS, 2013)" or any other supporting material, none of which were contained in the "Appendices I and J" attached to the FEIS.

The "CEQA Findings" were not publicly available and could not be viewed except by complicated internet navigation posted on the SFCTA web site under the "Agenda" item for the SFCTA Board meeting of September 10, 2013. The Agenda was not available until after hours, Friday, September 6, 2013, giving the public less than 48 hours to find and assimilate hundreds of pages of findings and other documents that were not previously available. That is not adequate notice under CEQA or other existing statutes providing for open meetings, public notice and the opportunity to be heard.

The "Findings" at "Enclosure A" of the Agenda of the Board Meeting of September 10, 2013, **falsely states** that "paper copies" of the FEIR were "sent to . . .those parties that commented on the Draft EIS/EIR and provided a physical mailing address." "Enclosure A, September 10, 2013 ["Findings"], p. 8. This commenter commented on the DEIR/DEIS and was never provided a hard copy of the FEIR or any other document. Instead, this commenter, and presumably all others were required to separately order and pay for a hard copy of the FEIR, and for hard copies of the allegedly supporting studies.

A hard copy of the FEIR had to be separately ordered at a cost of $97.59, precluding getting a readable document for people who could not afford it and could not visit public facilities to view it during business hours, *i.e.,* most working people. See, *e.g.,* 40 CFR 1506.6(f). A cheaper black and white copy was unavailable within the limited public comment period. A CD of the "Technical Memos," meaning the supporting documents that should have been included in appendices, was only available on request, and the CD provided was defective, requiring more requests, more hassles and wasted review time of the defective documents. Nevertheless, the agencies still did not extend the time for public comment beyond the bare minimum required.

The Findings and other materials were not publicly noticed or available to the public in any form before the September 10, 2013 meeting of this Board. They were only available by searching and finding them on the SFCTA web site where they were posted after hours on Friday, September 6, 2013.

3. THE DEIR MUST BE RECIRCULATED: The FEIR Has Hundreds of Pages of Revisions and A New "Locally Preferred Alternative" That Were Not in the DEIR, Requiring Recirculation Under Both NEPA And CEQA.

After the close of public comment on the DEIR on December 23, 2011, the lead agency, the San Francisco County Transportation Authority ("SFCTA") and a "cooperating" or "responsible" or "implementing" agency, the San Francisco Municipal Transportation Agency ("SFMTA"), significantly changed the Project description, alternatives, and analyses in the DEIR by creating a new "alternative" and approving it as the "locally preferred alternative" ("LPA").

A section is added at §10.3 in the FEIS, claiming that the lead agency SFCTA and City's MTA "proposed an LPA based on the project's purpose and need."

The FEIR claims that those "substantive" changes are "demarcated by a vertical bar in the margin" (FEIR at p.S-1, §S-2), but they are otherwise unexplained, and they occupy nearly every page of the massive FEIR, substantively changing the Project description, alternatives, baseline (existing conditions description), proposed mitigations, and all the analyses of impacts required by NEPA and CEQA.

For example, the FEIR, unlike the DEIR, discloses that the LPA *would permanently remove nearly all of the parking on both sides of Van Ness Avenue*, including existing passenger loading zones, blue zones, and yellow loading zones -- more than any alternative analyzed in the DEIR. FEIR at pp.4.2-13-17, fn.65, §§4.2.4.2-4, Tables 4.2-8 & 9; 10-31-32, §10.4.1.1. This change in the Project Description requires recirculating an accurate DEIR, not a final environmental document, because the public has been substantially misled by all previous information in the DEIR and other documents. The LPA also removes nearly all trees in the center median strip, and contains more bulbouts, turn prohibitions, and other significantly negative features than the "alternatives" described in the DEIR. The failure to coherently describe the Project requires recirculation, because the public has been misled.

Both laws require recirculation of the DEIR under these circumstances, since the public and decisionmakers have been deprived of a meaningful opportunity to understand and comment on what is actually being proposed as the Project and its significant impacts. NEPA requires that the DEIS "must fulfill and satisfy to the fullest extent possible the requirements established for final statements," and, "If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised *draft* of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives *including the proposed action.*" 40 CFR 1502.9(a), emphasis added. Here, the DEIS did not include the proposed action, precluding meaningful analysis and depriving the public of the opportunity to understand what the agency actually intended and to meaningfully participate in the decisionmaking process. "NEPA procedures must insure that environmental information is available to . . . citizens before decisions are made. . . The information must be of high quality." 40 CFR 1500.1(b)

NEPA requires the agency to "assess the reasonable alternatives to *proposed actions* that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 CFR §1500.2(e), emphasis added. Here, the FEIR proposed alternatives without having a finite, stable "proposed action."

NEPA further requires that, based on the FEIR's description of the affected environment (40 CFR §1502.15), and the statement of environmental consequences (40 CFR §1502.16), the FEIR "should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker *and the public.*" 40 CFR §1502.14, emphasis added. The Alternatives section of the FEIR must "identify the agency's preferred alternative . . . **in the *draft statement...*"** 40 CFR §1502.14(e), emphasis added. The DEIR failed to comply, and the agencies must now recirculate the DEIR for a new public comment period and, after considering public comment, issue a new FEIR. *Ibid.*

CEQA also requires recirculation of the DEIR, because it failed to accurately describe the proposed Project, which is the LPA. See, *e.g.,* PRC §21092.2; Guidelines §15088.5 [requiring recirculation when significant new information is added to the EIR including changes in the project, environmental setting, and additional data or other information, that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative"]. That provision clearly applies here, because the public was deprived of even knowing what the actual Project was, and because the FEIR admits throughout that substantive changes were made to the DEIR.

The DEIR misled the public to believe that there were four specifically described alternatives that did *not* include the LPA, and that the public had a voice in the analysis and choice of alternatives.

Even if the agency claims that the LPA resembles other "alternatives" (such as #3 and #4) with a center-median BRT, those alternatives were highly controversial. Indeed, the City's Public Utilities Commission and the Department of Public Works raised serious concerns and repeatedly stated their opposition to the center median BRT. FEIR II: Agency: 28-30, 32-38, 46, 48-50, 54, 56-61, 113-114, 129-132. The Mayor's Office of ADA/Disability Access also raised significant concerns about the center-median BRT and opposed it. FEIR II: Agency: 68-71. Several individuals also voiced opposition to the center-median "build" alternatives in the FEIR. See, *e.g.,* FEIR II: individuals, 11, letter I-4, 24 (I-10), .32 (I-14), 34 (I-15), 36 (I-16). Many substantive comments were opposed to the entire Project and all "build" alternatives. See, *e.g.,* FEIR II: Individuals, p.15 (I-6), 19 (I-8), 22 (I-9),26 (I-11), 34(I-15), 36 (I-16), 45(I-20), 59 (I-25), 71-72 (I-31a), 78-79(I-32), 82 (I-33), 90-91 (I-36), 96 (I-37), 98-100 (I-38),112-121 (I-40).

While the Project's improper goal of slowing traffic by eliminating traffic lanes to create a large paved island for buses in the middle of the historic Van Ness Avenue corridor was proposed as an alternative in the DEIR, it was not proposed as the "*preferred alternative*" that is now described as *the* Project. The analysis remains a one-sided promotion instead of an objective analysis and is now focused on an "alternative" that was *never presented for public scrutiny* and input or properly described as the Project under review. The public was therefore deprived of meaningful participation in the decisionmaking process. 40 CFR §§1500.1(b), 1502.19, 1506.6; Cal. Pub. Res. Code ["PRC"] §21092.1; 14 Cal.Code Regs. ["CEQA Guidelines"] §15088.5(a), (g).

The DEIR here did not include the actual ***proposed project,*** a violation of CEQA that deprived the public of meaningful participation in the review process. The LPA and the large number of substantive changes (vertical lines appear on nearly every page of the FEIR) require a new DEIR and recirculation to meet CEQA's and NEPA's requirements of informed public involvement in the review and decisionmaking process.

Additionally, and previously undisclosed, the LPA would permanently eliminate *most parking on Van Ness Avenue, a new significant impact unaddressed and unmitigated in the DEIR.* .FEIR at pp.4.2-13-17, fn.65, §§4.2.4.2-4, Tables 4.2-8 & 9; 10-31-32, §10.4.1.1. In fact, the DEIR misinformed the public to believe that center-median "alternatives" would not eliminate parking.

The DEIR's omissions, misleading Project and "alternatives" descriptions and misleading analyses also require recirculating a new DEIR under NEPA, since the DEIR failed to provide accurate or "high quality" information for public scrutiny. 40 CFR §§1500.1(b), 1500.2(d); 1505.1, 1506.3(b)

The FTA and other lead agencies must recirculate a new DEIS/DEIR with all of the above contents, including an accurate description of the proposed Project and existing conditions, and the other requirements noted above that are absent from the DEIR previously circulated. Only *after* allowing a new comment period for the accurate DEIR, may the agency issue a new FEIR that addresses public comment on the DEIR. Further, the public comment period for the recirculated DEIR must be a minimum of 45 days but should be at least 90 days due to the large amount of paper generated by the agencies, the obfuscatory analyses in the documents, the unavailability of studies and staff, the fact that the public comment period on the original DEIR was improperly shortened, and the need to address at least two different bodies of environmental law.

4. **THE REVIEW IS NOT OBJECTIVE. The SFCTA (Project Sponsor And Lead Agency), and the MTA (Implementing Agency), Have Conflicts of Interest Since They Would Receive Substantial Funding From Project Approval; And The FTA Has Provided *No* Independent Review.**

The FEIR claims that it was prepared by the Federal Transit Administration ("FTA") and the San Francisco County Transportation Authority ("SFCTA"). FEIR inside cover page. However, the "Appendix H List of Preparers" includes SFCTA and MTA Agency staff, even though those agencies would receive and have already received part of at least $87.6 million from the FTA to design and implement the Project (FEIR, p.1-6), and thus have a huge financial interest in the outcome of the Project, which is prohibited by NEPA. 40 CFR §1506.5(c). The SFCTA plans to allocate to itself another $20.5 million in Proposition K funding. FEIR, p.9-2. The FEIR indicates that the FTA has already approved the Project and its funding, which violates NEPA's and CEQA's fundamental requirements of analyzing and mitigating the Project's impacts before approving it. FEIR, p.9-6.

