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I. KEYS

Abbreviations

Subjects

BID	=	"Parking and Business Improvement District"
CDBG	=	"Community Development Block Grant"
MAD	=	"Maintenance Assessment District"
RFQ	=	"Request for Qualifications"
RFP	=	"Request for Proposal"

Organizations

NBA	=	"North Bay Association of San Diego"
NCA	=	"New City America"
OSB	=	San Diego's "Office of Small Business"
PAC	=	"Project Area Committee"

Codes & References

CFR	=	"Code of Federal Regulations"
CGC	=	"California Government Code"
CH&SC	=	"California Health & Safety Code"
CPC	=	"California Penal Code"
CPCC	=	"California Public Contract Code"
CS&HC	=	"California Streets & Highway Code"

II. CASE SUMMARY

This investigation involves illegal activities committed during the administration of the San Diego Midway area "Parking and Business Improvement District" (BID). The violations were committed by past and present members and employees of the North Bay Association of San Diego (NBA), the non-profit organization under contract with the City of San Diego to administer the Midway BID. Investigators uncovered the following:

- 1) A violation of CGC Section 1090 occurred when Marco LiMandri was hired as the NBA's first Executive Director.
- 2) A conspiracy to misappropriate public money took place involving LiMandri and then NBA President Paul Mannino. The conspiracy involved a *quid pro quo* arrangement between LiMandri and Mannino whereby LiMandri arranged to trade his NBA Executive Director position, along with its \$50,000 per year salary, to Mannino in exchange for two CDBG subcontracts awarded by the NBA. The conspiracy involved the following:
 - a) The unwitting participation of two NBA Board Officers, Charles Pretto and Leslie Sanguenetti, who used the power of their membership on the NBA sub-committee known as the "Organization Committee" to facilitate the *quid pro quo* arrangement.
 - b) The use of fraudulent "procurement processes", giving the appearance that awarding LiMandri the grants was done with an "open and fair" process.
 - c) Mannino's fraudulent submission, after the fact, of false information and documentation to the City of San Diego to cover up one of the fraudulent "procurement" processes.
- 3) A conspiracy to obtain by fraud CDBG funds for a project the NBA failed to complete. The fraud involved the preparation by Mannino, his Executive Assistant Audrey Thifault, and NBA Treasurer Nancy Rossi, of false records of project expenses and the submission of those records to the City to obtain the CDBG funds. The fraud also involved the fabrication of survey data and a project report to conceal the fact that the NBA had failed to complete the project as claimed.
- 4) A bribery and attempt extortion scheme took place whereby Mannino, who was also serving as Chairman of the North Bay Redevelopment Project Area Committee (PAC), requested a payment of approximately \$100,000 from developer Bill Kenton in exchange for the NBA's support of Kenton's redevelopment project planned for the North Bay area. In exchange for the cash Mannino offered to provide assistance in obtaining redevelopment subsidies for Kenton's project.

-END CASE SUMMARY-

III. CASE BACKGROUND

"Parking and Business Improvement Districts" are formed under the authority of the California Streets & Highway Code, Sections 36500-36571, entitled "The Parking & Business Improvement District Law of 1989." A "Parking and Business Improvement District" is commonly referred to as a "BID". Essentially a BID is a geographical area, primarily a business district, in which the business owners have agreed to be assessed a fee based on a set formula. This fee is collected by the City of San Diego, along with the business taxes. The funds are held by the City, making them public funds, and released, by means of a reimbursement system, to a non-profit organization. The non-profit organization is tasked, under a contract with the City of San Diego, to use the assessment funds to improve the business district through a variety of activities.

Maintenance Assessment Districts are formed under authority of the California Streets & Highway Code, Sections 22500-22679, entitled "Landscaping And Lighting Act of 1972". A Maintenance Assessment District is commonly referred to as a MAD. Essentially a MAD is a geographical area in which the property owners have agreed to be assessed a fee based on a set formula. This fee is collected by the County of San Diego along with property taxes. The County then releases the funds to the City of San Diego's Treasurer. The funds are held by the City, making them public funds, and the money may only be expended for improvements authorized for such districts.

The award and use of Community Development Block Grant funds are regulated by the Code of Federal Regulations (CFR), under Title 24, Chapter V, Part 570, pursuant to Title I of the Housing and Community Development Act of 1974, United States Code Title 42, Chapter 69, Sections 5301 through 5321. Community Development Block Grants are commonly referred to as "CDBG's" and are federal funds. The non-profit organizations which contract with the City of San Diego to administer BID's are also eligible to apply for and receive CDBG funds from the City. Each year the City of San Diego receives millions of dollars in CDBG funds. As a CDBG recipient, the City of San Diego (The City Council) is empowered to award CDBG funds to organizations as "sub-recipients" for CDBG eligible projects. These organizations must submit an application for the funds to the City's "CDBG Office" in the Community and Economic Development Division. The office then determines whether the activities described in each application are eligible for CDBG funds. If eligible, the CDBG office then forwards the application to the City Council. If an application is approved for funding by the City Council, the organization then enters into a contract with the City of San Diego for the use of the funds. The projects awarded CDBG funds are monitored by the recipient, the City of San Diego.

The California Health and Safety Code is the regulating authority for the formation and operation of "Redevelopment Agencies". Authority is conferred on the Agency through the state of California's Health and Safety Code (Section 33000-et.seq.), also known as the California Community Redevelopment Law. The Redevelopment Agency of the City of San Diego was created by the City Council in 1958 to alleviate conditions of blight in older, urban areas. The Redevelopment Agency is able to use special legal and financial mechanisms to eliminate blight and improve economic and physical conditions in designated areas of the City. Although the Redevelopment Agency is a separate, legal entity, the City Council serves as its legislative body. The Mayor chairs the Agency, and the City Attorney serves as general counsel. Employees

from the City's Community and Economic Development Division serve as staff for the Redevelopment Agency.

The Redevelopment Agency also administers seven Project Area Committees (PAC's) that advise the Agency regarding plan adoption and project implementation activities, per CH&SC, Section 33386.

The San Diego Office of Small Business (OSB) administers several programs for small business development, including oversight of BID operations. OSB is also tasked with contract administration for BID's receiving CDBG funds from the City. OSB is an office under the Community and Economic Development Division of the City of San Diego.

New City America (NCA) is a "for profit" corporation. New City America incorporated on December 19, 2001 under California Corporation #C2386116.¹ Marco LiMandri is the corporation's "president" and "agent for service."

On October 30, 1998 the City of San Diego hired Marco LiMandri, under contract #C-09148, as a consultant to provide services and perform tasks necessary to establish a BID in the Midway area of San Diego.²

On May 30, 2000, the San Diego City Council announced its intention of establishing the Midway BID with Resolution # R-293207.³

On July 18, 2000, the City of San Diego contracted with the "Midway Community Development Corporation" to operate and administer the funds of the Midway BID.⁷ This occurred before the enactment of the Midway BID Establishment Ordinance, which is allowed under CS&HC, Section 36530. The founding interim president and signer of the contract for the "Midway Community Development Corporation" was Paul Mannino. Marco LiMandri acted as the temporary Executive Director for the Midway Community Development Corporation, receiving a salary to do so. Soon after the BID was formed the Midway Community Development Corporation changed its name to the "North Bay Association of San Diego" (NBA).

On August 7, 2000, the San Diego City Council adopted Ordinance # O-18834, which established the existence of the Midway Business Improvement District.⁴

On November 15, 2000 the NBA incorporated in the State of California under Corporate #C2279293.⁵ Marco LiMandri was the executor of the NBA articles of incorporation and was the initial "agent for service" and Executive Director for the corporation.⁶ The NBA is a non-profit, public benefit corporation formed under Section 503 (c)(6) of the Internal Revenue Code. The NBA's founding president was Mannino. The NBA was originally operated out of the office of LiMandri's company, New City America, at 1830 Columbia Street. After a shift of the NBA's Executive Director position from LiMandri to Mannino, the NBA was then operated out of 3666

¹ See Exhibit 1, NCA corporate information, #C2386116, from Ca. Sect. of State website.

² See Exhibit 2, contract between the City of San Diego and Marco LiMandri to form/establish the Midway BID.

³ See Exhibit 3, San Diego City Council Resolution to form the Midway area BID.

⁴ See Exhibit 4, San Diego City Council Ordinance establishing the Midway BID.

⁵ See Exhibit 5, NBA corporate information, #C2279293, from California Secretary of State website.

⁶ See Exhibit 6, NBA Articles of Incorporation, #2279293 (Tag# 995883).

Midway Drive, the location of the San Diego Fitness and Racquet Center, a business owned by Mannino.

The NBA is now, and has been during this investigation under contract with the City of San Diego to administer the Midway BID (original contract #RR-293487,⁷ current contract #RR-300685-13⁸). The current president of the NBA is Charles Pretto and the current agent for service and Executive Director is Mannino. The NBA is now, and has been during this investigation, operated from an office located at 3045 Rosecrans Street #207, San Diego, CA 92110.

