

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25

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

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

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

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

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

25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25

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

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

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

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

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

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

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

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

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

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

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

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

19
20
21
22
23
24
25