The FTA's role is unclear in either in preparing the FEIR or about the deliberations on the Project. The Project is, on the one hand, improperly cast as a "local" or "community" Project to make bus service more competitive with vehicle transportation on a segment of Van Ness Avenue/US Highway 101, with local (San Francisco) agencies controlling its design and implementation. On the other hand, the FTA appears willing to be a conduit for the hundreds of millions required to build the Project without taking responsibility for the magnitude of its impacts on City, regional, state, and interstate traffic on US Highway 101. The muddying of agency roles in preparing an FEIR does not excuse the agencies from their responsibilities under CEQA and NEPA. The FTA must not fund this Project without assuring that its significant impacts on traffic, transit, air quality, and transportation have been identified, analyzed, and completely mitigated. The FEIR admits that it has *not* fulfilled that mandatory duty. See, *e.g.*, FEIR, p.7-25 (CITE)

Further, CEQA requires objective decisionmaking that is precluded when a lead agency acts as the Project sponsor, EIR preparer, *and* unelected decisionmaker. There is *no* oversight of SFCTA by any elected decisionmaking body, and the SFCTA Board is not elected. There is no

way for the public to appeal its decisions at the administrative level. There is no way for the public to object to its conflicting roles as a relentless booster of the Project and as a decisionmaking body.

5. THE FEIR'S STATED "PURPOSE AND NEED" ARE IMPROPER: The Claimed "Purpose And Need" of Competing with Vehicle Speed by Slowing and Obstructing Vehicle Traffic Are Not Legitimate, Have No Federal Mandate, Are Contrary to the Mandates of CEQA and NEPA, And Unlawfully Constrain the Alternatives Analysis.

The FEIR states that the Projects "need" is to "provide a competitive transit alternative to auto travel" by decreasing the speed of all vehicles other than Muni bus lines #47 and 49. (FEIR, p.1-8, §1.3.2) However, competing with vehicles, the mode choice of the vast majority of travelers, by removing more than one-third of traffic capacity on a major United States Highway is not a legitimate goal, since it significantly and adversely affects local, regional, state, and interstate travel and the greater human environment in violation of NEPA and CEQA.

In response to a public comment on the Project's significant impacts by slowing traffic, the FEIR admits that the Project *will* have significant impacts that it claims are "unavoidable" on Franklin and Gough Streets, stating, "The proposed project is not intended to increase vehicle traveling rate on Van Ness Avenue," but rather to "balance vehicle circulation with...project objectives." FEIR II: Individuals, p.97.

The Project proposes making buses "competitive" by making car, taxi, and freight traffic on Van Ness Avenue and cross streets much slower, *so* slow that between now and 2035, buses and private bicycles will overtake vehicles while they sit idling in gridlocked traffic, unable to turn or to efficiently reach a destination. FEIR, p.3-72, Table 3.3-15. However, that goal does not serve the public, and it is contrary to the mandates of NEPA and CEQA to protect the entire environment, not just the environment of a relatively small segment of the public. Under NEPA, agencies must "identify and assess the reasonable alternatives *to the proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment,"* and must "[u]se all practicable means . . . to "restore and enhance the quality of the human environment and *avoid or minimize any possible adverse effects of their actions*." 40 CFR 1500.2(e), (f), emphasis added.

Here, the Project proposes *not* to improve the human environment but to deliberately degrade it for the vast majority of travelers. CEQA requires that an EIR "shall be considered by every public agency prior to its approval or disapproval of a project," and its purpose is to provide agencies and the public with information about a project's possible impacts, and to "list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." PRC §21061. CEQA's mandate is to maintain a "quality environment" for all the people of California, not just some. PRC §21001(a),(d). CEQA prohibits approving any project where an EIR has identified significant impacts without proposing effective mitigation or alternatives to the project, and specifically requires such information in EIRs and separately in findings. See, *e.g.,* PRC §21002.1, 21081, 21081.5; CEQA Guidelines §§15091 – 15093; 15120-15130. The FEIR fails to satisfy those requirements.

The FEIR complains that, "Transit speeds are currently not competitive with automobiles on Van Ness Avenue. Buses now travel at half the speed of cars (only 5 miles per hour) in the

Project area." FEIR, p.S-3, §S.5.2. The document claims that with the Project buses would increase bus speed to up to 7 miles per hour and substantially decrease vehicle speed on Van Ness Avenue *and* parallel streets from the current 10.5 miles per hour, "resulting in a significantly reduced speed gap between modes" on Van Ness Avenue. FEIR at p.3-27-28, §3.2.2.3, Figure 3.2-6. That alleged gain of 1.8 miles per hour of speed for Muni lines #47 and #49 on the 2-mile Project length, however, comes at the expense of delaying hundreds of thousands of people, while doubling the distance between bus stops. FEIR, p. 3-72, Table 3.3-15.

Although it is not analyzed in the FEIR, much of the Muni gain in speed would be due to removing half the bus stops and other measures unrelated to eliminating traffic lanes and parking. By failing to describe such alternatives, the FEIR falsely implies that the "purpose and need" can only be met by creating the significant impacts and expense of a median-strip BRT. The FEIR further misleads by claiming without evidence that more people would travel by bus, but makes no commitment to acquire new buses to meet even the existing peak hour need, and without accounting for passengers who would give up on bus travel because of the increased (doubling of the) distance between bus stops. See, *e.g., Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 980-981 (9th Cir.2002) [failure to support purpose and need with scientific evidence and to consider contrary opinion violates NEPA].

The Project's toll on the vast majority travelers is distorted by the FEIR's relentless promotion of the Project and its underlying negative purpose of significantly affecting traffic and parking in central San Francisco. The FEIR says that the segment of U.S. Highway 101/Van Ness Avenue where the Project would eliminate two traffic lanes, all turning lanes, and hundreds of parking spaces, carries a total of 16,000 passengers on the two Muni bus lines #47 and 49. However, the few marginal gains in speed for people who might travel on Muni lines #47 and #49 are disproportionate to the Project's significant adverse impacts on the vast majority of travelers and on the entire human environment.

At the same time, the Project and the LPA require significantly degrading the visual and historic character of Van Ness Avenue by removing the mature trees and vegetation adorning the avenue, and the unique, historic, graceful old streetlamps that line that avenue and contribute to its character. The entire median would be replaced by a huge, asphalt expanse in the center of Van Ness Avenue, with bus stops (euphemistically called "stations"), flashing advertising signs, and the historic streetlamps by higher, ugly, generic light poles with two glaring lights that will significantly alter and degrade the visual and historic character of the entire corridor. There is no alternative that would rehabilitate the historic poles, and the agency has rejected the alternative that would save the median strip.

The FEIR claims that its "purpose and need" is supported by the lead agency's (SFCTA) own 2004 Countywide Transportation Plan ("CWTP"). FEIR, p.1-7, §1.3.1. The FEIR makes no other claim of federal authority for the "purpose and need" of the Project.[2] Again, the insular multiple roles here of a Project sponsor and booster that is the lead agency, the preparer of the environmental document, and the unelected decisionmaking body, leads to a predictable result

[2] The FEIR claims that the regional Metropolitan Transportation Commission and/or Caltrans have supported the Project are unsupported. There is no evidence of funding by either, and Caltrans wrote a letter opposing the Project.

and egregious lack of objectivity that fails to accurately inform the public, producing instead a massive document in support of a *fait accompli.*

Since the Project's "purpose and needs" is unreasonable and contrary to the law and will necessarily have significant adverse impacts on the environment that are not effectively mitigated, and since they have no basis in federal authority, they do not satisfy NEPA.

The FEIR's "purpose and needs" also improperly constrain the analysis of alternatives under NEPA by mandating the Project in some form. 40 CFR §1502.2(f) ["Agencies shall not commit resources prejudicing selection of alternatives before making a final decision"], and (g) ["Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."]; §1502.14, 1502.13; §1502.16(d); and see, *e.g., League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U. S. Forest Service* 689 F.3d 1060, 1069-1070. For example, no alternatives are discussed (except "no project") that would avoid or minimize the Project's adverse impacts, such as alternatives that might include removing half the bus stops, improved boarding capabilities, real-time displays at existing bus stops, and all the other parts of the Project that do not cause significant impacts on traffic and parking.

The significant effects on traffic that necessarily result from the FEIR's "purpose and needs" are contrary to the mandates of NEPA and CEQA to protect the environment, not to deliberately degrade it. See, *e.g.,* 40 CFR §1500.1, 1500.2(f) [requiring federal agencies to "Use all practicable means. . . to enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment."]; and see, *e.g.,* PRC §§21001 [California policy requires long-term protection of the environment of every Californian]; 21002 [public agencies should not approve projects if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects; §21002.1(a) [purpose of EIR is to identify the Project's significant effects on the environment, and to "indicate the manner in which those significant effects can be mitigated or avoided; CEQA Guidelines §15126.6 [alternatives must avoid or substantially lessen significant impacts, even if these alternatives would impede to some degree the attainment of the Project objectives.]

Deliberately causing traffic congestion throughout the area to "provide a competitive transit alternative to auto travel in major corridors" to gain speed on two Muni lines does not serve these mandates.

The FEIR's "purpose and needs" also misleads the public by masking the Project's significant impacts in feel-good verbiage, such as its claim that the Project's purpose is to "Contribute to the urban design, identity, and livability of the BRT corridors." FEIR, p.1-7, §1.3.1. In fact, as noted by many commenters, the Project will significantly degrade the environment on Van Ness Avenue by removing all mature median trees and creating a huge asphalt expanse, by removing parking, by removing streetlamps, and by creating traffic congestion in the entire area.

6. The FEIR's Claim That Vehicles Will Disappear Or Find Some Other Way to Get Around Is Unsupported Speculation.

The FEIR, like the DEIR, states that the one-third of travelers who formerly occupied those traffic lanes will find some other way to get around, speculating without any evidence that drivers will convert to bus travel, bicycles, or travel on foot. [3] FEIR, p.3-10. One third of the vehicle traffic on Van Ness would be 12,000 to 15,000 vehicles. No evidence is provided for the speculative mode shift, and there is no analysis of the impacts.

The FEIR has no coherent discussion of origin/destination or the *purpose* of vehicle travel, or of the origin/destination of other "modes," such as pedestrian travel and travel by bicycle. If those factors are considered, the FEIR's happy fantasy of vehicle abandonment evaporates. By omitting this critical information and by its false and unsupported speculation, the FEIR is misleading and fails in its informational purpose.

For example, the FEIR claims that "the number of trips made by transit would increase significantly" on Van Ness Avenue but fails to note that vehicle traffic would also increase significantly on parallel streets where there is already a large volume of traffic. FEIR, p.3-12. Similarly, the FEIR disingenuously claims that a higher *proportion* of travelers on US Highway 101/Van Ness Avenue would use transit, but fails to note the forced diversion of other vehicles by eliminating one-third of the highway's capacity. *Id.* The FEIR observes that each bus on would carry more passengers than a car. FEIR, p.3-13.

However, all of those happy numbers are irrelevant, since, even with its many defects and omissions, the FEIR admits that the Project will have significant adverse impacts on traffic on Gough and Franklin Streets that will worsen over time, while failing completely to analyze the Project's impacts on cross traffic and transit. The FEIR fails to propose any effective mitigation measures even for those impacts it identifies, plainly violating both CEQA and NEPA.