-END CASE BACKGROUND-

⁷ See Exhibit 7, original contract between the City of San Diego and the NBA for Midway BID administration.

⁸ See Exhibit 8, current contract between the City of San Diego and the NBA for Midway BID administration.

IV. CASE ORIGIN

Between April 6, 2005 and August 2, 2005, investigators conducted a series of interviews with Scott Kessler who was the Chief Executive Officer of the San Diego BID Council. The San Diego BID council supports each of the BID's throughout the city in attaining their goals to improve business in their respective districts. The San Diego BID council does not have oversight authority over the separate districts. Oversight authority for the individual BID's is the responsibility of the City of San Diego's Office of Small Business (OSB).

Kessler came to the San Diego Police Department to report "conflict of interest" violations occurring with the NBA's administration of the Midway area BID. Kessler said that the people involved were the NBA's current Executive Director, Paul Mannino, and its former Executive Director, Marco LiMandri. Kessler said that LiMandri was initially hired as the Executive Director of the NBA, in violation of conflict of interest law, Section 1090 of the California Government Code.⁹ Shortly after LiMandri was hired, Mannino, who was the president of the NBA (an unpaid position), wanted to award a \$50,000 a year subcontract to a security company that would be owned by him to conduct security work in the North Bay area. Kessler advised Mannino that such an arrangement would represent a conflict of interest for Mannino. After receiving Kessler's advice, Mannino then became the Executive Director (a paid position) of the NBA under a subcontract from LiMandri. According to Kessler, once Mannino took over the Executive Director position, LiMandri and his company, New City America Inc. (a for profit corporation), received two subcontracts from the NBA. Those subcontracts stemmed from the NBA's receipt of two Community Development Block Grants (CDBG's) from the City of San Diego. Kessler believes this was also a violation of conflict of interest regulations.¹⁰

-END CASE ORIGIN-

⁹ See Exhibit 9, Investigator's Report dated 4/6/2005 from interview of Scott Kessler.

¹⁰ See Exhibit 10, Investigator's Report dated 4/28/2005 from interview of Scott Kessler.

V(a). INVESTIGATION

Investigators discovered that the City of San Diego's Office of Small Business (OSB), an office within the San Diego Community and Economic Development Division, was solely responsible for oversight of the contract between the City of San Diego and the NBA regarding the administration of the Midway BID. Additionally, OSB was also responsible for the oversight of three CDBG contracts between the City of San Diego and the NBA.

On May 3, 2005 investigators received numerous records concerning the NBA from the Director of OSB, Meredith Brown.¹¹ Included were records from the inception of the NBA & the Midway BID to the year 2005. The records were impounded at SDPD Headquarters under tag #'s 995882 & 995883.^{12,13} To investigate Kessler's allegations the following set of circumstances had to be analyzed:

- 1) LiMandri's contract with the City of San Diego to form the Midway BID and establish a contract between the City and a non profit group that would administer the funds generated by the BID.
- 2) LiMandri's hiring as the Executive Director of the NBA.
- 3) LiMandri's subcontracting of the NBA's Executive Director position to Paul Mannino.
- 4) LiMandri's receipt of the "Conceptual Plan" CDBG subcontract from the NBA.
- 5) Limandri's receipt of the "Maintenance Assessment District (MAD) Formation" CDBG subcontract from the NBA.

In the records obtained from OSB on May 11, 2005 investigators found a copy of the consultant contract between the City of San Diego and LiMandri to "*provide services and to perform tasks associated with the establishment of a business improvement district in the Midway area.*"¹² The contract was signed on October 30, 1998 by LiMandri and Michael Jenkins, an Acting Manager in the Community and Economic Development Division of the City of San Diego. The contract was approved on December 11, 1998 by Deputy City Attorney Prescilla Dugard from the San Diego City Attorney's Office. The contract was filed on December 18, 1998 at the San Diego City Clerk's Office.

On May 18, 2000, after the formation of the BID, the City of San Diego entered into a contract with the Midway Community Development Corporation, later renamed the North Bay Association of San Diego (NBA), to administer the Midway area BID.⁷ At that time LiMandri was temporarily retained by the NBA to fill their Executive Director position with a \$50,000 a year salary.

¹¹ See Exhibit 11, Investigator's Report dated 5/3/2005 from interview of OSB Director, Meredith Dibden Brown.

¹² See Exhibit 12, SDPD Impound Tag # 995882.

¹³ See exhibit 13, SDPD Impound Tag # 995883.

On June 19, 2001 the NBA Board voted to continue LiMandri's employment as their Executive Director in a temporary capacity. It was the NBA president, Mannino, who requested to continue LiMandri's employment¹⁴.

On August 14, 2001 the NBA Board voted to permanently hire LiMandri as the NBA Executive Director with a one year, \$50,000 contract.¹⁵

It is the belief of investigators that the temporary and permanent hiring of LiMandri as NBA Executive Director represents a violation of California Government Code, Section 1090. As a "city official", LiMandri "made the contract", between the City of San Diego and the NBA. He then received a "financial interest" from that contract when he was hired by the NBA as its Executive Director.

Violation #1: Section 1090 of the California Government Code
Suspect: LiMandri, Marco

§ 1090 reads: Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

In order to determine whether or not a violation of § 1090 CGC took place, the following three questions must be answered;

- 1) Was LiMandri a "city officer"?
- 2) Acting in his official capacity, as a "city officer", did LiMandri "make a contract"?
- 3) Did LiMandri have a "financial interest" in that contract?

The following analysis relied heavily on a 2004 pamphlet produced by the California Attorney General's Office, entitled "Conflicts of Interest", specifically chapter VI, pages 66-95.¹⁶

1. Was LiMandri a "city officer"?

The Attorney General opined in 46 Ops.Cal.Atty.Gen. 74 (1965)¹⁷ that section 1090 applied to independent contractors who "perform a public function." In that opinion they further stated that even independent contractors who served the public temporarily should be held to the same "fealty" as those who serve as permanent officers or employees.

As allowed by law, the City of San Diego initiated the establishment of the Midway BID under City of San Diego Administrative Regulation #1.90 entitled "Business Improvement District Formation Procedures and Guidelines", Section 4.1, which reads in part:¹⁸

¹⁴ See Exhibit 14, NBA Board meeting minutes dated 6/19/2001 with attached Midway BID billing for July 2001 (Tag# 995883).

¹⁵ See Exhibit 15, NBA Board meeting minutes, dated 8/14/2001 (Tag# 995883).

¹⁶ See Exhibit 16, 2004 pamphlet produced by the California Attorney General's Office.

¹⁷ See Exhibit 17, California Attorney general's opinion 46 Ops.Cal.Atty.Gen. 74 (1965).

¹⁸ See Exhibit 18, City of San Diego Administrative Regulation #1.90.

"The City Council may adopt a resolution of intention to establish an area, either on its own initiative or if it is requested to do so by at least 20 percent of the owners of businesses within the area to be formed. It is expected that demonstration of support will be greater than that of opposition if a BID proposal is to go forward to City Council."

The San Diego City Council Policy 900-07 entitled "Business Improvement Districts", in the section entitled "Establishment", reads in part:¹⁹

"Upon presentation of a petition signed by 20% of the eligible businesses within the proposed district" staff shall conduct a mailed ballot procedure of all eligible businesses.

It was LiMandri who was hired by the City to obtain a signed petition from 20% of business owners and to conduct a "mailed ballot procedure." Task # 5 in LiMandri's contract with the City reads in part:

"coordinate petition drive to obtain the signatures of twenty percent (20%) of business license holders in the proposed district as required Council Policy 900-07" and "conduct a mailed ballot procedure of business tax certificate holders and optionally rental business tax certificate holders in the proposed project area to determine if a majority of those responding support the formation of a BID."

San Diego Administrative Regulation #1.90, Section 4.10,¹⁸ also allows for the City to utilize its **employees** for purposes of BID formations. That section states in part that:

*"The formation of BIDs may be supported by **City staff** who are involved in revitalization of business areas or as otherwise directed by the City Manager."*

LiMandri's contract with the city also called for him to perform functions and tasks that were in the public's interest and to exercise considerable judgment on behalf of the city. Under "task 1" in LiMandri's contract with the City it listed:²

- 1) *"Develop a strong relationship with the leadership or Board of Directors of the participating merchant group "task force" or business improvement association and the City of San Diego's Office of Small Business."*
- 2) *"Facilitate an ongoing flow of communication between the City Administration, Council District office and affected businesses."*
- 3) *"Assist in formulating a strategic approach to successful execution of district formation."*

By comparing the above referenced "Administrative Regulation" and "Council Policy" with the tasks laid out in LiMandri's contract it becomes clear that LiMandri fulfilled a role that normally should be performed by city staff.

¹⁹ See Exhibit 19, San Diego City Council Policy 900-07.

