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MEMORANDUM

To: City of San Jose
From: Patton Boggs LLP
Date: October 21, 2004
Subject: Update on San Jose Federal Relations Activities

This memorandum highlights recent Patton Boggs federal relations work on behalf of the City of San Jose. Specifically, the report reviews –

- federal lobbying visits organized for City officials;
- FY2005 appropriations agenda status and action;
- transportation reauthorization and BART extension advocacy;
- homeland security funding and legislative activities;
- housing and community development funding and policy efforts;
- telecommunications tax legislation; and
- other federal legislative and grant opportunity assistance.

Federal Lobbying Visits by San Jose Officials

Working with City staff, we developed a two-day September lobbying trip for Mayor Gonzales. The objectives of the visit were to address issues involving the Silicon Valley BART Extension project; promote the FY2005 appropriations agenda, and explore other federal agency funding opportunities.

Specific to BART issues and delayed release of previously appropriated funding, we identified and secured a series of meetings with key Administration and Congressional policymakers. Silicon Valley Manufacturing Group CEO Carl Guardino also participated. Meetings included:

- Jenna Dorn, FTA Administrator, with lead FTA technical and legal staff;

- Representative Ernest Istook (R-OK), Chairman of the House Transportation Appropriations Subcommittee;
- Senator Patty Murray (D-WA), Ranking Member of the Senate Transportation Appropriations Subcommittee;
- House Minority Leader Nancy Pelosi (D-CA);
- Paul Doerrer, Senate Transportation Appropriations Subcommittee Majority Clerk;

We also facilitated discussions with the full San Jose congressional delegation regarding BART issues, pending FY2005 appropriations requests, and other policy themes, including:

- Senator Dianne Feinstein;
- Senator Barbara Boxer;
- Congressman Mike Honda;
- Congresswoman Zoe Lofgren;
- Congresswoman Anna Eshoo; and
- staff to Congressman Richard Pombo.

Finally, we arranged dialogues with senior Administration officials to review special initiatives and new sources of funding for San Jose. We met with the Director of the HHS Office of Community Services about tapping a variety of discretionary and competitive grant sources, including a possible new demonstration project in San Jose tied to the Strong Neighborhoods Initiative. We also met with senior staff to the White House Drug Policy Advisor concerning possible funding to increase law enforcement drug interdiction efforts.

FY2005 Appropriations Projects

Congress recessed on October 8 without completing nine of the thirteen annual appropriations bills for FY2005, including all of those targeted for City appropriations project requests. Most federal domestic government programs now are being funded through a Continuing Resolution set to expire on November 20, which allows programs to keep running at their FY2004 funding levels. We expect the remaining bills to be combined into one omnibus appropriations package for consideration when Congress reconvenes for a lame duck session in mid-November.

Although not yet finalized, the pending House and Senate versions of the federal FY2005 appropriations bills already include at least \$1.175 million in special projects directed to the City, approximately twice the amount secured for the City in FY2004, excluding the amounts targeted to VTA for the BART extension project. The ultimate status of those projects is subject to a final agreement by the House and Senate in conference. In addition, several other requests remain

possibilities for insertion during the conference negotiations. We continue to work with the congressional delegation on these priorities. Currently, the funded City projects are:

- (1) North San Pedro Housing Site Water / Sewer Improvements -- \$500,000 in the Senate and \$200,000 in the House to support the construction of wastewater and drinking water infrastructure enabling brownfield redevelopment for high-density housing. (In conference, the total amount earmarked for a project tends to be at most the higher of the House or Senate numbers.)
- (2) San Jose BEST Youth Gang Reduction Program -- \$500,000 to expand and enhance community-based gang suppression, prevention, and intervention activities.
- (3) Tully-Senter School Hub Construction -- \$100,000 to support construction of a new multipurpose community facility at J.W. Fair Middle School campus, the highest priority in the area's Strong Neighborhoods Initiative plan.
- (4) Maple Leaf Shopping District Rehabilitation -- \$75,000 to help revitalize the shopping area and commercial corridor serving the Blackford neighborhood.