The FEIR admits that a large volume of vehicles already travel on parallel streets and that the Project would cause significant adverse impacts on those heavily-traveled corridors, but even that admission is couched in misleading promotional verbiage while the FEIR continues to irresponsibly promote the Project.

For example, the FEIR admits that the Project's decrease of roadway capacity by one-third "would cause motorists to divert from Van Ness Avenue to avoid delays." FEIR, p.3-52. The FEIR explains that "the reduction n overall vehicle capacity, as well as the reduction in left turns on Van Ness Avenue may make the accessibility of parallel streets relatively more attractive for local drivers in comparison [to the BRT], even at similar speeds." FEIR, p.3-10.

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[3] The FEIR claims without any supporting evidence that "Pedestrian and bicycle trips comprise approximately 25 percent of trips to, from, or within the neighborhoods surrounding Van Ness Avenue." (FEIR,p.3-12, §3.1.3) Thus, of the "55,000" travelers on Van Ness Avenue, the FEIR implausibly claims that 13,750 travel by private bicycle or on foot. (*Id.*) Since a "pedestrian" may be walking 20 feet to a bus or a vehicle, and since the document admits that there are few bicycles traveling on Van Ness Avenue, that claim is misleading and irrelevant to the impacts analysis. At p. 3-91, the FEIR contradicts itself by stating that pedestrian trips are 26% of the total "nonmotorized transportation in the Van Ness Avenue corridor," but admits that "these figures" do *not* account for "walking to reach transit," and "every transit trip begins and ends as a pedestrian trip." FEIR, p.3-91, §3.4.2. The FEIR admits that "there is no accurate accounting" of private bicycle trips in the Project area, but includes it in the merged 25% or 26% of "nonmotorized" trips. FEIR, p.3-100, §3.4.2.2.

Incredibly, the FEIR does not attribute that mass diversion of traffic to the *delays* caused by the Project, which are significant adverse impacts under CEQA and NEPA.

Continuing to pretend that parallel streets could accommodate the diversion, the FEIR nevertheless claims that "Less than half of travelers in private vehicles on Van Ness Avenue under existing conditions have an origin or destination in neighborhoods surrounding Van Ness Avenue, meaning many of them could divert to streets throughout San Francisco rather than use Van Ness Avenue or streets immediately parallel." FEIR, p.3-12.

The FEIR says that with the Project, "an average of 19 to 32 percent of traffic on Van Ness Avenue (depending on the location) would change their travel patterns, including driving on other streets, shifting the trip to other times of day, or shifting to other modes such as transit, walking, and bicycling." FEIR, p.3-52. With no supporting evidence, the FEIR claims that those 19 to 32 percent of travelers who now use Van Ness Avenue "would change their tripmaking in a number of different ways," with half either using one of the five parallel streets (Gough, Franklin, Polk, Larkin, or Hyde), and claiming that the other half would use transit, walk or bike, change the time of day of their trip, forego the trip, or to "use a route through another part of the city." FEIR, p.3-10. With no supporting evidence, the FEIR claims that "more than half of all trips that start *and* end in the Van Ness Avenue neighborhoods . . . are walk or bike trips." FEIR, p.3-6.

The FEIR admits that Franklin and Gough Streets already carry 59,000 daily automobile person trips. FEIR, p.3-3. The FEIR finally admits that both "near term" and "long term" impacts would lead to significant traffic impacts on Gough and Franklin Streets. See, *e.g.,* FEIR, p.3-60, Table 3.3-9, p.3-72, Table 3.3-15. The FEIR, however, considers those impacts in a vacuum, without considering how the queuing and back-up will affect other intersections and cross traffic. The FEIR proposes to inflict more impacts on drivers as *"mitigation"* for those impacts, *i.e.,* to eliminate more parking, and to eliminate more turn pockets. FEIR, p.3-81.

The FEIR claims without evidence that the BRT would increase transit trips to "an average" of 40 to 44 percent, and that at "select locations, transit trips would comprise more than 50 percent of motorized trips," (FEIR, p.3-12) and that "the number of trips made by transit would increase significantly." FEIR, p.3-13. That claim is mistaken, unsupported, and misleading, since vehicles and their passengers would obviously be diverted to other streets causing increased congestion. There is *no* evidence that vehicle passengers would abandon cars to take Muni lines 47 and 49 to their destinations. Like the DEIR, the FEIR fails to accurately state that the Project provides *no* new buses to accommodate the claimed increase in use of transit. [4] The pretense is that Van Ness is a neighborhood street, like Polk Street. But Van Ness is a major US Highway carrying through the City, region and state. However, the FEIR admits that "Less than half of travelers in private vehicles on Van Ness Avenue under existing conditions have an origin or destination in neighborhoods surrounding Van Ness Avenue,

[4] The FEIR vaguely speculates that, "Future services investments would increase person-throughput without additional traffic operations impacts" (FEIR, p.3-13), and that MTA might buy one new bus. FEIR, p.3-37.

meaning many of them could divert to streets throughout San Francisco rather than use Van Ness Avenue or streets immediately parallel." FEIR, p.3-12.

The FEIR's lack of objectivity and the failure to support the speculation that thousands of vehicles will simply disappear or switch to buses or bicycles to reach their destinations and its improper promotion of the Project in spite of its significant adverse impacts violate NEPA and CEQA's fundamental requirements to provide accurate, high-quality information and objective analysis. 40 CFR §§1500.1(b), 1500.2(d), 1505.1, 1506.3(b).

Further, since it proposes to obstruct and delay traffic on a major U.S. and California Highway, the Project will clearly affect interstate commerce and travel, implicating constitutional provisions that require equitable allocation of revenues for such funding, not special or local interests. United States Constitution, amendment XIV (1). To the extent that revenues for building, maintenance, and operating costs of the Project are proposed to be taken from state fuel taxes, they must first be specifically approved in an election and must be used "in a manner which gives equal consideration to the transportation needs of all areas of the State and all segments of the population." California Constitution article XIX (1) (3) and (4). The FEIR claims that the funding of Project construction would be partially from FTA "small starts" program, based on a "high" rating, and partially from "Proposition K," revenues. However, the Project provides no funding of new buses.

7. PROJECT DESCRIPTION: The FEIR's Project Description Is Not Stable, Finite, and Accurate.

The DEIR described the Project as "three build alternatives," with two "options" for "Build Alternative 3," and a "no Build alternative," (DEIR at pp.S-4 to S-6) instead of an accurate, finite description, and therefore did not comply with CEQA. *County of Inyo v. City of Los Angeles* (1977) 72 Cal.App.3d 185, 193.

Months after the close of public comment, the SFCTA and SFMTA collaborated on designing and approving a "local preferred alternative" ("LPA") that was *not included in the DEIR*. FEIR, p.2-3-2-4, §2.1.4. The LPA proposes removing the existing median, two traffic lanes, nearly all parking on Van Ness Avenue, removing nearly all of the mature trees and vegetation in the median of Van Ness Avenue, and other features causing significant impacts that were not described or analyzed the DEIR. And see discussion at Item 3, *ante*.

The DEIR was required to include and describe *the Project*, not only alternatives to it. For example, NEPA requires the agency to "assess the reasonable alternatives to *proposed actions* that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 CFR §1500.2 (e), emphasis added. Here, the FEIR proposed alternatives without having a finite "proposed action." NEPA further requires that, based on the FEIR's description of the affected environment (40 CFR §1502.15), and the statement of environmental consequences (40 CFR §1502.16), the FEIR "should present the environmental impacts of the proposal *and* the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker *and the public.*" 40 CFR §1502.14, emphasis added. The Alternatives section of the FEIR must "identify the agency's preferred alternative . . . in the *draft statement...* " 40 CFR §1502.14(e). The DEIR failed to identify the preferred alternative in the DEIR, and the agencies must now recirculate the DEIR for a new public comment period and, after considering public comment, issue a new FEIR. *Ibid.*

NEPA explicitly requires that the analysis of the Project's impacts should *not* duplicate the discussion of alternatives. 40 CFR §1502.16. By simply discussing alternatives and *not* discussing the Project itself, which is the LPA, both the DEIR and the FEIR fail to comply with NEPA.

Under NEPA, the analysis of alternatives to the Project is clearly distinct from the analysis of the Project's impacts.

CEQA also requires a Project description that is distinct from the analysis of alternatives. CEQA Guidelines §15125, *cf.* §15126.6. Under CEQA, the failure to include an accurate Project description is an abuse of discretion that makes it impossible to assess the Project's direct, indirect, and cumulative impacts. See, *e.g., Communities for a Better Environment v. Richmond,* 184 Cal.App.4th 70, 88-89 [holding abuse of discretion where agency did not disclose accurate project description until after close of public comment, as "too little, and certainly too late, to satisfy CEQA's requirements" for informing the public.].

In any event, as noted, recirculation is required because the necessary information was not given to the public in the DEIR as required, and the public was deprived of meaningful participation in the review and decisionmaking process, violating both CEQA and NEPA. See discussion, Item 3, *ante.* The public had no way of knowing what was actually being proposed on Van Ness Avenue from the misleading DEIR, and had no opportunity to comment on the actual Project and its significant impacts.

8. BASELINE DEFECTS: The FEIR'S Description of Existing Conditions Is False, Distorted, and Incomplete, Precluding Accurate Analysis of the Project's Impacts:There Is NO Accurate Description of Existing Traffic Conditions on Van Ness Avenue and on the Parallel and Surrounding Streets.

As discussed previously (FEIR II: Individuals, p.114-121; I-40), but not coherently addressed in agency response, under CEQA an EIR must include an accurate description of the actual existing physical conditions in the Project area. The FEIR here contains no such description.

An analysis of the Project's impacts must begin with an accurate description of the existing conditions in the Project area. 40 CFR 1502.15; CEQA Guidelines §15125. An accurate baseline is necessary for determining the Project's impacts existing conditions.

Under NEPA, baseline data must be accurate, reliable, and based on scientific evidence. *Northern Plains Resource Council v. Surface Transportation Board,* 668 F.3d 1067, 1083 (9th Cir. 2011). Baseline data must be gathered and analyzed before implementation of a project, because "'[O]nce a project begins, the pre-project environment' becomes a thing of the past' and evaluation of the project's effect becomes 'simply impossible.'" *Id.* "[W]ithout this data, an agency cannot carefully consider information about significant environmental impacts," resulting in an arbitrary and capricious decision. *Id.* at 1085. Collecting the necessary data cannot be deferred to a future date, because "the data is not available during the EIS process and is not available to the public for comment. Significantly, in such a situation, the EIS process cannot serve its larger informational role, and the public is deprived of their opportunity to play a role in the decision-making process." *Id.*; and, *e.g.*, 40 CFR 1502.24

CEQA also requires that the baseline must be supported by substantial evidence in the administrative record. See, *e.g., Communities for a Better Environment v. South Coast Air Quality Management District*, 48 Cal.4th 310, 328 (2010); *County of Amador v. El Dorado County Water Agency* 76 Cal.App.4th 931, 954 (1999) [inadequate baseline held an abuse of discretion]; *Communities for a Better Environment v. Richmond, supra,* 184 Cal.App.4th at 89 [omission of baseline information fails CEQA's informational purpose].