2. Acting in his official capacity, as a "city officer", did LiMandri "make a contract"?

The California Attorney General's 2004 pamphlet, Chapter VI, Section D, entitled "Participation in making a contract", pages 69 & 70, reads in part:¹⁶

- 1) *In People v. Sobel, supra, 40 Cal.App.3d 1046, 1052 the court outlined the broad reach of section 1090; The decisional law, therefore, has not interpreted section 1090 in a hypertechnical manner, but holds that an official (or a public employee) may be convicted of violation no matter whether he actually participated personally in the execution of the questioned contract, if it is established that he had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests.*
- 2) *With respect to the making of a contract, the court in Millbrae Assn. for Residential Survival v. City of Millbrae (1968) 262 Cal.App.2d 222, held that the test is whether the officer or employee participated in the making of the contract in his or her official capacity. The court defined the making of the contract to include preliminary discussions, negotiations, compromises, reasoning, **planning, drawing of plans and specifications and solicitation for bids.** (See also Stigall v. City of Taft (1962) 58 Cal.2d 565; People v. Sobel, supra, 40 Cal.App.3d at p. 1052.)*

The level of influence LiMandri had in the creation of the contract between the City of San Diego and the NBA to administer the Midway BID was considerable. LiMandri's contract with the City for the formation of the Midway BID, included the following tasks:²

- 1) "Task 2"; *Participation in the planning of the district (Assessment & Boundary report).*
 - a) **"Conduct an accurate study of potential district boundaries and;**
 - b) **Differing fee structures for affected businesses in conjunction with staff from the Office of Small Business (OSB) and City Treasurer."**
- 2) "Task 4"; **Formation of the scope of services to be performed by the non-profit organization that would eventually receive the service contract.**
- 3) "Task 6"; **Provide administrative support, provide minutes, aid president in the conduct of Board meetings, prepare budget, aid in the organization of committees, consolidate the interim board of directors.**

Based on the above listed portions of LiMandri's contract, he clearly had extensive involvement in the formation of the Midway BID and the resulting service contract that would be offered by the city. This involvement resulted in LiMandri having considerable influence both directly and indirectly in that contract.

Additionally, LiMandri was also extensively involved in the formation of the entity that received that service contract, the NBA. Under "Task 5" in LiMandri's contract² with the City to form the Midway BID it reads in part:

“Simultaneously (with obtaining the 20% signatures) retain consultant APPROVED BY MERCHANTS ASSOCIATION to draft bylaws and prepare corporate documents and tax filings for non-profit organization to administer the BID”

It was LiMandri himself who became that consultant ***“to draft bylaws and prepare corporate documents and tax filings for non-profit organization to administer the BID”***. In the records provided by OSB on May 11, 2005, investigators found a copy of the original NBA “Articles of Incorporation”.⁶ The articles were filed with the California Secretary of State’s office on November 15, 2000. The “executor” of the articles and the initial “agent for service” for the corporation was Marco LiMandri at 1830 Columbia Street in San Diego.

3. Did LiMandri have a “financial interest” in that contract?

Once the BID was established and the NBA secured the service contract from the City, it was LiMandri that received the ***“BID management staff”*** position as the NBA’s Executive Director with the associated \$50,000 per year salary. The salary represents LiMandri’s “financial interest” in the contract.

In the California Attorney General’s pamphlet Chapter VI, Section E, entitled “Presence of Requisite Financial Interest”, page 74, it reads:¹⁶

Although special statutory exemptions may negate the full effect of the section 1090 prohibition, the following economic relationships generally constitute a financial interest: employee of a contracting party; attorney, agent or broker of a contracting party; supplier of services or goods to a contracting party; landlord or tenant of a contracting party; officer or employee of a nonprofit corporation which is a contracting party.

Although the likelihood was very high that LiMandri would receive the NBA’s Executive Directors position upon formation of the Midway BID, it is not necessary to show that the financial gain was a certainty. In the California Attorney General’s 2004 pamphlet, Chapter VI, Section E, entitled “Presence of Requisite Financial Interest”, page 75, it reads:¹⁶

[T]he certainty of financial gain is not necessary to create a conflict of interest. [T]he object of the [statute] is to remove or limit the possibility of any personal influence, either directly or indirectly which might bear on an official’s decision. . . .’ (Stigall v. City of Taft, supra, 58 Cal.2d at p. 569.) ‘The government’s right to the absolute, undivided allegiance of a public officer is diminished as effectively where the officer acts with a hope of personal financial gain as where he acts with certainty.’ (Honig, supra, 48Cal.App.4th at p. 325.)

Section 1090 CGC exists to ensure that public officials act solely in the public’s interest and are not guided by their own personal interest in dealing with contracts. LiMandri, as a public official, had substantial influence in both the establishment of the Midway BID and the creation of the NBA. He also had extensive involvement in the making of the service contract between the City of San Diego and the NBA to administer the Midway BID funds. In those unique positions, LiMandri gained extraordinary influence in who the NBA would hire as ***“BID management staff”***, which ended up being LiMandri himself. As the NBA executive director (in both a temporary and permanent role), LiMandri received a \$50,000 per year salary. This is the exact type of “self

dealing" § 1090 CGC prohibits.

LiMandri knew there would be an opportunity to gain a "financial interest" in the resulting service contract between the city of San Diego and the NBA because Task #5 of his consultant contract² with the City called for his "*preparation and selection of BID management staff*". Furthermore, LiMandri engaged in this behavior at least one time before. Although not a focus of this investigation, LiMandri had been hired by the City to form the "Little Italy" BID and subsequently, after the BID was formed, was hired by the organization that received the BID administration contract.²⁰

In the final analysis of a CGC § 1090 violation, it does not matter whether or not LiMandri provided acceptable services to the NBA. In the California Attorney General's pamphlet Chapter VI, Section E, entitled "Presence of Requisite Financial Interest", page 67, it reads:¹⁶

"It follows from the goals of eliminating temptation, avoiding the appearance of impropriety, and assuring the city of the officer's undivided and uncompromised allegiance that the violation of section 1090 cannot turn on the question of whether actual fraud or dishonesty was involved. Nor is an actual loss to the city or public agency necessary for a section 1090 violation. (Thomson v. Call (1985) 38 Cal.3d at p. 648; emphasis in original; footnote omitted.)"

In addition to the fact that LiMandri should not have been hired as the NBA's Executive Director, he either eliminated or severely limited an "open and fair" procurement process to fill that position. LiMandri, while acting as the NBA's "temporary" Executive Director, created the "Request for Qualifications" (RFQ) for the NBA's search for a "permanent" Executive Director. Additionally, the candidates were required to send their resumes to LiMandri's office.^{21,22}

²⁰ See Exhibit 20, Contract # C06498, between the City of San Diego and Marco LiMandri for Little Italy area BID formation.

²¹ See Exhibit 21, NBA's Executive Director RFP, prepared on June 19, 2001, found on a computer at LiMandri's office (H37522 Bookmark Conflict of Interest 3).

²² See Exhibit 22, Search Warrant # 33686 with sealing order.

V(b). INVESTIGATION

During Kessler's April 28, 2005 interview,¹⁰ he advised investigators that, in April of 2002, then NBA President Mannino had asked Kessler about having the NBA hire a security company, that Mannino would create, to provide security for the Midway BID. At the time, Kessler advised Mannino that such an arrangement would represent a conflict of interest. Shortly after that meeting, Mannino, who as NBA President received no salary from the NBA, replaced the current NBA Executive Director, LiMandri, obtaining LiMandri's Executive Director position and its approximately \$50,000 annual salary. Mannino then hired LiMandri's company to provide services to the North Bay Association.

Consistent with the information provided by Kessler, further investigation revealed the following timeline of events:

Timeline

1. NBA Board meeting minutes dated June 19, 2001¹⁴ reported the election of the NBA's first Board of Directors, which included the election of the NBA officers comprising the NBA's Organization Committee: Mannino as President, Eric Munro as Vice President, Chuck Pretto as Treasurer, and Leslie Sanguinetti as Secretary.²³ Mannino announced that the Board should formally put the Executive Director position out to bid and requested Board support for the continuation of New City America's (LiMandri's) staffing contract until a new staff person could be hired, which the Board approved.
2. At an Organization Committee meeting on July 11, 2001 attended by Mannino, Eric Munro, Leslie Sanguinetti and Chuck Pretto, three candidates were interviewed for the NBA's Executive Director position. The minutes from that meeting indicate "it was the opinion of all the members" that LiMandri was the best qualified for the position even though the minutes also indicate that LiMandri was not one of the candidates interviewed.²⁴
3. At the NBA Board meeting on July 17, 2001 the Board approved a motion to issue a Request for Proposal (RFP)²⁵ for a security company or similar entity to provide homeless intervention services to the district.²⁶ The contract would be worth \$36,000 per year (since on or before February of 2001 the NBA had contracted with a company called "Alpha Project" to provide such services²⁷). Treasurer Pretto reported that two Board members were considering bidding on the contract. One of those Board members appears to have been Mannino: during an interview of then NBA Secretary Sanguinetti,²⁸ she advised investigators that Mannino had provided a proposal to take over for the Alpha Project but

²³ See Exhibit 23, North Bay Association Narrative – Fiscal 2005 (Tag# 994639; Item# 14; Sub 3).

