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

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

WHEREAS, In accordance with San Francisco Administrative Code, Section 2.10(b), the Controller must report to the Board of Supervisors on the implementation of recommendations that pertain to fiscal matters that were considered at a public hearing held by a Board of Supervisors Committee; and
WHEREAS, The 2020-2021 Civil Grand Jury Report, entitled “Van Ness Avenue: What Lies Beneath” (“Report”) is on file with the Clerk of the Board of Supervisors in File No. 210702, 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, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, and F14, as well as Recommendation Nos. R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, and R11 contained in the subject Report; and

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

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

WHEREAS, Finding No. F3 states: “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;” and

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

WHEREAS, Finding No. F5 states: “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;” and

WHEREAS, Finding No. F6 states: “Practical work during preconstruction that could have derisked the subsequent construction phase of the project was insufficient;” and
WHEREAS, Finding No. F7 states: "Review of preconstruction deliverables did not sufficiently measure the contractor's preparedness for construction, which resulted in both inaccurate cost estimates and timelines;" and

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

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

WHEREAS, Finding No. F10 states: "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;" and

WHEREAS, Finding No. F11 states: "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;" and

WHEREAS, Finding No. F12 states: "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;" and

WHEREAS, Finding No. F13 states: "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;" and

WHEREAS, Finding No. F14 states: "Confusion related to the contractual requirements for pedestrian monitoring contributed to the deterioration of the relationship between Walsh, the general contractor, and the City;" and
WHEREAS, Recommendation No. R1 states: “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;” and

WHEREAS, Recommendation No. R2 states: “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;” and

WHEREAS, Recommendation No. R3 states: “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;” and

WHEREAS, Recommendation No. R4 states: “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;” and

WHEREAS, Recommendation No. R5 states: “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;” and
WHEREAS, Recommendation No. R6 states: “The adopted CMGC management policy should specifically include the industry best practice of awarding the contract before project design continues past 30% completion;” and

WHEREAS, Recommendation No. R7 states: “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;” and

WHEREAS, Recommendation No. R8 states: “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;” and

WHEREAS, Recommendation No. R9 states: “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;” and

WHEREAS, Recommendation No. R10 states: “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;” and

WHEREAS, Recommendation No. R11 states: “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;” and

WHEREAS, In accordance with California 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, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, and F14, as
well as Recommendation Nos. R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, and R11 contained in the subject Report; now, therefore, be it

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

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

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

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

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

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

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

FURTHER RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the Superior Court that they disagree partially with Finding No. F8 for reason as follows: while the benefits of bringing in the CMGC contractor earlier in the project is acknowledged,
the record reflects that the contract effectiveness was also reduced by subsequent actions of the contractor; and, be it

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

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

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

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

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

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

FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation No. R1 has been implemented; and, be it
FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation No. R2 requires further analysis, and hereby directs the Budget and Legislative Analyst to issue a report by March 31, 2022 analyzing options for the adoption of a policy regarding itemized assessments of de-risking activities for major capital projects; and, be it

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

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

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

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

FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation No. R7 has not been implemented but will be implemented, and hereby directs the Budget
and Legislative Analyst to issue a report by March 31, 2022 laying out options and key
considerations for an ordinance to amend the Administrative Code to remove the mandatory
cost criterion in awarding CMGC contracts; and, be it

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

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

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

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

FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the
implementation of the accepted findings and recommendations through 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 2020-2021 Civil Grand Jury Report, entitled "Van Ness Avenue: What Lies Beneath," and urging the Mayor to cause the implementation of accepted findings and recommendations through her department heads and through the development of the annual budget.

September 30, 2021 Government Audit and Oversight Committee - CONTINUED

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

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

October 19, 2021 Board of Supervisors - ADOPTED

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

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

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

10/29/2021
I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without her approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo  
Clerk of the Board

10/29/2021  
Date

File No.  
210701