Here, as described in our Comment on the DEIR, the traffic baseline is incomplete, inaccurate, and unsupported. FEIR, Appendix I, Individuals, p.114-121 (I-40).

The FEIR, like the DEIR, errs in omitting critical baseline information and by focusing only on intersections already "operating at LOS E and F." FEIR, p.3-41, §3.3.1. The FEIR only conducted actual traffic counts in 2007 at five intersections on Van Ness Avenue, on one intersection of Gough Street, and one intersection on Franklin Street. FEIR, p.3-44. Those counts, however, were not used to analyze traffic impacts. Instead, traffic counts were "developed" by a computer model called "Synchro" (FEIR, p.3-40), based on growth factors from another computer model called "CHAMP," and other data. FEIR p.3-39-41, §3.3.1. The FEIR "uses a Synchro traffic operations model to assess intersection LOS impacts" caused by the Project's "build alternatives" on Van Ness Avenue and the "five parallel north-south streets east and west of Van Ness Avenue." FEIR, p.3-41. The computer model evaluates intersections "based on the approach with the highest delay." FEIR, p.3-41. Although the study area includes 139 intersections, "Due to the large number of intersections in the traffic study area, the discussion of existing and future intersection approach LOS focuses . . . on intersections . . . operating at LOS E or F." FEIR, p.3-41.

However, by only analyzing intersections that *already* operate unsatisfactorily, the Project's impacts are necessarily minimized. Significance is assessed by degradation of the Level of Service ("LOS") from level "A," indicating "negligible delays" of less than 10 seconds per vehicle to LOS level "F," indicating delays of more than 80 seconds at signalized intersections "with queuing that may block upstream intersections" and more than 50 seconds for unsignalized approaches. FEIR, p.3-41. LOS "D" indicates delays of 35 to 55 seconds, and LOS "E" indicates delays of 55 to 80 seconds at signalized intersections. *Id.* Therefore, the impacts are much greater if LOS declines from "A" to "F" (losing more than 70 seconds), or from "A" to "D" (losing 25 to 45 seconds), than if it declines from "E" to "F" (losing one to 15 seconds). The omission of baseline information violates NEPA and CEQA. *County of Amador v. El Dorado County Water Agency, supra,* 76 Cal.App.4th at 954; *Communities for a Better Environment v. Richmond, supra,* 184 Cal.App.4th at 89.

Further, the FEIR fails to analyze the queuing that it admits may block upstream traffic when LOS is degraded to "F," and considers the few intersections that it does analyze that operate at LOS E or F in isolation. FEIR, p. 3-60. The FEIR's Synchro output thus projects significant traffic impacts in the "near term," meaning for the year 2015, at only five intersections, with some experiencing delays of over 100 seconds. FEIR, p.3-60, Table 3.3-9. However, the FEIR fails to analyze how those delays will affect intersections "upstream." There is no LOS analysis of the impacts on cross traffic.

In the year 2035 projection, those significant effects worsen, and ten intersections operate at LOS E or F, some intersections with delays of more than two minutes per vehicle.

FEIR, p.3-67, Table 3.3-14. And again, the FEIR fails to analyze the inevitable queuing and backup of traffic at other intersections upstream.

Even if the FEIR's defective baseline could be considered adequate on US Highway 101/Van Ness Avenue, the FEIR contains ***no accurate baseline description of existing conditions on Gough, Franklin, and other parallel streets where the FEIR says traffic will be diverted, and no analysis of intersecting streets affected by the Project.***

a. GOUGH STREET: The FEIR Fails to Describe Existing Conditions on Gough Street, which Cannot Accommodate Any Overflow from US Highway 101/Van Ness Avenue.

Gough Street is a two-way, two-lane street from Lombard Street to Sacramento Street, with unsignalized intersections, many Stop signs, and a steep grade. It is not a major arterial street, and it does not merge into Highway 101 southbound. FEIR, p.3-40. Gough turns into a one-way street south of Sacramento Street. Gough Street does not go through to Highway 101 or any freeway turnoff. FEIR, p.3-40 Figure 3.3-1.

Unstated in the FEIR are the plain facts that Gough Street between Sacramento and Market Streets is backed up for several intersections during peak hours, and can accommodate no more traffic without extreme delays. The FEIR claims that it measured 27,007 cars at Ellis and Gough Streets some time in 2007, but contains *no* actual on-ground measurement of existing traffic at or near the Civic Center and Market Street or at any other intersection from Ellis to Lombard Streets. FEIR, p.3-44. The FEIR admits that *no* trucks will travel on Gough Street. FEIR, p. 3-12 ["it is unlikely that most trucks would divert from Van Ness Avenue to parallel streets due to the increased grade/slope on parallel streets (trucks are currently prohibited on Franklin Street north of California Street and are also prohibited on Gough Street north of Sacramento Street . . . and because they are either traveling regionally on US 101 o making deliveries on Van Ness Avenue."]. However, the FEIR fails to analyze the inevitable delays to those vehicles and other traffic from eliminating a traffic lane on US 101.

In fact, there is ***no major arterial street*** carrying southbound traffic in the Project area other than US Highway 101/Van Ness Avenue. That critical information is omitted from the FEIR. The FEIR ignores that egregious defect, and only analyzes *one* intersection where existing LOS is already at "F" at Gough/Green. FEIR, p.3-55. The FEIR claims that is the *only* intersection on Gough Street that will be affected by diverting thousands of cars from US Highway 101/Van Ness Avenue in the "near term." FEIR, p.3-55. That conclusion cannot survive judicial scrutiny under CEQA or NEPA, since the omission of accurate baseline conditions makes the impacts analysis impossible. *Northern Plains Resource Council v. Surface Transportation Board, supra,* 668 F.3d 1067 at 1085; *Communities for a Better Environment v. South Coast Air Quality Management District, supra,* 48 Cal.4th at 328; *County of Amador v. El Dorado County Water Agency* 76 Cal.App.4th 931, 954 (1999) [inadequate baseline held an abuse of discretion]; *Communities for a Better Environment v. Richmond, supra,* 184 Cal.App.4th at 89 [omission of baseline information fails CEQA's informational purpose].

However, the FEIR contains *no* accurate description of existing conditions on the five parallel streets where the FEIR claims that the vehicle traffic will go after the Project eliminates one-third of the road capacity on US Highway 101/Van Ness Avenue. FEIR, p.3-42-43.

b. FRANKLIN STREET

The FEIR claims that SFCTA measured 30,901 vehicles at Franklin and Post Streets in 2007, but there is no accurate statement of existing conditions on Franklin Street. FEIR, p.3-44. Therefore, no evidence supports the FEIR's conclusion that there will be no traffic impacts on Franklin Street from diverting thousands of vehicles from Van Ness Avenue.

c. POLK STREET

The FEIR contains *no* measurement of existing traffic, and no accurate description of existing conditions on Polk Street, an often-congested, two-lane, two-way street between Grove Street and Lombard Streets that is not a major arterial. FEIR, p.3-42. Polk Street is a busy neighborhood commercial street. The FEIR also fails to state that City's MTA and the San Francisco Bicycle Coalition have proposed a plan to remove most or all of the parking on Polk Street, to create "parklets," bulbouts, and a wide, separated bicycle lane, and to otherwise obstruct vehicle traffic and turning on Polk Street. These existing conditions make the EIR's speculation that thousands of vehicles from US Highway 101/Van Ness Avenue will be diverted to Polk Street a ludicrous, unsupported, and unrealistic theory, not substantial evidence.

d. LARKIN STREET

The FEIR contains *no* actual traffic counts and no accurate statement of existing traffic conditions on Larkin Street, which is described as a "one-way NB street with three lanes from Market to California streets, and a two-way street north of California Street and between McAllister and Grove Streets." FEIR, p.3-42. The FEIR's claim that this street could accommodate *any* diverted traffic from US Highway 101/Van Ness Avenue is entirely unsupported.

e. HYDE STREET

The FEIR contains *no* actual traffic counts and no accurate statement of existing traffic conditions on Hyde Street, which is described as "a one-way street with three SB lanes between California and Market streets, and a two-way street with one lane in each direction between Jefferson and California streets," which "shares the ROW with cable cars between Beach and Washington Streets." FEIR, p.3-43. That description does not accurately describe the baseline traffic conditions on Hyde Street, and there is no way that traffic impacts on Hyde Street can be analyzed from that description.

f. EAST-WEST STREETS: There Is No Accurate Description of cross traffic, cross transit and parking on cross-streets. Broadway, Pine, Bush, Geary, O'Farrell, Hayes, Fell, Market, and Mission Streets.

The FEIR contains *no* accurate description of existing conditions on major east-west cross streets, many of which carry heavy traffic and more transit passengers than Muni lines 47 and 49 on Van Ness Avenue. The FEIR admits that it has not analyzed traffic, transit, parking, emergency services, and land use impacts on these and other cross streets, most of which the FEIR does not even bother to list, much less to describe and analyze. The FEIR lists some cross streets (FEIR, p.3-43) but contains no information on traffic volumes, existing congestion, transit, and parking on those and other cross streets that are certain to be affected by the Project's traffic diversions, turning restrictions, and parking removal. The FEIR fails to analyze those impacts.

The FEIR also fails to accurately describe existing cross-transit. The FEIR lists the Muni lines that cross Van Ness with average weekday ridership, which exceeds 400,000 per day on these lines, with several individual Muni lines crossing Van Ness exceeding the 16,000 combined ridership on lines 47 and 49, FEIR, p.3-17,18, Table 3.2-2 However, the FEIR does not show existing stops and speeds on those cross streets and has *no analysis* of how they will be affected by the increased congestion caused by the Project's traffic diversion, turning restrictions, and parking removal.

Similarly, the FEIR mentions Muni route 19, carrying 9,200 passengers on Polk Street, but fails to show its existing speed and stops, thus making any analysis of the Project's impacts impossible.

The Project area is improperly defined as only Van Ness Avenue and five parallel streets, implying that other areas will be unaffected by the Project's impacts. In fact, the transportation environment affected by the Project includes existing traffic, transit, and parking conditions on the cross streets.

g. There Is No Accurate Count of Trucks, Taxis, Shuttle and Tour Buses in the Project Area and No Analysis of Impacts on Them.

The FEIR has no accurate count of trucks, taxis, shuttle, and tour buses, on Van Ness Avenue and other streets in the Project area. These types of vehicles are instead merged with "private" automobiles that the FEIR dismissively claims will find some other way to get to their destination with the Project's lane elimination.