²⁴ See Exhibit 24, NBA Organization Committee meeting minutes dated 7/11/2001 (S73517_H73518 Bookmark Conflict of Interest 4).

²⁵ A "Request for Proposal" or "RFP" describes the goods or services required and requests a price proposal from prospective contractors as well as information regarding relevant qualifications. Drafting of an RFP is part of the procurement procedures for goods and services mandated by the City of San Diego for nonprofit corporations contracting with the City.

²⁶ See Exhibit 25, NBA Board meeting minutes dated 7/17/2001 (Tag# 994639; Item# 13; Sub 1).

²⁷ See Exhibit 26, NBA Board meeting minutes dated 2/20/2001 (Tag# 995883).

²⁸ See Exhibit 27, FD-302 dated 9/26/2005 from interview of Leslie Sanguinetti.

the proposal had not been accepted because of the apparent conflict of interest.²⁹ It should be noted that, following Mannino's apparent disqualification from the process, no new contract to provide homeless intervention services was awarded.³⁰

4. Approximately one month later, on August 14, 2001,³¹ following the recommendation of the NBA's Organization Committee, a one year contract was approved by the NBA Board for LiMandri to act as Executive Director of the NBA with an annual salary of \$50,000.³²
5. During the NBA's Organization Committee meeting on November 7, 2001, less than three months after (and only two NBA Board meetings after) LiMandri was awarded the contract to act as the NBA's Executive Director, LiMandri advised the committee that his business was expanding too rapidly to adequately service the NBA.³³ LiMandri then proposed subcontracting the Executive Director position to Mannino for the remainder of the contract period, ending July 31, 2002.
6. At the subsequent NBA Board meeting on November 20, 2001 LiMandri explained his proposal to the full Board, noting that since the NBA awarded the contract to LiMandri after engaging in the required RFP (Request for Proposal) interview and selection process, there was no reason to conduct another RFP process to subcontract the position to Mannino.³³ LiMandri's proposal was approved by the Board. Mannino resigned his unpaid position as NBA President effective January 1, 2002 and became the NBA's Executive Director (under subcontract to LiMandri)³⁴ with an annual salary of \$50,000. Mannino was replaced as President by then Treasurer, Chuck Pretto, who in turn was replaced as Treasurer by Board member Nancy Rossi. The subcontract signed by Mannino, LiMandri and Pretto, had the following provisions:
 - a) There was to be a transition period commencing on January 1, 2002, with Mannino and New City America (LiMandri) splitting the allocated administrative services contract for the month of January, 2002.
 - b) Mannino was to take over all NBA administration duties and responsibilities described in the subcontract as of February 1, 2002 and concluding July 31, 2002.
 - c) Each party retained the right to terminate the agreement with 30 days written notice.

²⁹ Exhibit 28, Paul Ward letter (Tag# 994639; Item# 14; Sub 1). Investigators also discovered a letter dated 7/11/2001 from Mannino to NBA Board member Paul Ward (and cc'd to the Organization Committee and LiMandri) in which Mannino advised that a company that he had a financial interest in might bid for a contract put out to bid by the NBA.

³⁰ See Exhibit 29, NBA Board meeting minutes dated 9/18/2001 (Tag# 995883). From the NBA Board meeting minutes dated 9/18/2001, after proposals had been submitted to the NBA in response to the RFP, Mannino advised the Board that the funding allocated for security services should be self-administered—the NBA would provide its own homeless intervention program. This recommendation was approved by the Board.

³¹ See Exhibit 30, NBA Board meeting minutes dated 8/14/2001 (Tag# 995883).

³² The position title and value of the contract with LiMandri was not reported in the minutes from 8/17/2001. However, in the minutes from the Organization Committee dated November 11, 2001, it stated that \$50,000 was allocated for Executive Director/staffing to New City America.

³³ See Exhibit 31, NBA Board meeting minutes from 11/20/2001 submitted to OSB (Tag# 995883), which contain a portion of the 11/7/2001 Organization Committee meeting minutes. Note that the NBA Board meeting minutes from 1/15/2002 indicate that the 11/20/2001 minutes were miss-dated as 1/7/2002 (see footnote 35).

³⁴ See Exhibit 32, subcontract between Mannino and LiMandri (Tag# 995883).

7. At the following NBA Board meeting, held on January 15, 2002,³⁵ the need for the approval of an RFP to identify a subcontractor to execute the "Conceptual Plan"³⁶ CDBG project was noted.
8. The Conceptual Plan RFP was published in the San Diego Daily Transcript for one day, January 28, 2002. The RFP indicated that proposals had to be submitted to Sanguinetti by 5:00 p.m., February 11, 2002.³⁷
9. During the subsequent NBA Board meeting held on February 19, 2002, a motion was made and approved to have the NBA's Organization Committee hold a special meeting to receive a presentation from New City America (LiMandri) for the Conceptual Plan subcontract.³⁸ The Organization Committee was then to make a recommendation to the entire NBA Board at a special Board meeting to be held immediately afterward. The motion stipulated that, in the event a quorum was not present for the special Board meeting, the Organization Committee would have full authority to award the Conceptual Plan subcontract.³⁹
10. Also during the NBA Board meeting on February 19, 2002, Mannino indicated that the NBA "staff" had filed an application for a CDBG to fund formation of a Maintenance Assessment District (MAD) in the Midway area.⁴⁰ Investigators have determined that the application was in fact drafted by LiMandri.^{41,42}
11. At the NBA's Special Organization Committee meeting held on February 22, 2002, the subcontract to conduct the Conceptual Plan CDBG project was awarded to New City America (LiMandri).^{43,44,45} A review of reimbursements from the City of San Diego's Office of Small Business (OSB) for the Conceptual Plan CDBG project shows that over the life of the project New City America received \$40,800 of the \$50,000 value of the grant.⁴⁶
12. A little over two months later, during the NBA Organization committee meeting held on May

³⁵ See Exhibit 33, NBA Board meeting minutes dated 1/15/2002 (Tag# 995883).

³⁶ The Conceptual Plan CDBG, also referred to as the North Bay Conceptual Plan CDBG, was a grant to develop a conceptual plan for growth and development in the North Bay area.

³⁷ See Exhibit 34, Certificate of Publication of Conceptual Plan RFP (Tag# 994639; Item# 14; Sub 1).

³⁸ See Exhibit 35, NBA Board meeting minutes dated 2/19/2002 (Tag# 995883).

³⁹ See Exhibit 36, H73528 Bookmark Conceptual Plan CDBG – Subcontracting 4.

⁴⁰ Maintenance Assessment Districts (MAD's) are similar to BID's except with a MAD the assessment funds are collected by the City in the form of a tax from the property owners inside the district area, rather than the business owners.

⁴¹ See Exhibit 37, handwritten draft of the NBA's MAD CDBG application (Tag# 994639; Item# 19; Sub 7). During a search of the NBA office conducted on 10/11/2006 investigators recovered a fax sent from New City America of a hand-written draft of the NBA's MAD CDBG application. The draft, believed to be in LiMandri's handwriting, is substantially identical to the final typed application submitted to OSB (see footnote 42). In addition, an NCA Time Sheet for LiMandri indicates that LiMandri worked on a CDBG application on behalf of the NBA on or about 1/31/2002 (see footnote 77).

⁴² See Exhibit 38, copy of MAD CDBG application filed with OSB, on file with the CDBG office.

⁴³ See Exhibit 39, Special Organization Committee Meeting minutes dated 2/22/2002 (Tag# 994639; Item# 14; Sub 1). Note that the minutes only indicate that a vote was taken, not who won.

⁴⁴ See Exhibit 40, copy of e-mail dated 2/24/2002 from Mannino to LiMandri indicating that the Conceptual Plan CDBG project subcontract had been awarded to NCA (Tag# 994639; Item# 14; Sub 1).

⁴⁵ See Exhibit 41, copy of letter dated 2/25/2002 from Mannino to Michael Singleton of KTU&A advising Singleton that the NBA had decided against awarding Singleton's firm the Conceptual Plan subcontract (Tag# 994639; Item# 14; Sub 1).

⁴⁶ See Exhibit 42, Conceptual Plan Reimbursement Requests submitted to OSB (Tag# 995882).

