Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2010-2011 Civil Grand Jury Report entitled "Whistling in the Dark: The San Francisco Whistleblower Program" and urging the Mayor to cause the implementation of accepted findings and recommendations through his/her department heads and through the development of the annual budget.

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

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

WHEREAS, The 2010-2011 Civil Grand Jury Report entitled "Whistling in the Dark: The San Francisco Whistleblower Program" is on file with the Clerk of the Board of Supervisors in File No. 110928, which is hereby declared to be a part of this resolution as if set forth fully herein; and

WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond to Finding Nos. F1, F6, F7, F8, F9, F11, F13, and F14 as well as Recommendation Nos. R1, R5, R6, R7, R8, R10, R12, and R13 contained in the subject Civil Grand Jury report; and

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WHEREAS, Finding No. F1 states: "The investigation of whistleblower complaints is not independent when performed by the targeted agency or department;" and

WHEREAS, Recommendation No. R1 states: "CSA should perform all investigations. This would require a change to the Charter;" and

WHEREAS, Finding No. F6 states: "No detailed final public report of substantiated whistleblower complaints is issued by the City Services Auditor. The lack of public reporting of whistleblower investigations fails to provide transparency in government;" and

WHEREAS, Recommendation No. R5 states: "If a complaint is substantiated, a public Finding should be issued that details: 1. The nature of the complaint; 2. What the investigation determined; 3. The name of the respondent; and 4. The penalty applied or actions taken;" and

WHEREAS, Finding No. F7 states: "The current Whistleblower protections are inadequate;" and

WHEREAS, Recommendation No. R6 states: "An independent administrative law judge should deal with retaliation issues. The responsibility for retaliation complaints should be removed from the Ethics Commission;" and

WHEREAS, Finding No. F8 states: "The Jury found that whistleblowers who faced retaliation choose to initially use their union or sue the City rather than using the Ethics Commission to resolve their retaliation complaint;" and

WHEREAS, Recommendation No. R7 states: "If an employee who has filed a whistleblower complaint is laid off within two years of having filed the complaint, or within one year of the complaint being closed, an administrative law judge will conduct a full review. Should it be determined that retaliation is a factor in the layoff/termination; the employee shall be awarded up to two years full salary as part of his or her severance package;" and
WHEREAS, Finding No. F9 states: “Citizens General Obligation Bond Oversight Committee CGOBOC does not provide effective or independent oversight of the Whistleblower program;” and

WHEREAS, Recommendation No. R8 states: “CGOBOC must become an effective Whistleblower Program oversight entity by reviewing the number and type of whistleblower complaints, the investigative process used and the final results of investigations at least twice a year;” and

WHEREAS, Finding No. F11 states: “Whistleblower Program staff are spending an inordinate amount of time on low level complaints;” and

WHEREAS, Recommendation No. R10 states: “Create and institute a filter process to allow redirection of non-waste, fraud and abuse complaints to 311. This would require a change to the Charter;” and

WHEREAS, Finding No. F13 states: “A process is needed to give complainants an avenue to appeal a whistleblower investigation if they have questions about how the investigation was conducted or if they disagree with the investigation’s conclusions;” and

WHEREAS, Recommendation No. R12 states: “Establish an appeals process using an independent administrative law judge for whistleblower complaints that qualify for review. Guidelines must be established to determine legitimate reasons for the appeal of a "dismissed", "no violation found" or "closed" complaint;” and

WHEREAS, Finding No. F14 states: “Adding a reward program would create an incentive for individuals to become Whistleblowers;” and

WHEREAS, Recommendation No. R13 states: “Establish a reward system for validated high risk whistleblower complaints with a $500 minimum or 10% of funds recovered, whichever is greater;” and
WHEREAS, in accordance with Penal Code Section 933.05(c), the Board of
Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
Court on Finding Nos. F1, F6, F7, F8, F9, F11, F13, and F14, as well as Recommendation
Nos. R1, R5, R6, R7, R8, R10, R12 and R 13 contained in the subject Civil Grand Jury report;

now, therefore, be it

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

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

FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
of the Superior Court that it agrees with Finding No. F7; and be it

FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
of the Superior Court that it agrees with Finding No. F8; and be it

FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
of the Superior Court that it disagrees with Finding No. F9; and be it

FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge
of the Superior Court that it agrees with Finding No. F11; and be it

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

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

FURTHER RESOLVED, That the Board of Supervisors reports that it disagrees with
Recommendation No. R1; and be it

FURTHER RESOLVED, That the Board of Supervisors reports that it disagrees with
Recommendation No. R5; and be it

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FURTHER RESOLVED, That the Board of Supervisors reports that it disagrees with Recommendation No. R6; and be it

FURTHER RESOLVED, That the Board of Supervisors reports that it disagrees with Recommendation No. R7; and be it

FURTHER RESOLVED, That the Board of Supervisors reports that it agrees with Recommendation No. R8; and be it

FURTHER RESOLVED, That the Board of Supervisors reports that it disagrees with Recommendation No. R10; and be it

FURTHER RESOLVED, That the Board of Supervisors reports that it disagrees with Recommendation No. R12; and be it

FURTHER RESOLVED, That the Board of Supervisors reports that it disagrees with Recommendation No. R13; and be it

FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the implementation of accepted findings and recommendations through his/her department heads and through the development of the annual budget.
Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2010-2011 Civil Grand Jury Report entitled "Whistling in the Dark: The San Francisco Whistleblower Program" and urging the Mayor to cause the implementation of accepted findings and recommendations through his/her department heads and through the development of the annual budget.

October 27, 2011 Government Audit and Oversight Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 27, 2011 Government Audit and Oversight Committee - RECOMMENDED AS AMENDED

November 08, 2011 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

I hereby certify that the foregoing Resolution was ADOPTED on 11/8/2011 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

May 18, 2011
Date Approved

Date: November 18, 2011

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.

Clerk of the Board