The FEIR dismisses the impacts on trucks and traffic with the cavalier observation that "it is unlikely that most trucks would divert from Van Ness Avenue to parallel streets due to the increased grade/slope on parallel streets (trucks are currently prohibited on Franklin Street north of California Street and are also prohibited on Gough Street north of Sacramento Street . . . and because they are either traveling regionally on US 101 to making deliveries on Van Ness Avenue." FEIR, p. 3-12.

Similarly, the FEIR contains no accurate information on taxis that carry passengers throughout the area and region, dismissing the Project's significant impacts on taxis, instead merging them with "mixed-flow traffic." FEIR, Appendix I, Individuals, p. 101. The FEIR dismisses the evidence presented by a 26-year taxi driver by again reciting the dubious rhetoric in the DEIR and FEIR, while noting that it has revised the former claim that drivers would convert to bus travel to "include more conditional language: '*up to* 50% of the new transit riders *could be* former drivers." *Id.* at 102. That speculation, again, is not substantial evidence or an accurate assessment of the Project's impacts on travel in the Project area.

The FEIR contains *no* accurate information on the large number of shuttle buses carrying passengers to and from jobs, medical shuttles, and the large number of tour buses traveling throughout the Project area to tourist attractions and to and from Civic Center attractions. Those large vehicles are again merged with cars in the FEIR, the cars that the document claims will go elsewhere, on transit, or on bicycles.

h. Computer-generated Simulations and Projections Are Not a Substitute for Accurate Baseline Descriptions, or for the FEIR's Omissions.

The FEIR admits that actual traffic counts were conducted at only five intersections. The remaining "existing" conditions were created by computer projections and not by evidence of actual physical conditions.

The FEIR refers to a traffic study consisting of thousands of pages of computer-generated print-outs from its "CHAMP," "Synchro," and "Vissim" databases. CHS Consulting Group: "*Final Van Ness Corridor Bus Rapid Transit Traffic Analysis Vehicular Traffic Analysis Technical Memorandum*," July 7, 2013 ["*Final Technical Memo*"][5].

However, that massive document does not provide an accurate measure of the traffic on U.S. Highway 101/Van Ness Avenue, or on the parallel and cross streets affected by the Project. The agency has *no* accurate data on the origin and destination of the traffic on these streets, *no* accurate traffic count data for cross streets, and *no* accurate data on turning on Van Ness Avenue and other affected streets. Without that data, the FEIR cannot accurately analyze transportation impacts.

The FEIR notes a large number of changes in its Transportation Analysis, noted by vertical lines in the document. The FEIR states that computer "travel demand projections" are "the basis for the operations models" described in the FEIR and "provide several measures of performance of the build alternatives." FEIR, p.3-2, §3.1. The FEIR states that its "existing travel patterns" section uses "CHAMP"-generated data to describe existing and future travel patterns: travel demand, regional versus local travel patterns, divertibility of trips, and mode splits" FEIR, p.3-2, §3.1.1.

The *Final Technical Memo* states that "SF-CHAMP" was used as the primary technical modeling tool to predict changes in travel patterns for private vehicles with the implementation of BRT in both the near term (2015) and horizon year (2035)," and "takes into account the 'attractiveness' (i.e., relative capacity, driving travel time, left turn opportunities, etc.) of streets relative to each other, as well as the relative 'attractiveness of other modes (e.g., cost, travel time, frequency, etc.) when determining the changes in traveler behavior with the implementation f the BRT." *Final Technical Memo,* p.7.

After all that, the *Final Technical Memo* reaches the unsurprising conclusion that "Van Ness Avenue would be less attractive to drivers when compared with the No Build Alternative and BRT service on Van Ness Avenue would be slightly more attractive than the 47/49 service under the No Build Alternative." *Final Technical Memo,* p.7.

The *Final Technical Memo* also states that it uses a "macro-simulation traffic model" called "Synchro" that used some "field counts conducted in 2008 by SFCTA" and that "Synchro default values were assumed for all other locations." *Final Technical Memo*, p.7.

However, the FEIR admits that actual traffic counts were conducted by SFCTA only in March 2007 at five locations along Van Ness Avenue and 1 location each along Franklin and Gough streets "to determine the peak hour traffic." FEIR, p.3-2, §3.1.1, fn.18; and see FEIR,

[5] The *Final Technical Memo* apparently augments or supersedes the earlier *Technical Memo* referred to in the DEIR. The FEIR refers to the *Final Technical Memo*, but it is not made available as an appendix to the FEIR and must be specially ordered from the SFCTA. FEIR, p.3-1.

Appendix I, Individuals, p.114. The FEIR claims that "traffic turning movement counts were taken at 91 intersections and were a separate effort." *Ibid.* However, those elusive "field counts" and "traffic turning movement counts" are not included in the FEIR or the *Final Technical Memo*, even though they are required to be included in the FEIR by the San Francisco Planning Department's *Transportation Impact Analysis Guidelines for Environmental Review,"* which requires on-ground traffic counts to establish existing conditions, including "the date that the counts were actually taken," "[c]opies of all counts used in the analysis," and "[t]he LOS calculation sheets need to include the data . . . used in the calculation was actually collected." San Francisco Planning Department: Transportation Impact Analysis Guidelines for Environmental Review, Appendix B, 1, 2.[6] Nor does any document define or explain what the "Synchro default values" are or how the "existing" traffic volumes were created by "Synchro."

The *Final Technical Memo* states that it also used "VISSIM," which it says is "a multi-modal micro-simulation model" that is "capable of simulating transit, automobile, and pedestrian operations, parking operations," and was selected to "model VN BRT transit operations due to its ability to model bus operations in exclusive bus lanes" and was "primarily utilized to compare the relative travel time and speed difference between autos and buses, differences in speeds and delays between the BRT alternatives, and bus reliability." *Final Technical Memo,* p.8.

The *Final Technical Memo* states that, even though it used other computer programs, "only Synchro results were used to assess vehicular traffic impacts based on intersection Levels of Service (LOS) impacts along Van Ness Avenue and the five parallel north-south streets." *Final Technical Memo,* p.8. Since LOS is the methodology used by the FEIR to measure the Project's traffic impacts, the lengthy elaborations in the FEIR and the *Technical Memo* on "CHAMP" and "VISSIM" are largely pointless, except perhaps to promote the Project's dubious "purpose and need" of a busway that "competes" by impeding other traffic. The *Final Technical Memo* also admits that its data "volume to capacity ratio" and "average vehicular travel speed" is useless for identifying the Project's impacts. *Final Technical Memo*, pp.8-9.

The *Final Technical Memo*, like the previous Technical Memo, states: "The VN BRT Project traffic study area includes a total of 139 intersections. . . Due to the large number of intersections analyzed in the traffic study area, the discussion of existing (and future) intersection LOS focuses only on those operating at LOS E and F." *Final Technical Memo*, p.8. However, as noted, that analysis necessarily minimizes impacts.

The FEIR's description of "existing" conditions on selected streets is largely a computer-generated statistical exercise that removes those conditions from the real environment and human experience, while the reality of the Project's impacts on that real environment remains unaddressed.

Without an accurate description of the existing and historic *purpose and use* of US Highway 101, Van Ness Avenue, the context of the Project's significant impacts cannot be analyzed. Under NEPA, "Context" means that "*the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected*

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[6] This Commenter requested pursuant to the California Public Records Act *all* traffic counts, and was not provided "turning movement counts" at "91 intersections" or any "field counts conducted in 2008 by SFCTA" that the *Final Technical Memo* claims were the basis for its "existing conditions."

interests, and the locality," and both short- and long-term effects. 40 CFR 1508.27(a), emphasis added. That required description is not in the FEIR.

Under CEQA, the analysis of impacts is impossible without an accurate baseline, and the failure to accurately describe existing conditions is a failure to meet informational requirements and an abuse of discretion. See, *e.g., County of Amador v. El Dorado County Water Agency, supra,* 76 Cal.App.4th at 954; *Communities for a Better Environment v. Richmond, supra,* 184 Cal.App.4th at 89 [omission of baseline information fails CEQA's informational purpose].

The visual character and history of Van Ness Avenue as a grand boulevard is also part of the context that is absent in the FEIR, precluding a coherent analysis of the Project's destruction and alteration of that context and character. Pieces of that context are divorced from its whole, such as the median strip, the historic poles, and the layout of the avenue to provide the That loss is irretrievable and yet made invisible by the FEIR's omissions and failure to provide a coherent description of the existing environment.

9. IMPACTS: The FEIR Fails to Identify and Analyze the Project's Impacts

NEPA and CEQA require that the FEIR identify the impacts of the Project. See, *e.g.,* 42 USC §4332(C)(i); PRC §21002.1; and see, e.g., 40 CFR §§1502.16, 1508.7, 1508.8, 1508.27. The FEIR fails to satisfy those requirements. Its flaws include failing to accurately state the existing environment, and context, meaning "society as a whole (human, national), the affected region, the affected interests, and the locality (40 CFR §1508.27(a)); failing to include a factually and legally adequate analysis of the Project's cumulative impacts on traffic, parking, and visual and historic resources; omitting impacts analysis from backed-up traffic on parallel streets, cross-traffic and transit, parking, emergency services, and air quality; failing to accurately describe the Project; and failing to support its conclusory statements with evidence and quality analyses. Due to lack of time, this Comment can only give a few examples, in addition to the comments already submitted by the public and agencies. FEIR, Appendix I.

a. TRAFFIC: The FEIR Violates CEQA and NEPA by Failing to Identify and Analyze the Project's Impacts on Traffic.

This commenter and many others have already submitted comment on the Project's inevitable impacts on traffic. See FEIR, Appendix I generally, and Individuals, p.114-121. The FEIR still fails address many impacts.

Even though the FEIR analyzes "near-term" and "long-term" impacts, its analysis is selective and improperly relies on causing significant impacts on traffic on parallel streets by traffic diverted by the Project's removing one-third of the traffic capacity on US Highway 101/Van Ness Avenue. One third of the vehicle traffic on Van Ness would be 12,000 to 15,000 vehicles. The FEIR admits that "approximately 105 to 450 total vehicles in both directions could divert away from Van Ness Avenue and make their trip on a parallel street" during the PM peak, and "any given segment of Polk, Franklin, or Gough streets could experience an additional 50 to 250 vehicles per hour. . .during the PM peak. FEIR, p.3-10 -3-11. And the "approximately" widely ranging figures fall far short of the high quality data required for a legally adequate analysis of the Project's impacts and fail to inform the public of the intensity of the Project's severe consequences on traffic. 40 CFR §1508.27(b); §1500.1(b); PRC §21002.1.

The FEIR fails to analyze or even acknowledge the Project's inevitable impacts on cross traffic. As noted, the FEIR's analysis of existing conditions omits conditions on cross streets, making such analysis impossible. Those omissions are an informational failure and an abuse of discretion under CEQA, and also fail to comply with NEPA.