3, 2002, Mannino indicated that the NBA had been awarded a \$30,000 CDBG to fund formation of a MAD (hereafter referred to as the "MAD CDBG").⁴⁷ At the following NBA Board meeting, Mannino requested that the Board authorize staff to issue an RFP at the appropriate time. Mannino's request was granted.⁴⁸

13. The MAD RFP was published in the San Diego Daily Transcript on or about July 31, 2002. The RFP indicated that proposals had to be submitted to Mannino by 5:00 p.m., August 15, 2002.⁴⁹

14. At the NBA Board meeting held on September 17, 2002, NBA President Pretto announced the unanimous recommendation of the Organization Committee to award the consultant contract for the MAD CDBG project to New City America (LiMandri).⁵⁰ A motion was then approved by the Board to award the consultant contract to New City America, thereby awarding New City America its second subcontract from the NBA in seven months. A review of reimbursements from the City of San Diego's Office of Small Business (OSB) for the MAD CDBG project show that over the life of the project New City America received only \$10,563.41 of the \$30,000 value of the grant.⁵¹ The project was halted in December of 2003 due to lack of support from property owners.⁵²

As revealed in the timeline of events reported above, investigators were able to substantially corroborate the information reported by Kessler regarding activities at the NBA. On or about June of 2005, investigators contacted representatives of the City's Office of Small Business (OSB—the office responsible for overseeing CDBG contracts), to obtain information regarding the subcontracting of CDBG's received by the NBA. On or about June 23, 2005, OSB sent a letter to the NBA requesting the following:

1. A copy of any final reports required by their contract for each completed CDBG funded project.
2. Documentation relating to the status of each incomplete CDBG funded project.
3. Documentation verifying compliance with the City's Conflict of Interest Policy.⁵³

Included in the letter sent to the NBA by OSB were details regarding the City's Conflict of Interest Policy: *"The City's Conflict of Interest Policy requires that contractors must obtain three written price proposals and keep the written price proposals on file for all subcontractor/subconsultant agreements for \$5,000 or more in a 12 month period. If three proposals could not be obtained, the policy requires that contractors demonstrate why."*

On or about July 15, 2005, Mannino provided the requested documents regarding the MAD CDBG project to OSB.⁵⁴ On or about August 12, 2005, the requested documents regarding the

⁴⁷ See Exhibit 43, NBA Organization Committee meeting minutes dated 5/3/2002 (Tag# 994639; Item# 19; Sub 13).

⁴⁸ See Exhibit 44, NBA Board meeting minutes dated 5/21/2002 (Tag# 995883).

⁴⁹ See Exhibit 45, handwritten record of RFP notices (Tag# 994639; Item# 19; Sub 21).

⁵⁰ See Exhibit 46, NBA Board meeting minutes dated 9/17/2002 (Tag# 995883).

⁵¹ See Exhibit 47, MAD Reimbursement Requests (Tag# 995882).

⁵² See Exhibit 48, NBA Board meeting minutes dated 12/16/2003 (Tag# 995882).

⁵³ See Exhibit 49, OSB letter dated 6/23/2005 attached to NBA Board meeting agenda from 8/16/2005 (Tag# 994639; Item# 21; Sub 26).

⁵⁴ See Exhibit 50, FD-302 dated 7/20/2005 from interview of Alissa Gabriel.

Conceptual Plan CDBG project were provided to OSB by Mannino.^{55,56} Both sets of documents were subsequently obtained by investigators.

The set of documents provided by Mannino to OSB regarding the Conceptual Plan CDBG project included an accompanying cover letter signed by Mannino and addressed to Alissa Gabriel of OSB. The cover letter indicated that the enclosed documents were provided in response to OSB's request regarding the NBA Conceptual Plan CDBG. The cover letter further indicated that enclosed were "*The Final Report*" as well as "*Proof of Adherence to City's Conflict of Interest Policy (see copies of three applicants)*".^{57,58} The "proof" consisted of a top sheet titled "*Proof of Adherence to City's Conflict of Interest Policy*" which listed three companies as "applicants" (recall from above that the letter sent to the NBA from OSB had indicated that for the Conceptual Plan subcontract the NBA needed to have obtained three written price proposals). The companies listed were NCA (who was awarded the subcontract for the project), KTUA and Graphic Solutions. Attached to the top sheet with a paperclip were three letters addressed to the NBA, one from each company listed in the top sheet.

The letters enclosed by Mannino from NCA and KTUA are dated February 8, 2002 and February 11, 2002, respectively, and both mention the project and the authors' intentions to "interview" or "present [their] ideas". Note that the dates of these letters are completely consistent with the above timeline: the RFP for the Conceptual Plan CDBG project went out January 28, 2002 and the subcontract was awarded on February 22, 2002. In contrast, the letter from Graphic Solutions, the third company identified by Mannino as an applicant, is dated March 27, 2003, more than a year after the Conceptual Plan subcontract was awarded. In addition, the Graphic Solutions letter makes no mention of an RFP, the Conceptual Plan project, or any intention to interview with the NBA. In fact, the letter appears to be a generic description of the type of work undertaken by Graphic Solutions and indicates that its author, Simon Andrews, Principal of Graphic Solutions, first met Mannino only days before the letter was dated.

On August 25, 2005, investigators interviewed Andrews at the office of Graphic Solutions. Andrews advised that he never applied for, submitted a proposal for, or interviewed for the subcontract for the NBA's Conceptual Plan project, or any other NBA project.⁵⁹ Andrews further advised that his company did send a letter to Mannino at the NBA on or about March 27, 2003 and that the letter was a generic letter sent out to solicit or procure new business from all kinds of companies.

It is the belief of investigators that in preparing the cover sheet indicating that Graphic Solutions had been an applicant for the Conceptual Plan project subcontract, and attaching to that cover sheet the Graphic Solutions letter, along with the letters from NCA and KTUA, Mannino made a false or fraudulent record.

It is further the belief of investigators that by providing the documents to OSB as "*Proof of Adherence to City's Conflict of Interest Policy*" Mannino attempted to pass or offer the documents as true in violation of California Penal Code Section 115 (a) and/or Section 132. It is

⁵⁵ See Exhibit 51, e-mail message dated 8/1/2005 from Alissa Gabriel to Mannino (S73507_H73508 Bookmark Conceptual Plan CDBG – Subcontracting 1).

⁵⁶ See Exhibit 52, FD-302 dated 8/22/2005 from interview of Alissa Gabriel.

⁵⁷ See Exhibit 53, FD-302 dated 8/17/2005 from interview of Meredith Dibdon Brown.

⁵⁸ See Exhibit 54, Packet of documents provided by Mannino to OSB re the Conceptual Plan CDBG project.

⁵⁹ See Exhibit 55, FD-302 dated 8/25/2005 from interview of Simon Andrews.

further the belief of investigators that Mannino committed these violations of the California Penal Code in an attempt to conceal from OSB a failure on the part of the NBA to adhere to the City's Conflict of Interest Policy with regard to the subcontracting of the Conceptual Plan project.

Violation #2: Section 115 (a) of the California Penal Code
Suspect: Mannino, Paul

§ 115(a) reads in part: "Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

In order to determine whether or not a violation of § 115 (a) took place, the following three questions must be answered:

- 1) Did Mannino *knowingly* offer a false instrument?
- 2) Was the instrument to be filed in any public office within this state?
- 3) Under what law might this instrument, if genuine, have been filed?

1. Did Mannino knowingly offer a false instrument?

It has been shown above that the documents provided by Mannino to OSB as proof of adherence to the City's Conflict of Interest Policy contain material information that is false. While the documents were provided by Mannino with the purpose of demonstrating that *three* companies had submitted proposals for the Conceptual Plan project subcontract, as required by the policy, in fact one of those companies, Graphic Solutions, had never submitted such a proposal. It is the contention of investigators that Mannino was completely aware that Graphic Solutions had never submitted a proposal for, applied for, or been interviewed for the Conceptual Plan subcontract based on the following facts:

- a) In Mannino's initial response to the document request by OSB he did not provide any documents regarding the Conceptual Plan CDBG project. In an e-mail from Alissa Gabriel of OSB to Mannino dated July 26, 2005, Gabriel pointed out that she still needed the Conceptual Plan project documents.⁶⁰ Mannino's e-mailed response read in part: "*I reviewed [the OSB request] once more and noticed you also requested information from me pertaining to the Conceptual Plan grant from 2002. This is what you refer[r]ed to in an earlier e-mail, that confused me. Originally I only saw the 2003 Funding Summary and though[t] all you needed from me was information about the MAD grant...*"⁶⁵

Mannino's response indicates that he was clear in his own mind as to when the Conceptual Plan project had been undertaken (2002). Conversely, the Graphic Solutions letter Mannino provided to OSB is dated March 27, 2003, more than a year *after* the Conceptual Plan subcontract was awarded. Furthermore, the Graphic Solutions letter has nothing to do with the Conceptual Plan project: it makes no mention of an RFP, the Conceptual Plan project, or any intention to interview with the NBA.

⁶⁰ See Exhibit 56, e-mail from Gabriel to Mannino dated 7/26/2005 (S73714_H73715 Vagrant Study CDBG – General 3).