In addition, the City explicitly endorsed and advocated for several project requests led by the Santa Clara Valley Water Authority. Of these, the relevant House bill funded the Army Corps of Engineers to undertake the Guadalupe River Flood Protection project at \$6 million and the Upper Penitencia Creek Flood Protection project at \$500,000.

Transportation Reauthorization and BART Extension

The highway and transit reauthorization bill remains stalled in a contentious conference between the House and Senate, now lasting for more than five months. Congress recently approved an eight-month extension of the prior TEA-21 authorization through the end of May 2005.

The three earmarked City projects secured in the House version of the bill, totaling \$17 million, are contingent upon a final resolution of the bill during the lame duck session. The same is true for language authorizing future appropriations for the Silicon Valley BART Extension.

We forecast that there is an equal chance the bill will be completed in this Congress or pushed back into next year. The post-election session minimizes political negatives of voting for a more expensive bill, and there will be pressure to clear the agenda of outstanding items so that a new Congress can give full consideration to the President's legislative agenda in January 2005. However, the eight-month extension removes the urgency that has driven conference negotiations thus far; key authorizers have no incentive to finish the legislation now and thereby diminish their influence; and if the Senate control shifts in the election, Senate Democrats will seek to postpone negotiations until January when they become the majority and yield much more leverage.

If delayed, the reauthorization process would start over with required reintroduction and passage of the bills in both House and Senate. The current bills could serve as a baseline if the election does not change control of the chambers. However, given the two years since submission of original project requests and changes to Committee membership, earmarks in the House bill likely will be reconsidered. The Senators also would reopen their project request process, as no earmarks have been included in the Senate bill.

The principal differences still to be resolved in conference include: (1) the rate of return for the Minimum Guarantee program; (2) the scope of programs covered and excluded from the Minimum Guarantee program; (3) the breakdown between highway and transit funds; and (4) donor/donee state issues about how to increase donor state return without harming the growth of funding for donee states.

No matter what direction the conference takes, we are maintaining regular contacts with the San Jose delegation offices and other relevant congressional staff in order to affirm and preserve the City's projects. In particular, we have been discussing with Senator Boxer's office how she might best use her position on the conference to support the City's reauthorization agenda by protecting the House earmarks and perhaps adding another project.

Specific to the Silicon Valley BART Extension project authorization and funding, we continue to advise the City in its partnership with VTA, balancing the VTA institutional leadership responsibility with the City's own interest in providing complimentary and rigorous support for the project to advance.

To that end, we initiated and helped the Silicon Valley Manufacturing Group to organize a San Jose visit by Senator Richard Shelby (R-AL). Senator Shelby is Chairman of the Senate Transportation Appropriations Subcommittee and Chairman of the Senate Banking Committee, the committees with jurisdiction over annual transportation funding and transit provisions of transportation reauthorization. It follows other visits we initiated with the Chairmen of the House Transportation Appropriations Subcommittee and the House Transportation and Infrastructure Committee, designed to more personally engage them in the BART extension project and garner support.

Homeland Security

We continue to advocate aggressively for the City's homeland security funding agenda in several areas, performing a facilitating role in the coalition of the large, high-risk municipalities that we helped to initiate last year, and working with the Governor's representative. Objectives included:

- (1) increasing FY2005 appropriations for the Urban Area Security Initiative (UASI) through which the City receives substantial, targeted funding, and maximizing funding flexibility;
- (2) preserving other key first response / homeland security grant funding from which the City derives notable directed assistance, including Emergency Performance Management Grants (EPMG) and Metropolitan Medical Response System (MMRS) grants; and

- (3) negotiating for favorable treatment under pending House and Senate legislation that creates statutory authority for future appropriations and modifies current funding mechanisms.

For FY2005 appropriations, we engaged with relevant appropriations staff and the delegation regarding outstanding homeland security demands, problems experienced in targeting funds according to risk and need, and the overall case for additional, directed funding. We also drafted and secured 17 Mayoral signatories on a detailed multi-city letter to appropriations conferees which outlined our issues. We pursued several amendments to increase funds to Urban Area Security Initiative designees, and assuring that State Formula Grant distributions are targeted based more on risk, receiving support from the City's full House and Senate delegation.