While the FEIR finds impacts in the "near term" at five intersections, it fails to analyze how those delays will affect traffic at intersections upstream and on cross streets. Thus, the defective analysis misleads decisionmakers and the public to believe those impacts are isolated and occur in a vacuum, minimizing their effect. This is not the high quality information required by NEPA, and does not satisfy CEQA, and misleads the public and decisionmakers.

The FEIR contains *no information* on how the Project's turning prohibitions will affect traffic on Van Ness Avenue and on cross streets, even though the FEIR admits that "approximately 105 to 450 total vehicles in both directions could divert away from Van Ness Avenue and make their trip on a parallel street" during the PM peak, and "any given segment of Polk, Franklin, or Gough streets could experience an additional 50 to 250 vehicles per hour . . . during the PM peak. FEIR, p.3-10 -3-11.

There is no accurate description or count of existing traffic turning left from Van Ness Avenue intersections with which to begin the impacts analysis of how the left-turn prohibitions will affect traffic on cross and parallel streets. Nor is there any coherent analysis of the impacts of increased right turns, or of the impacts of prohibiting right turns on many intersections, inevitably leading to significant traffic congestion where turns may be permitted.

The FEIR contains *no* information on how removing parking on Van Ness Avenue, will affect traffic on the avenue and on parallel and cross streets, even though vehicles will clearly have to circle and search for parking after the Project removes nearly all of the parking on Van Ness.

The FEIR contains *no* coherent analysis of bus crowding, even though it predicts more passengers. And see, FEIR, Appendix I, Individuals, p.114-118.

The FEIR contains *no* information on impacts on trucks, taxis, shuttle buses, and tour buses. FEIR, p. 3-11-12. There is no accurate description or counts of trucks on Van Ness Avenue, even though the FEIR admits that "it is unlikely that most trucks would divert from Van Ness Avenue to parallel streets due to the increased grade/slope on parallel streets (trucks are currently prohibited on Franklin Street north of California Street and are also prohibited on Gough Street north of Sacramento Street . . . and because they are either traveling regionally on US 101 o making deliveries on Van Ness Avenue." FEIR, p. 3-12.

Further, the FEIR's analysis of cumulative impacts on traffic does not comply with the requirements of NEPA and CEQA. The analysis must identify impacts that result from "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. 40 CFR §1508.7. Under CEQA, the analysis must include a discussion past, present, and probable future projects that could have similar impacts or that when combined with other impacts could cause an incremental impact to become significant. PRC §21083(b)(2), CEQA Guidelines §15130(b)(1), 15065. The FEIR's "cumulative impacts" section on traffic simply repeats the data from its section on "transportation impacts." That analysis, however, does not take into account past, present, and probably future projects that will add to the

Project's impacts on traffic, transit, and parking. Instead, that analysis only contains a computer-projection of the *direct* impacts of the Project from 2015 to 2035. That is not a legally adequate cumulative impacts analysis under CEQA or NEPA, and is an abuse of discretion under CEQA. See, *e.g.,* CEQA Guidelines §15130; *San Franciscans for Reasonable Growth,* 151 Cal.App.3d 61, 73-76, 80 (1984); *Environmental Protection Information Center v. Johnson,* 170 Cal.App.3d 604, 624-625 (1985).

b. PARKING: The FEIR's Failure to Accurately Identify and Analyze Parking Impacts Violates NEPA and CEQA.

The FEIR contains *no accurate information* on parking impacts, since its information is inconsistent throughout as to how much parking will permanently eliminated. For example, the FEIR claims that due to a more "refined analysis" it has discovered that, contrary to conflicting information elsewhere in the FEIR and in the DEIR, the LPA would remove nearly all of the parking on Van Ness Avenue, at least 105 spaces, not including the spaces permanently removed by construction and bulbouts. FEIR, p.3-122-123; 4.2-13-17

The FEIR repeats the City and County of San Francisco's mistaken notion that parking is not a part of the physical environment, that removing parking is not a significant impact under the law, and that it need not analyze and mitigate parking impacts. FEIR, p.3-118, 3-125, §3.5.3. That notion is factually incorrect and legally spurious. See, *e.g., Taxpayers for Accountable School Bond Spending v. San Diego Unified School District,* 214 Cal.App.4th 1013, 1050, 1053-54 (2013) [holding that parking is part of the environment and that a project's impacts on parking may be significant impacts on the environment and on humans, requiring analysis and mitigation in an EIR].

The FEIR fails to analyze parking impacts under NEPA, even though such analysis is clearly required.

Further, as noted, the DEIR misled the public to believe that parking would not be removed under the alternatives describing center-median projects. Instead, the FEIR now contradicts that conclusion, admitting that the LPA and other alternatives would all remove most of the parking on Van Ness Avenue. However, even more misleading, the FEIR's response to public comment claims that "parking and loading would be largely retained." FEIR II, Individuals, p.101. (I-38-3)

In contrast, the FEIR admits that at least 105 parking spaces would be permanently removed on both sides of Van Ness, and that the LPA would provide "fewer spaces" than any other alternative, and would completely remove parking on many blocks of Van Ness, including between Market and Mission Streets, Vallejo and Broadway Streets, Green and Vallejo streets, and Lombard and Greenwich Streets, and would be completely removed on both sides of Van Ness Avenue between O'Farrell and Geary Streets, Broadway and Vallejo Streets, Vallejo and Green Streets. FEIR, p. 3-125 A more detailed description shows that nearly *all* parking on many more segments would be removed, including, for example, all spaces west side from Market St. to Golden Gate Avenue, all spaces east side between Market and Fell Streets, all but one space on both sides from Fulton to McAllister Streets, 10 of 12 spaces west side from McAllister to Golden Gate Ave., 9 of 11 spaces between Golden Gate Ave. and Turk Streets, 6 of 8 spaces on east side from Turk to Eddy Street, all 5 spaces west side from O'Farrell to Geary, 4 of 5 spaces on east side and 8 of 9 spaces on west side between Sutter and Bush streets, 10 of

11 spaces east side and 4 of 5 spaces west side from Sacramento to Clay, all 5 spaces on east side from Jackson to Pacific, 7 of 11 spaces on east side from Pacific to Broadway, all spaces between Broadway and Vallejo, all spaces from Vallejo to Green, all spaces east side between Green and Union, --and all spaces west side from Greenwich to Lombard. FEIR, p.4.2-13-17, fn.63, Table 4.2-8.

The FEIR notes that the Project would also remove passenger-loading spaces, green short-term spaces, truck-loading spaces FEIR, 4.2-16, Table 4.2-9

The FEIR fails to account for the two to three parking spaces removed for each of the 64 to 70 bulbouts it proposes to construct, removing 200 more parking spaces.

The FEIR has no legally adequate analysis of cumulative impacts on parking. For example, the FEIR fails to note that the City's Market-Octavia Plan will increase population in the Project area by 10,000, while requiring no parking.

The FEIR fails to analyze the impacts of proposed "mitigation" of the Project's traffic impacts on Van Ness Avenue and parallel streets, which call for removing *more* parking.

The FEIR ignores and fails to comply with the requirement of one parking space per residential unit in the San Francisco General Plan's Van Ness Avenue Area Plan and Civic Center Area Plan. Instead the FEIR falsely claims the Project is "consistent" with those parts of the General Plan. FEIR, p.4.1-8,9, 4.1-12

The FEIR finally concludes that there would be *no parking impacts*, even though most of the parking would be removed on Van Ness, and other parking spaces would be permanently removed for bulbouts, and an unstated amount of parking would be removed to "mitigate" the Project's impacts on other streets. FEIR, p.5-18, 5-21.

Even though it concludes that parking is not an impact and/or that there are no parking impacts, the FEIR claims that the following are "mitigation measures under NEPA" and "an improvement measure under CEQA": "coordinate with" businesses affected by removal of "colored parking spaces...to confirm the need for truck and/or passenger loading spaces," and "apply parking management tools . . . including adjustment of residential permits in the residential community north of Broadway Street" or to "manage parking occupancy and turnover through pricing [by SFPark] " FEIR, p.4.2-17, §4.2.5.

There is no coherent analysis of cumulative parking impacts affecting residents and businesses, or of the impacts on cross streets and parallel streets from removing parking, which include spillover traffic, circling, and double-parking. Again, the FEIR fails in its purpose to inform the public and decisionmakers.

c. AESTHETIC AND HISTORIC RESOURCES IMPACTS

1. The FEIR Fails to Accurately Analyze the Direct and Cumulative Impacts of Removing the Historic Lamp Posts on Van Ness Avenue.

The FEIR admits that the Project's replacement of the historic streetlights lining Van Ness Avenue is "one of the most noteworthy changes to the visual context at each key viewpoint" that it presents, and that "Impacts resulting from changes to the OCS support poles/streetlights network would be experienced by all viewer groups, including sensitive viewer groups (i.e., residents, commuters, and tourists.)" FEIR, p.4.4-34. The poles are nearly 100

years old and bear historic markings and irreplaceable features that define the character of Van Ness Avenue. FEIR, p.4-4-12, 14, Figures 4.4-3, 4. The FEIR fails to state that the unique square bases and poles, their height and spacing, and the size and shape of the lamps, are part of their value to those viewpoints. Instead, the FEIR claims that the generic, higher poles each with unevenly spaced faux decorative lamps measure up to the graceful old streetlight system. Even the few depictions for comparison in the FEIR plainly show that the newer lamps bear no resemblance to the historic ones, are intrusive, and contrary to the FEIR are plainly out of scale by comparison. FEIR, p.4-4-29, 31, 4.4-34. The FEIR incredibly concludes that, contrary to the plain evidence, the Project's removal and replacement with incompatible poles would have "no significant visual or aesthetic effect." FEIR, p.4.4-35.

Further, the FEIR fails to describe an alternative that would restore and rehabilitate, rather than replace, the historic poles. The old lamp posts are part of the context of Van Ness Avenue that merits restoration not destruction regardless of the Project.

2. The FEIR Fails to Accurately Analyze the Direct and Cumulative Impacts of Killing and Eliminating the Mature Trees and Green Median on Van Ness.

The FEIR admits that the "landscaped median and tree canopy are one of the most noteworthy impacts on the visual setting" and "are one of the most important visual features in the corridor." FEIR, p. 4.4-35. The FEIR acknowledges that the Project's killing and removal of those trees would affect all viewers, and that "Many comments regarding concern for tree loss were submitted by agencies and the public during circulation of the [DEIR]." FEIR, p.4.4-35-36. The FEIR admits that the Project's removal of 90 of 102 mature trees and nearly all the "existing healthy and mature median trees in the corridor" would result in a "notable, adverse change in the visual quality of the project corridor until new tree plantings mature." FEIR, p.4.4-44.