- b) During the execution of a County of San Diego search warrant²² served on October 11, 2006, at the NBA office were discovered five large black binders together on the bookshelf in the anteroom to Mannino's office. Each of the binders is labeled indicating that it contains documents covering a specified time period (i.e. "July 2001 – June 30, 2002"). The binders contain, in chronological order, what appear to be NBA Board meeting packets consisting of agendas, meeting minutes, balance sheets, and associated documents from NBA Board and committee meetings. These packets, readily available to Mannino, contain a wealth of documentation regarding the subcontracting of the Conceptual Plan CDBG project, including the following:
- i. The NBA Board meeting minutes dated February 19, 2002 indicate that Sanguinetti reported at the meeting that there were only two applicants for the Conceptual Plan project.³⁸ The minutes further indicate that Mannino was in attendance and submitted the completed minutes to the Board for approval.
 - ii. The NBA Special Organization Committee meeting minutes dated February 22, 2002 describe the interviews of the applicants for the Conceptual Plan CDBG project subcontract.⁴³ The minutes indicate that only Singleton (of KTUA) and LiMandri were interviewed. The minutes further indicate that Mannino was in attendance. Available information indicates that Mannino both took the minutes at the meeting and submitted the minutes to the Board for approval.⁶¹
 - iii. Copies of the communications sent to applicants following the awarding of the subcontract indicate only two companies submitted proposals. Only two such communications were found during the search of the NBA office including a copy of an e-mail notifying LiMandri that his company had been awarded the subcontract⁴⁴ and a copy of a letter notifying Singleton of KTUA that the NBA had decided against awarding his firm the subcontract.⁴⁵ Both of the communications appear to have been prepared by Mannino.
- c) Available records indicate that fallout from the subcontracting of the Conceptual Plan project to LiMandri made it a memorable event for the NBA, and Mannino in particular. The NBA Organization Committee meeting minutes dated March 1, 2002 indicate that during the meeting Mannino reported on a telephone conversation he had with Singleton of KTUA on February 28, 2002.⁶² During this telephone conversation Singleton raised the issue of the awarding of the Conceptual Plan subcontract to LiMandri and expressed that he believed the decision to choose NCA had already been made and that there was likely impropriety and/or conflict of interest. Singleton further alleged that he felt it was clear the NBA did not want applicants to submit bids, evidenced by the short time frame imposed on applicants to submit, and there were other firms that Singleton was aware of who wished to bid on the subcontract but were unable to contact a representative of the NBA with the phone number given in the RFP. The minutes

⁶¹ See Exhibit 57, Investigator's Report dated 11/6/2006 from interview of Chuck Pretto.

⁶² See Exhibit 58, NBA Organization Committee meeting minutes dated 3/1/2002 (Tag# 994639; Item# 14; Sub 1).

go on to describe, in detail, Mannino's response to Singleton's allegations, covering a full page of text. The last paragraph reads "*Chairman Munro indicated his views on the subject, noted the need to follow the appropriate process in the future, and commended Mr. Mannino for his handling of the situation resulting in the avoidance of a complaint, an investigation, or even litigation.*" Mannino went on to make a second presentation regarding the complaint by Singleton of KTUA, this time to the full Board, on March 19, 2002.⁶³

- d) Finally, it should be noted that at the time Mannino responded to OSB's request for documents regarding CDBG's received by the NBA, the NBA had only received three such grants in its history, subcontracted only two of them (both to LiMandri), and interviewed only four different companies for those subcontracts, one being NCA. In addition, the status of the Conceptual Plan project was discussed by Mannino at virtually every NBA Board meeting from the time the subcontract was awarded to NCA in February of 2002 until the first draft of the Conceptual Plan report was provided to the NBA a year later in February of 2003,⁶⁴ all of which took place *before* Mannino appears to have even met Simon Andrews of Graphic Solutions.

2. Was the instrument to be filed in any public office within this state?

The letter requesting the documents was sent to the NBA on City of San Diego letterhead from OSB. The letter specified that the documents were requested to close out individual CDBG files and address City audit issues.

3. Under what law might this instrument, if genuine, have been filed?

Part 570, Section 501(b) of the CFR indicates that the recipient (i.e. the City) is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The recipient is also responsible for determining the adequacy of performance under subrecipient (i.e. the NBA) agreements.

Violation #3: Section 132 of the California Penal Code
Suspect: Mannino, Paul

§ 132 reads in part: "**Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of a felony.**

In order to determine whether or not a violation of § 132 (a) took place, the following two questions must be answered:

- 1) Did Mannino *knowingly* offer a forged document or record?
- 2) Did Mannino offer the document in evidence in response to any inquiry or investigation whatever, authorized by law?

⁶³ See Exhibit 59, NBA Board meeting minutes dated 3/19/2002 (Tag# 995883).

⁶⁴ See Exhibit 60, NBA Board meeting minutes dated 2/25/2003 (Tag# 995883).

1. Did Mannino knowingly offer a forged document or record?

§ 132 references "Forgery" defined in § 470 of the California Penal Code. § 470 (d) reads in part: *"Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery..."* In preparing the cover sheet indicating that Graphic Solutions had been an applicant for the Conceptual Plan project subcontract, and attaching to that cover sheet the Graphic Solutions letter, along with the letters from NCA and KTUA, Mannino made a false or fraudulent record. By providing the documents to OSB as *"Proof of Adherence to City's Conflict of Interest Policy"* Mannino attempted to pass or offer the documents as true. Note that the question of whether Mannino could have identified Graphic Solutions as an applicant for the Conceptual Plan project subcontract *in error* is addressed above in the section discussing violation of California Penal Code Section 115 (a) under the heading "Did Mannino knowingly offer a false instrument?"

2. Did Mannino offer the document in evidence in response to any inquiry or investigation whatever, authorized by law?

In the cover letter signed by Mannino and addressed to Alissa Gabriel of OSB, Mannino indicated that the enclosed documents were provided in response to OSB's request regarding the NBA Conceptual Plan CDBG. Mannino further indicated that enclosed was *"Proof of Adherence to City's Conflict of Interest Policy (see copies of three applicants)"*. OSB was authorized to make the request under Part 570, Section 501(b) of the CFR which indicates that the recipient (i.e. the City) is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The recipient is also responsible for determining the adequacy of performance under subrecipient (i.e. the NBA) agreements. In addition, the contract between the City and the NBA regarding the Conceptual Plan CDBG project reads in part: *"At any time during normal business hours and as often as the City deems necessary, the Contractor and any or all subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this agreement."*⁶⁵

⁶⁵ See Exhibit 61, Conceptual Plan contract between the City and the NBA (Tag# 994639; Item# 20; Sub 13).

V(b). INVESTIGATION (Cont.)

As discussed above, after investigators were able to substantially corroborate the information reported by Kessler regarding activities at the NBA (see the timeline above), investigators attempted to obtain additional information regarding the subcontracting of CDBG's received by the NBA. On or about June 23, 2005, OSB sent a letter to the NBA requesting relevant documents that were not currently in OSB's possession.⁵³ Upon review of the documents provided by Mannino in response to OSB's request, investigators concluded that Mannino had made false documents in an attempt to conceal from OSB a failure on the part of the NBA to adhere to the City's Conflict of Interest Policy with regard to the subcontracting of the Conceptual Plan project.

On October 11, 2006, a County of San Diego search warrant was served on the offices of the NBA and NCA, and the homes of Mannino and LiMandri.²² As a result of the service of the search warrant, substantial evidence was obtained indicating that LiMandri had subcontracted his Executive Director position to Mannino in exchange for receiving the subcontracts for the Conceptual Plan and the MAD CDBG projects. Furthermore, evidence was obtained indicating that the NBA attempted to conceal this arrangement from OSB. The evidence is discussed below.

Recall from the timeline above that on November 7, 2001, less than three months after (and only two NBA Board meetings after) LiMandri had been awarded the contract to act as the NBA's Executive Director, LiMandri advised the Organization Committee that his business was expanding too rapidly to adequately service the NBA. LiMandri then proposed subcontracting the Executive Director position to Mannino for the remainder of his contract period. Only four people were present at the meeting: LiMandri, Mannino, Pretto and Sanguinetti.

An e-mail obtained by investigators as a result of the search of LiMandri's computer indicates that by the time the November 7, 2001 Organization Committee meeting took place LiMandri had already discussed his proposal with at least two of the other participants at the meeting. The e-mail dated November 3, 2001 from LiMandri to Mannino reads in part: *"I have spoken to Leslie about our discussion and the transition. I want to have Chuck and Leslie on Board before I present it to the Org Committee."*⁶⁶

LiMandri's proposal to subcontract the Executive Director position to Mannino was subsequently approved during the November 20, 2001 Board meeting. Investigators became aware of the arrangement through a review of NBA Board meeting minutes which had been submitted by NBA staff, along with monthly reimbursement requests, to OSB.

The copy of the November 20, 2001 Board meeting minutes submitted to OSB reference the November 7, 2001 Organization Committee meeting minutes and indicate that the *"contract particulars as they appeared in the November 7, 2001 Organization Committee minutes"* are attached.³³ What is, in fact, attached is the first page, plus the beginning of the second page, of the Organization Committee meeting minutes from November 7, 2001.⁶⁷ The attachment must have been prepared expressly for submission to OSB. The font of the actual November 7, 2001

⁶⁶ See Exhibit 62, e-mail from LiMandri to Mannino dated 11/3/2001 (S73725_H73726 Bookmark ED-CDBG Quid Pro Quo 1).