As a result, the final FY2005 Homeland Security appropriation increased UASI funding by \$160 million, eliminating a proposed 10% cap on overtime expenditures, newly allowing use of funds for target hardening purposes, and waiving aspects of federal law to permit funds to be drawn in advance of expenditure. It also held last year's funding for EPMG and preserved MMRS grants, both of which San Jose receives to underwrite core activities.

With regard to authorizing legislation, we engaged our coalition partners in extensive negotiations with relevant House and Senate committees as they moved pending proposals toward inclusion in the 9-11 Intelligence Reform bills. We secured fundamental changes in strengthening the position of high-threat urban areas; expanding the use of funds for overtime and some construction purposes; and lowering or eliminating non-federal match requirements.

As the bills currently are being conferenced, we now are seeking further modifications and clarifications in several areas that would benefit San Jose and similarly situated cities. We briefed the California delegation conferees, prepared policy analysis papers, and conducted media outreach. Some of the specific policy changes sought include:

- maximizing the amount of funding distributed based upon threat criteria, which would benefit both San Jose and California;
- grandfathering existing UASI designees, and their plans and decision-making structures, as eligible recipients under any new grant system;
- creating procedural safeguards to hold the State plans accountable to major urban areas by requiring incorporation of existing UASI efforts and establishing new review and comment systems;
- eliminating a non-federal match requirement;
- narrowing supplantation limits and permitting federal funds to be used in place of local funding for expenditures that serve a dual purpose of terrorism preparedness and traditional law enforcement.

We also continued to advise staff of a DHS task force of state and local officials on progress in changing current systems to improve local access and utilization of homeland security grant funding.

Housing and Community Development

In consultation with the City's Housing Department and the Housing Authority of the County of Santa Clara, we continued advocacy opposing policy changes to the Section 8 Housing Choice Voucher Program that have a negative fiscal impact on San Jose. The combined efforts by the coalition of large, high-cost localities that we helped to organize, the Governor's federal representative, and numerous housing groups achieved further incremental reversals and improvements to policies that ultimately covered most current year funding shortfalls.

We continue to work with the high-cost locality coalition and broader housing advocate community to assure that congressional interests remain engaged until further policy modifications are achieved, including provision of sufficient Section 8 funding and more reasonable implementation of potential reforms in the FY2005 appropriations process. We maintain regular contact with the congressional delegation, as well as directly to relevant committee leaders and staff, to provide information and impact analysis of proposals. In addition, we advanced the Mayor's co-sponsorship of a U.S. Conference of Mayors resolution passed in support of the City's positions. Some immediate objectives include requiring the program to more accurately assess Fair Market Rents and incorporate additional local-specific data into its funding formula, and replenish housing agency reserves in a timely manner.

We also advised the City regarding status, implications, and recommended actions on other housing and community development legislative and funding issues, such as authorization of the Samaritan Initiative for comprehensive homeless services and proposed modifications to Community Reinvestment Act regulations.

Telecommunications Tax Legislation

Working with a coalition of large municipalities, we helped to prevent legislative language from being attached to an FY2005 appropriations bill which could have seriously undermined the City's Utility User Tax (UUT) revenue base. Advanced by a small group of House and Senate leaders, the provision threatened the current ability of California municipal governments to tax telephone services under Voice Over Internet Protocol (VOIP), contrary to a compromise position previously reached in the Senate. We assisted in securing Senator Feinstein's leadership to oppose the measure and leveraging other impacted delegations, thus successfully stopping the proposed legislative maneuver.

Other Federal Legislative and Grant Opportunities

We responded to various City agency inquiries regarding pending legislation impacting such topical areas law enforcement and homeland security; water resources; and airports.

We also answered City agency questions regarding grant program at the Department of Labor, Department of Housing and Urban Development, and Department of Health and Human Services.

Finally, we continued the provision of notices of federal and other funding opportunities for a variety of programs for which the City might be eligible, highlighting particularly relevant notices.