That misleading statement implies that a similar median might result from replanting, but that is plainly false, since the LPA would replace the median with a red asphalt expanse with glaring plastic bus stops and advertising where the mature trees now stand. That misleading information and the false claim that the removal of the trees would be "mitigated" by the BRT violate NEPA and CEQA.

3. The FEIR Fails to Describe and Analyze the Impacts of the BRT, the Barren Red Asphalt Expanse, and Visual Clutter on the Median Strip and the Context of Van Ness Avenue.

There is no accurate description of the Project's changes to the visual context on Van Ness Avenue consisting of mature streets separating, defining, and structuring the broad Avenue. That context will be destroyed and replaced with a 2-mile red asphalt strip dominating the entire avenue with glaring bus stops lined with advertisements and visual clutter. The failure to analyze those impacts is a failure to comply with NEPA and CEQA.

No reason is given to paint the huge four-lane expanse of the Proposed bus lanes red in violation of the General Plan, and there is no illustration or coherent description of the resulting bus stops, glaring advertising, intrusive lighting, "art" installations, and pointless whirling wind turbines and other visual clutter proposed for the middle of the avenue, and even claims that would be "mitigation" for removing the trees. See, *e.g.,* FEIR, p. 4.4-31, 4.4-52

d. TRANSIT: The FEIR Fails to Identify, Analyze and Mitigate the Project's Impacts on Transit.

There is no coherent analysis of the Project's impacts on transit crowding. There is no analysis of the Project's impacts on the more than 400,000 passengers on buses that cross Van Ness Avenue, ignoring the inevitable impacts of congestion on the cross streets from the Project's diversion and turning impacts.

e. AIR QUALITY AND NOISE IMPACTS: The FEIR's Air Quality and Noise Impacts Analyses Fail to Accurately Describe and Propose Mitigation of the Project's Impact.

f. IMPACTS OF BULBOUTS

The FEIR fails to analyze the impacts of removing hundreds of parking spaces and obstructing turning by installing 64 bulbouts on Van Ness Avenue. FEIR, p.3-108, and see simulation at FEIR, p.4.4-27. Bulbouts protrude into the street, obstructing right turns, backing up traffic trying to turn right and blocking through traffic, and they remove two to five parking spaces per bulbout. The FEIR claims that pedestrians would gain a negligible average of 1.7 feet of crossing distance, but fails to analyze their significant impacts on parking and traffic.

g. EMERGENCY AND COMMUNITY SERVICES

There is no accurate analysis of the Project's impacts on emergency services (fire, ambulance) from the Project's traffic impacts on Van Ness, on cross streets, and on parallel streets.

The analysis of traffic impacts on cultural events and community services is inadequate, with the unsupported conclusion that although traffic delays are forecast during the PM peak period; the project effects on traffic circulation would be less at other times of day and night when shopping, eating out, entertainment, and other commercial activities often occur." 4.2-13.

There is no analysis of traffic to and from cultural events at the Civic Center.

The FEIR acknowledges that the loss of parking could affect residents and businesses, but dismisses those significant impacts, claiming with no supporting evidence that "it can be anticipated that private vehicles users would have more incentive to shift their mode of travel to public transit," and that the Project "would benefit the transit-dependent population at large and would result in a transportation mode shift from automobiles to public transit." FEIR, p. 5-22. That unsupported and irrelevant conclusion does not comply with NEPA or CEQA. See, *e.g.*, 40 CFR 1508.27(a); PRC §21002.1.

h. The FEIR Fails to Identify and Analyze the Project's Impacts on Accessibility for Disabled and Seniors.

The FEIR fails to accurately analyze the Project's impacts on accessibility to transit for disabled and seniors from removing half the bus stops on Van Ness. There is no analysis of impacts on parking for seniors and the disabled.

10. THE FEIR FAILS TO IDENTIFY AND DISCUSS FEASIBLE MITIGATION MEASURES FOR EACH OF THE PROJECT'S IMPACTS

Under NEPA, mitigation includes: "(a) Avoiding the impact altogether by not taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. . ." 40 CFR §1508.20. CEQA includes similar provisions. CEQA Guidelines §15370. Mitigation measures must be described in the FEIR. *Ibid.*, and, *e.g.*, CEQA Guidelines §15126.4.

Under CEQA, mitigation measures must be analyzed for each identified and must be effective for each significant impact identified in the EIR. CEQA Guidelines §15126.4. The FEIR fails to comply with this requirement. It provides no feasible mitigation measures for *each* of the "near-term" and "long-term" traffic impacts, and no mitigation measures for the many impacts that it fails to identify. The mitigation measures described are ineffective, generalized, and are themselves negative measures that will cause more significant impacts, such as removing more parking. If a mitigation measure will itself cause impacts, it must also be analyzed in the EIR, which the FEIR fails to do. CEQA Guidelines §15126.4(a)(1)(D). The FEIR improperly "assumes" that it may propose a Project that has "significant and unavoidable" impacts. FEIR, p.7-25. That assumption violates CEQA.

a. The FEIR Describes NO Effective Mitigation Measures for the Project's Traffic Impacts.

The FEIR fails to address each traffic impact it has identified, plainly violating CEQA's requirements. Even though it omits many required impacts in its defective and selective analyses, the FEIR identifies many impacts on intersections for each "build" alternative. FEIR, pp.3-55, Table 3.3-7; 3-57 – 3-61, Tables 3.3-8;3.3-9 [describing selected "near-term" impacts at Gough/Green, Gough/Hayes, Franklin/O'Farrell, Franklin/Market/Page, Otis/Mission/S. Van Ness, and Duboce/Mission/Otis/Us101 Off-Ramp]. The FEIR describes selected "long-term" (meaning some time between 2015 and 2035) significant traffic impacts at Gough/Green, Gough/Clay, Gough/Hayes, Franklin/Pine, Franklin/O'Farrell, Franklin/Eddy, Franklin/McAllister, Van Ness/Pine, Otis/Mission/S. Van Ness, and Duboce/Mission/Otis/ US101 Off-Ramp. FEIR pp.3-67-79, Tables 3.3-14, 3.3-15, 3.3-16.

However, instead of proposing feasible and effective mitigation measures for each of those identified impacts as required, the FEIR proposes self-defeating suggestions for each and then concludes that if the SFCTA finds them "infeasible," the impacts would be "significant and unavoidable," and therefore exempt from mitigation. FEIR, p.3-82 -3-87. That does not meet CEQA's requirement to propose effective mitigation, including "Avoiding the impact altogether by not taking a certain action or parts of an action" and "Minimizing impacts by limiting the degree or magnitude of the action and its implementation." CEQA Guidelines, §15370. Further, deferring a determination of the feasibility of mitigation is a failure to proceed under CEQA's requirements. CEQA Guidelines §15126.4(a)(1)(B).

Further, the FEIR's "mitigation" measures would cause worsened impacts, by removing more parking or removing more "turn pockets." FEIR, p.3-81. Those measures, however, are not "mitigation" within the meaning of CEQA and NEPA. Further, the FEIR fails to analyze the impacts of those proposed "mitigation" measures. Other examples of the FEIR's failure to describe mitigation of the Project's impacts include but are not limited to the following.

PARKING

The FEIR claims that there would be no parking impacts even though most of the parking would be removed on Van Ness, and other parking spaces would be permanently removed for bulbouts and for "mitigation" of other impacts. FEIR, p.5-18.

The FEIR claims that even though there are no parking impacts, it would try to "mitigate" parking impacts by retaining colored loading zones and blue disabled parking zones, where "feasible." FEIR, p.5-21. That does not meet CEQA's requirements for mitigation.

LAMP POSTS: The FEIR Misstates that Demolishing the Historic Lampposts Can Be Mitigated by Installing Completely Different Generic-style Posts.

The FEIR is mistaken in claiming that replacing the historic lampposts on Van Ness Avenue with new, taller, ugly, generic posts with two unevenly spaced fixtures on each is "mitigation." The standards required by the Secretary of the Interior require that the existing historic lampposts be rehabilitated and restored.

MEDIAN TREES: The FEIR Misstates that Planting Vegetation on the Sidewalks Can Mitigate Killing and Removing the Mature Trees on the Van Ness Median.

The FEIR is plainly incorrect in claiming that removing nearly all of the mature trees on the Van Ness median can be mitigated by planting other tree varieties on sidewalk (where there are already trees) or in other places, and waiting for them to reach maturity.

CONSTRUCTION

As to the impacts of 5-years of construction, the FEIR acknowledges that, "traffic congestion, travel delay, and access restriction . . . within the general vicinity could be expected during the entire construction period." FEIR, p.5-14. But the FEIR says that "Early and well-publicized announcements and outreach will help to minimize the confusion and traffic congestion at the start of construction." FEIR, p.5-15. The FEIR says that other "mitigation," such as removing parking, detours, and forced turning that "could" minimize the five years of disruption, may or may not be "feasible." FEIR, 5-15. That does not comply with CEQA, since it does not mitigate or propose feasible mitigation for the Project's impacts from five years of construction.

11. THE FEIR FAILS TO CONSIDER ALTERNATIVES THAT WOULD AVOID THE PROJECT'S SIGNIFICANT IMPACTS ON TRAFFIC, TRANSIT, PARKING, AIR QUALITY, AND NOISE, AND IS IMPROPERLY NARROWED BY THE CLAIMED "PURPOSE AND NEED."

The FEIR's "alternatives" analysis does not comply with CEQA or NEPA, which requires that the EIR set forth a full range of alternatives that are capable of "avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." CEQA Guidelines §15126.6(b); PRC §21002.1. An alternative is not eliminated unless it cannot meet "most of the basic project objectives. CEQA Guidelines §15126.6(c); and see 40 CFR §1502.14 [requiring the FEIR to "Rigorously explore and objectively evaluate all reasonable alternatives."]

The analysis must also consider alternative locations for the Project, and if there are none, must explain why. CEQA Guidelines §15126.6(f)(2).

The FEIR here describes no alternatives that meet these requirements, even though many alternatives could accomplish most of the Project's objectives without removing traffic lanes on Van Ness Avenue and causing severe traffic congestion and parking loss throughout the area.

The alternatives are not a random list of variations on the Project as here, but must be alternatives to the proposed Project for the purpose of eliminating its impacts. CEQA Guidelines §15126.6(b).

Further, the FEIR errs in claiming that the "No Build" or "No Project" alternative is the "environmentally superior" alternative. FEIR, p.7-27, §7.6. If the FEIR identifies No Project as the environmentally superior alternative, it must also identify another environmentally superior alternative. CEQA Guidelines §15126.6(e)(2); and see, *e.g., Watsonville Pilots Ass'n v. City of Watsonville,* 183 Cal.App.4th 1059, 1089 (2010). Here, the FEIR identifies "Build Alternative 2" as the "environmentally superior" alternative but admits that it would have similar impacts to all of the other alternatives in the FEIR. FEIR, p.7-28.