⁶⁷ See Exhibit 63, NBA Organization Committee meeting minutes from 11/7/2001 (Tag# 994639; Item# 14; Sub 1).

minutes appears to have been reduced to get the first page, plus the beginning of the second page of the actual minutes, on the one page attachment. The attachment bears no indication that it is not, in fact, the actual November 7, 2001 minutes in their entirety. However, the Board meeting minutes to which the attachment is attached contain three references made by a Board member to text on "page two" of the November 7, 2001 Organization Committee minutes indicating that the Board members had access to the actual November 7, 2001 minutes, rather than the attachment, during the November 20, 2001 Board meeting.

The fact that on November 20, 2001 the NBA Board had access to the November 7, 2001 Organization Committee meeting minutes in their entirety while voting to approve LiMandri's proposal to subcontract his Executive Director position to Mannino is important in light of the text found in the actual November 7, 2001 minutes, but left out of the attachment. The attachment indicates that LiMandri was proposing that he be allowed to subcontract the Executive Director position to Mannino based on the conditions reproduced below:

- a. *Joe Mannino would become the full time staff Executive Director as of 2/1/02;*
- b. *The line item allocated to New City America (\$50,000) for the fiscal year be allowed to be sub-contracted to Joe Mannino, an independent contractor;*
- c. *The rent allocation of \$200 per month would be transferred to Joe Mannino as of 2/1/02 as long as Mr. Mannino provided adequate office space, fax machine, phone lines and related office equipment;*
- d. *Phone number of NBA would be transferred as of February 1, 2002;*
- e. *The transition would be as follows:*
 1. *½ staff allocation to New City America during month of January;*
 2. *½ staff allocation to Joe Mannino during the month of January;*
- f. *The full transfer of responsibility will occur as of February 1, 2002;*

End Copy

Conversely, the actual November 7, 2001 Organization Committee meeting minutes obtained as a result of the execution of the search warrant on the NBA office on October 11, 2006 include the following additional condition after item "f":

- g. *The new role for Marco Li Mandri and New City America as of Feb. 1, 2002 will be as follows:*
 1. *Allocate up to \$1,000 per month to New City America, February 1 – June 30, 2002 to provide professional services including,*
 - *Board meetings;*
 - *Org meetings;*
 - *Beach Route Task Force*
 - *Design Committee work**(\$5000 funded from Outside Services component of the budget);*
 2. *NCA to get a minimum of 15% of CDBG grant related to conceptual plan, work to be completed by June 30, 2002;*
 3. *NCA, would investigate a Maintenance Assessment District for the North Bay district. Investigation would commence as soon as funds were secured. CDBG grant for 2002-2003 to District 2 will be written to fund the M.A.D. investigation.*

These last conditions of LiMandri's proposal to subcontract the Executive Director position to Mannino indicate a *quid pro quo* arrangement between LiMandri and then NBA President Mannino: in exchange for subcontracting the Executive Director position, with its \$50,000 annual salary, to Mannino, LiMandri would receive up to \$5,000 for providing professional services to the NBA, a *minimum* of 15% of the \$50,000 Conceptual Plan CDBG the NBA had been awarded, plus a CDBG funded "subcontract" (subsequently valued at \$30,000)⁶⁸ to investigate the formation of a MAD for the North Bay district. Note that while LiMandri did not use the term "subcontract" in item "g(3)", as a for-profit company NCA would have been required to obtain a subcontract from a non-profit entity (i.e. the NBA) to fund the work.

The NBA Board meeting minutes from November 20, 2001 indicate that LiMandri's proposal was approved without modification.³³ The Board approved an additional motion to adopt a consulting contract with NCA consistent with "Action Items" listed on page two of the November 7, 2001 Organization Committee meeting minutes. These "Action Items", which were faithfully reproduced in the November 20, 2002 Board meeting minutes, included a directive for NCA to seek a \$50,000 grant for a MAD investigation {consistent with LiMandri's condition in item "g(3)"} and re-stated LiMandri's condition in item "g(2)" as "*NCA administration of CDBG grant will entitle it to a minimum of 15% administrative allocation.*"

Consistent with the *quid pro quo* arrangement described above, five days after the November 20, 2001 Board meeting LiMandri appears to have submitted a list of "key issues necessary in implementing the North Bay conceptual plan" to the NBA's Design Committee (the NBA sub-committee responsible for the Conceptual Plan project).⁶⁹ The 12 "issues" listed by LiMandri ranged from setting up a website to explain progress on the plan, to the hiring of architects for landscape and building design, to the writing of the report for review and eventual submission to the Board. The "issues" listed by LiMandri indicate that LiMandri expected to administer the Conceptual Plan project for the NBA, hiring subject matter experts such as architects when necessary. Such a plan was initially described approximately three months prior during an NBA Design Committee meeting on August 13, 2001 attended by LiMandri, Mannino and Sanguinetti.⁷⁰ At the time of the August 13, 2001 meeting the Design Committee planned to direct 15% of the value of the grant to NCA for administration of the Conceptual Plan grant. This would be over and above NCA's staff contract. Subject matter experts necessary to complete the project would be hired by RFP.

It is the belief of investigators that sometime after LiMandri sent his list of "issues" to the Design Committee on November 25, 2001, and before the NBA Design Committee meeting on January 7, 2002,⁷¹ LiMandri and/or Mannino must have realized that there was a potential problem having LiMandri administer the Conceptual Plan project. Once OSB had been advised that LiMandri was no longer acting as the NBA's Executive Director (which took place some time before January 7, 2002)⁷² any work performed by LiMandri on the Conceptual Plan project would be considered by OSB for the purpose of reimbursement as work performed by a subcontractor. The contract between the NBA and the City regarding the Conceptual Plan

⁶⁸ Recall that the value of the MAD CDBG awarded to the NBA was \$30,000.

⁶⁹ See Exhibit 64, letter dated 11/25/2001 to Sanguinetti of the North Bay Design Committee (Tag# 994639; Item# 14; Sub 1). Note that the letter is unsigned but is on the same NBA letterhead bearing the address of NCA and the same text font used by LiMandri in his other communications to NBA Board members (see footnote 75).

⁷⁰ See Exhibit 65, NBA Design Committee meeting minutes dated 8/13/2001 (Tag# 994639; Item# 14; Sub 1).

⁷¹ See Exhibit 66, NBA Design Committee meeting minutes dated January 7, 2002 (Tag# 994639; Item# 14; Sub 1).

⁷² See Exhibit 67, NBA Organization Committee meeting minutes dated January 7, 2002 (Tag# 994639; Item# 14; Sub 1).

CDBG required that a minimum of three written price proposals be obtained for subcontracts valued at \$5,000 or more in a 12 month period.⁶⁵ In light of the fact that the NBA had approved awarding a *minimum* of 15% of the value of the Conceptual Plan CDBG to LiMandri (roughly \$7,000), and LiMandri was expecting to complete the project in approximately six months,⁶⁷ the NBA would have been forced to put LiMandri's "subcontract" to administer the Conceptual Plan project out to bid. Furthermore, the NBA would be forced to conduct additional RFP's to award subcontracts to subject matter experts (i.e. architects) necessary to complete the project.

It is the belief of investigators that in order to avoid this situation the NBA elected to award the entire Conceptual Plan project subcontract to LiMandri. LiMandri would then be able to administer the project and hire the necessary subject matter experts, the hiring of which would not require RFP's. In addition, by subcontracting the project to LiMandri, not only would LiMandri be able to bill the grant for his efforts under the subcontract, the NBA would also be able to bill the grant for ~15% of its value for administration of LiMandri's subcontract.^{73,74} Consistent with this belief, at the NBA Design Committee meeting on January 7, 2002 LiMandri advised the committee that "we must put out an RFP" for the Conceptual Plan project.⁷¹

The Conceptual Plan RFP was published in the San Diego Daily Transcript three weeks later on January 28, 2002.³⁷ Investigators have determined that the RFP was actually prepared by LiMandri and sent to the San Diego Daily Transcript by one of LiMandri's employees at NCA.^{75,76,77} The RFP specified that the costs of professional services could not exceed \$40,000. This \$40,000 value represented the total value of the grant (\$50,000), minus the fee charged by the City for monitoring (\$2,000), minus ~15% of the grant value for "administration" by the NBA.

Records obtained by investigators during the search of NCA indicate that in addition to preparing the Conceptual Plan RFP, LiMandri also participated on behalf of the NBA in a two hour "Conceptual Plan tour" on January 22, 2002.⁷⁷

Exactly one month later, at a Special Organization committee meeting, LiMandri was awarded the Conceptual Plan project subcontract.^{43,44,45} One other company submitted a proposal: KTUA, a landscape architecture and planning firm. NBA Organization Committee meeting minutes report that Mannino spoke to Michael Singleton of KTUA six days after the awarding of the subcontract to LiMandri.⁶² During this conversation Singleton "*indicated he believed the decision to choose New City [America] had already been made, and that there was a likely impropriety and/or conflict of interest.*"

It is the belief of investigators that Singleton's complaint was correct. The NBA Board had committed to directing part if not all of the Conceptual Plan grant funds to LiMandri when they approved LiMandri's proposal for subcontracting the Executive Director position to Mannino in

⁷³ The contract between the NBA and the City regarding the Conceptual Plan lists a \$7,200 line item in the Program Budget for "Administration" (see footnote 65).