The FEIR fails to analyze other possible alternatives that would not eliminate traffic lanes and parking on Van Ness Avenue but would still achieve *most* of the Project's objectives, including that of speeding up Muni Lines 47 and 49.

For example, no alternative(s) are proposed that would eliminate half the Muni lines 47 and 49 bus stops, would improve bus stops with real-time information (most of which has already been done), would get the already-procured low-boarding buses, and other improvements that do not require removing traffic lanes and parking on Van Ness Avenue, would not destroy the historic streetlamps, would not require building a new sewer and drainage system, would not require removing the mature trees that give character and beauty to the entire corridor, would not cost hundreds of millions of dollars, would not cause congestion, air pollution and noise, would not obstruct and degrade aesthetic views in the corridor, and would not remove the beautiful historic streetlamps, which could be restored instead of being demolished. Instead, the FEIR analyzes *only* "alternatives" that would cause all of these significant impacts to achieve a dubious goal or "purpose and need" of increased speed that could be accomplished without the impacts caused by all of the listed alternatives.

The FEIR claims that it initiated a "feasibility study" of a Van Ness Avenue BRT in 2004 that "defined BRT in San Francisco" as "general elements" of "Dedicated lane, Transit signal priority, High-quality stations, Distinctive vehicles, [and] Level or near level/all-door boarding(or proof-of-payment)." FEIR, p.1-6, §1.2.1. All of these "elements" except the "dedicated lane" can be met without the Project. The FEIR admits that other Project features such as pedestrian countdown signals would be implemented anyway, without the Project. FEIR, p. 3-90

In considering a superior alternative that would avoid the Project's impacts, the FEIR was required to "rigorously explore and objectively evaluate *all* reasonable alternatives." 40 CFR §1502.14(a). That analysis has not taken place here.

Instead, the agency has manufactured a more damaging preferred alternative to deliberately cause impacts on vehicle traffic and parking under an improper claim of "purpose and need" for the Project. The LPA, for example has more traffic impacts, more turning restrictions, more parking removal, more air quality degradation, removal of more median trees

(*i.e.*, all of them), more expense, more sewer replacement, more relocation of curbs for bulbouts, more difficulty and strain for pedestrians to reach bus stops, more impacts on aesthetic sand visual resources, and more construction time. (FEIR, p.10-16, 17,23,31,33, 36, 37) It is not even an alternative under CEQA, since it improperly creates impacts rather than eliminating and avoiding them.

The FEIR attempts to justify its violation of NEPA and CEQA in failing to consider reasonable alternatives to the Project that would achieve some of its objectives. For example, the FEIR rejects the idea of eliminating bus stops but not eliminating traffic lanes and parking by claiming that "the percentage of households in the Van Ness corridor that do not own cars is 17 percent higher than the citywide average." FEIR, p.7-31. That claim is irrelevant and unsubstantiated, since the use of US Highway 101/Van Ness Avenue is of regional, statewide, and nationwide importance, and the number of travelers on that federal Highway vastly exceeds the number of "households" that do not own cars on Van Ness Avenue.

The FEIR's claim that Muni lines #47 and #49 would "experience reliability impacts" without the "Build" alternatives is unproven and without merit. FEIR, p.7-32. In considering a superior alternative that would avoid the Project's impacts, the FEIR is required to support its conclusions with rigorous analysis and substantial evidence that is entirely lacking.

Further, NEPA forbids an alternatives analysis that is narrowly limited by manufacturing a "purpose and needs" statement, which is exactly what the FEIR does here. And see discussion at Item 5, *ante*. The improper "purpose and need" to deliberately obstruct and slow traffic and cause congestion for vehicle traffic results in a done-deal analysis that only considers "alternatives" that accomplish that improper goal. Instead of analyzing alternatives that eliminate the Project's significant impacts, the FEIR blanketly rejects such alternatives claiming they "contained a 'fatal flaw'" in "meeting the project purpose and need." FEIR, p.7-32.

Further, with the LPA, the agency has improperly already decided on building the Project, which violates both CEQA and NEPA. See, *e.g.*, 40 CFR §1502.2(f), (g); *e.g., Laurel Heights Improvement Assn. v. Regents of the University of California,* 47 Cal.3d 376, 394.

12. THE "CEQA FINDINGS" WERE NOT PUBLICLY AVAILABLE AND DO NOT COMPLY WITH CEQA.

As noted, the public was not given adequate notice of the SFCTA's CEQA Findings ["Findings"] and the "Mitigation Monitoring & Reporting Program" ["MMRP"], which were unavailable until only one business day before this hearing to adopt them. That is not legal notice under any provision of CEQA, NEPA, the Government Code, and the California or United States Constitutions. This meeting must be postponed until such notice and the opportunity for meaningful public participation in the proceedings is provided.

This Comment cannot possibly comment on the hundreds of pages of "Findings" and other materials that were neither provided on request of this commenter nor timely made available for public review. Therefore, this Comment does not waive any issue on the inadequacy of the FEIR or SFCTA's Findings and other materials in its packet. The Findings document is incoherent and largely inscrutable, with encoded conclusory statements, consideration of "construction" impacts in lieu of or listed along with "operation" findings, whatever that means.

Even a cursory glance at the Findings shows many legal and factual flaws. The Findings contain factual falsehoods, such as the claim that hard copies of the FEIR were distributed to those with a street address who had commented on the DEIR. (Findings, p.8.) In fact, as noted, such copies were unavailable, and were only provided by request and a time-consuming trip to the not readily accessible SFCTA offices, where this Commenter, for example, was charged nearly $100 for a hard copy of the FEIR, and was not timely provided on request with any accurate or hard copies of the "studies" referred to in that document.

Due to the lack of notice and time for comment, there is no time to give a comprehensive view of examples of the false and unsupported "factual" statements in the Findings, and only a few can be provided here.

Due to the FEIR's failure to identify and analyze the Project's significant impacts, the Findings are necessarily legally inadequate. The Findings thus evade the necessity to set forth mitigation measures, for example, on the Project's parking impacts, impacts on land use, air quality, noise, and traffic, because the FEIR fails to properly identify those impacts. The Findings repeats the false claim that the LPA will not remove parking. Findings, p.23. The Findings repeat the mistaken legal conclusion that the impacts of removing parking do not require analysis and mitigation. *Id.* at 23-25.

The Findings discloses for the first time (it is nowhere else in the record) that the agencies propose to also remove parking on other streets, including Franklin, Gough, and other parallel streets as "mitigation" for the Project's turning impacts. Findings, e.g., pp.37-39. The FEIR was required but failed to analyze the impacts caused by that proposed "mitigation." CEQA Guidelines, §15126.4(a)(1)(D). The Findings admits that its previously undisclosed plan to remove parking on Gough and Franklin Streets will *not* mitigate the Project's significant traffic impacts on those streets, and therefore is not effective mitigation as required within the meaning of CEQA or NEPA. Findings, pp.40-42. The Findings admits that removing parking would cause impacts on pedestrian conditions, since parking spaces provide a buffer insulating pedestrians from moving traffic, and that removing parking conflicts with its General Plan. *Id.* p.42-43.

As to the significant impacts on traffic identified in the FEIR, the Findings admits that the FEIR's proposed "Traffic Management 'Toolbox' Strategies,' such as "Driver Way Finding and Signage," "Public Awareness Campaign and TMP during Project Construction," and "Pedestrian Amenities at Additional Corridor Locations" will not effectively mitigate the Project's impacts: "These strategies. . . cannot be readily represented in conventional traffic operations models; therefore, their potential effect on minimizing traffic delay impacts has not been quantified and the traffic impacts...would remain significant and unavoidable." Findings, p.42. Thus, the "Toolbox Strategies" are a pointless paper-generating exercise, not mitigation.

The Findings conclude without any support or citation to evidence that there is no feasible mitigation for any of the Project's traffic impacts identified in the FEIR. Findings, pp.43-44. There is no feasibility analysis in the Findings or in the record.

The Findings fail to properly, objectively, and accurately analyze feasible alternatives that would eliminate or mitigate the significant impacts identified in the FEIR. Instead, the Findings simply repeat the SFCTA's reason for developing the LPA, which is not an "alternative" to the Project, but is the Project itself, which was neither described nor analyzed in

the DEIR, precluding public input. The Findings fails to support any of its conclusions with substantial evidence.

Even with the inadequate and truncated impacts "analysis" in the FEIR, the Findings fails to discuss *each* significant impact identified in the EIR as required by CEQA. *E.g.,* PRC §21081(a); 21081.5. The Findings (and the FEIR to which they defer) also fail as required to set forth *effective* mitigation measures for each of the Project's significant impacts. Such effectiveness must be supported by substantial evidence in the administrative record. There is no such discussion in either the Findings or the FEIR.

Nor may the agency "incorporate by reference" as "findings" the conclusions in the FEIR. Findings, p.16. The Findings must itself be a legally adequate document supported by substantial evidence that complies with CEQA's requirement that "no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur: (a) The public agency makes one or more of the following findings with respect to each significant effect: (1) Changes or alterations have been required in...the project which mitigate or avoid the significant effects...(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency; (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report." PRC §21081(a). The Findings do not comply with these requirements.

After rotely rejecting all mitigation of the Project's impacts, the Findings set forth a two and one-half page "Statement of Overriding Considerations" ["SOC"] that fails to comply with CEQA's requirements. Findings, pp.53-55. The Findings fails to first find mitigation of the Project's identified significant impacts truly infeasible, since it contains no feasibility study. The SOC then fails to include a factual statement weighing the Project's impacts on all travelers versus its benefits to all travelers, and to support that analysis with substantial evidence. Instead, the SOC only describes the alleged benefits of the Project to users of Muni lines 47 and 49, and the unsupported, unattributed, and subjective rhetoric that Project would, *e.g.,* "help transform the street into a vibrant pedestrian promenade," "would provide a greater sense of permanence than existing bus facilities," or would help "to stimulate further transit-oriented development," with *no* discussion or weighing of the Project's significant impacts on traffic, parking, air quality, noise, and aesthetic and historic resources.

The SOC does not comply with CEQA, which requires first that the Findings prove that mitigation is truly infeasible with substantial evidence, and only after that rigorous examination may an agency consider an SOC. The Findings do not meet that requirement here. Only after meeting that requirement may the agency consider an SOC, which must be a factual, not rhetorical, statement supported by substantial evidence in the record that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant impacts." PRC §21081(b); CEQA Guidelines §15093. Those requirements are not met by the SOC.

The Project may not lawfully proceed without legally adequate Findings.

CONCLUSION

The FEIR and Findings do not comply with the law and must not be approved and/or certified. Approving the Project and funding it would therefore be an abuse of discretion and a failure to proceed as required by law.

DATED: September 10, 2013

SIGNED: _____

Mary Miles