⁷⁴ See Exhibit 68, NBA Design Committee meeting minutes dated 2/1/2002 (Tag# 994639; Item# 14; Sub 1). During the NBA Design Committee Meeting on 2/1/2002 Mannino noted that the "*NBA can possibly receive a fifteen (15) percent administration fee for this contract.*"

⁷⁵ See Exhibit 69, letter dated 1/13/02 to Sanguinetti and believed to be from LiMandri. Letter contains Conceptual Plan RFP (Tag# 994639; Item# 14; Sub 1).

⁷⁶ See Exhibit 70, electronic fax from Zawadski to Daily Transcript with Conceptual Plan RFP (S73517_H73518 Conceptual Plan CDBG – Subcontracting 1).

⁷⁷ See Exhibit 71, billing from NCA for January 15-31, 2002, with LiMandri time sheet attached (Tag# 994644; Item# 4; Sub 5).

November of 2001. The subsequent actions of the NBA Board, including having LiMandri's prepare the RFP and participate in Conceptual Plan related work prior to being awarded the subcontract, are completely consistent with that commitment. Note that at the time the Conceptual Plan subcontract was awarded, LiMandri still held the contract for the NBA's Executive Director position, which he was subcontracting to Mannino. As part of the subcontracting agreement between LiMandri and Mannino, LiMandri retained the right to terminate the arrangement at any time with 30 days written notice.³⁴

Singleton's complaint was also correct regarding "conflict of interest". The awarding of the Conceptual Plan subcontract to LiMandri represented a clear violation of the conflict of interest provisions in the NBA's contract with the City for the Conceptual Plan CDBG. A copy of the contract was found by investigators in the NBA office following execution of a search warrant.⁶⁵ The document had the following section highlighted: *"In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development."* In light of the fact that all available evidence indicates that LiMandri wrote the original grant application,^{78,79} participated up until the month the subcontract was awarded in NBA Design Committee meetings where project elements were defined,⁸⁰ and prepared the RFP for the project, LiMandri was a *"consultant to the organization who has access to inside information."* LiMandri should have been prohibited from receiving any funds from the Conceptual Plan CDBG. Instead, OSB reimbursement records indicate that over the life of the contract NCA received \$40,800 of the grant funds.⁴⁶ Note that the NBA's contract with the City regarding the Conceptual Plan CDBG further required the NBA to adhere to the conflict of interest provisions in OMB Circular A-110 which is even more on point, reading in part *"contractors that develop or draft...invitations for bids and/or requests for proposals shall be excluded from competing for such procurements."*

It is the belief of investigators that as part of the *quid pro quo* arrangement between LiMandri and Mannino, and approved by the NBA Board, LiMandri was awarded the Conceptual Plan subcontract. It is further the belief of investigators that as part of the same *quid pro quo* arrangement LiMandri was awarded the MAD subcontract.

Recall from above that another of LiMandri's conditions for subcontracting the Executive Director position to Mannino was the following: *"NCA, would investigate a Maintenance Assessment District for the North Bay district. Investigation would commence as soon as funds were secured. CDBG grant for 2002-2003 to District 2 will be written to fund the M.A.D. investigation."* During the NBA Board meeting on November 20, 2001 at which LiMandri's proposal was approved, the Board approved an additional motion which included a directive for NCA to seek a \$50,000 grant for a MAD investigation.

Available records indicate that LiMandri prepared a draft CDBG application for fiscal year 2003 for a North Bay MAD investigation which was faxed from NCA to the NBA on February 1, 2002.⁴¹ A review of the actual CDBG application submitted by the NBA for the MAD project reveals that it is substantially identical to the draft prepared by LiMandri.⁴² NCA billing records indicate that LiMandri charged the NBA for his time devoted to preparation of the MAD CDBG

⁷⁸ See Exhibit 72, NBA Interim Board meeting minutes dated 1/23/2001 (Tag# 994639; Item# 13; Sub 9).

⁷⁹ See Exhibit 73, NBA Board meeting minutes dated 4/17/2001 (Tag# 994639; Item# 13; Sub 9).

⁸⁰ For a specific example, see footnote 71.

application.⁷⁷

During the NBA Organization Committee meeting held on May 3, 2002, Mannino indicated that the NBA had been awarded a \$30,000 CDBG to fund formation of a MAD.⁴⁷ Mannino then noted the need for an additional \$30,000 after the first phase of the project was complete, which would have to come from the Council office, the PAC or from the NBA.

It is the belief of investigators that Mannino arrived at this figure of \$60,000 as the total cost of the MAD project following discussions with LiMandri. Among the records obtained by investigators during the search of the NBA office was a page of notes discovered in a folder labeled "MAD - General Info" that appear to be in Mannino's handwriting.⁸¹ The notes, which regard the MAD project, were undated but appear to have been prepared sometime *before* the RFP for the project was drafted as they read "*Do RFP for evaluation & formation with no numbers.*" The notes appear to be derived from communications between Mannino and LiMandri: the notes report what LiMandri was going to bid for the project and they contain specific details regarding the project which were unique to the proposal submitted by LiMandri.^{82,83} The notes indicate that the City's Assessment Engineer had to be hired for the project at a cost of approximately \$20,000. The notes also indicate that Mannino knew that LiMandri was going to bid \$40,000+ for the project. Thus, upon awarding the project subcontract to LiMandri, the total cost of the project was going to be approximately \$60,000, identical to the total cost indicated in the May 3, 2002 Organization Committee meeting minutes above. Note that records obtained as a result of the search conducted at the NCA office support the belief that Mannino and LiMandri were holding detailed discussions regarding the MAD project *before* the RFP for the project was drafted: LiMandri's billing records for the MAD project show that he billed the NBA for a 15 minute discussion with Mannino on May 13, 2002, and a two hour meeting with Mannino on May 21, 2002.⁸⁴

Investigators determined that LiMandri not only drafted the application for the MAD CDBG and participated in multiple project-related discussions with Mannino once the NBA was awarded the grant, LiMandri also prepared the RFP for the MAD project. In an e-mail from LiMandri to Mannino dated July 7, 2002, LiMandri provided a draft of the MAD project RFP.⁸⁵ LiMandri's billing records for the MAD project show that he billed the NBA for three hours of his time spent on preparing the MAD project RFP.⁸⁶

⁸¹ See Exhibit 74, notes re MAD (Tag# 994639; Item# 19; Sub 9).

⁸² See Exhibit 75, LiMandri's proposal for the MAD project (F73573 MAD CDBG – Subcontracting 1).

⁸³ The notes identify six services that a MAD can perform: beautification, landscaping, lighting, security, marketing and economic development. These same six services, along with four others, were identified in LiMandri's proposal (see footnote 82). The notes mention the cost of the City's assessment engineer and then indicate that the engineering cost could possibly be funded by "Park & Rec." LiMandri's proposal reads in part: "*The cost for the Assessment engineer will be borne by the City of San Diego Redevelopment Agency for the North Bay Redevelopment Project of from a revolving loan fund set up in the Park and Rec Dept.*" The notes also mention that the "City wants 30% weighted vote, valued by the assessment." LiMandri's proposal reads in part: "*Gather a minimum of 30% weighted support of Management Plan based upon City ordinance or MTID Act of 2002.*"

⁸⁴ See Exhibit 76, NCA billing records for the MAD project (Tag# 994644; Item# 4; Sub 5).

⁸⁵ See Exhibit 77, copy of e-mail from LiMandri to Mannino containing a draft of the MAD project RFP attached to a fax cover sheet (Tag# 994639; Item# 20; Sub 6).

⁸⁶ See footnote 84. Note that LiMandri's billing records for time spent on preparation of the MAD RFP appear to be off by a month: LiMandri reported working on the RFP on 8/7/2002 but the e-mail with the draft RFP was actually sent on 7/7/2002.

On August 30, 2002 Mannino and the NBA's Organization Committee interviewed the three applicants for the MAD project subcontract, including LiMandri of NCA, Chris Gonzalez of Keyser/Marston and Associates, and Brian Jewett of Muni Financial.⁸⁷ While the NBA had failed to obtain the minimum number of three proposals required by OSB for subcontracting of the Conceptual Plan project (see above), this time Mannino ensured there were sufficient applicants by personally contacting both Gonzalez and Jewett and soliciting proposals from them.^{88,89} A week later, at the Organization Committee meeting on September 6, 2002, Mannino and the members of the committee discussed awarding the MAD project subcontract and the committee unanimously agreed to recommend to the full Board that LiMandri of NCA be awarded the \$30,000 subcontract.⁹⁰ At the NBA Board meeting held on September 17, 2002 the recommendation of the Organization Committee was approved by the Board.⁵⁰ OSB reimbursements records indicate that over the life of the project NCA received only \$10,563.41 of the \$30,000 value of the grant.⁵¹ The project was halted in December of 2003 due to lack of support from property owners.⁵²

Just as with the awarding of the Conceptual Plan subcontract to LiMandri, the awarding of the MAD subcontract to LiMandri represented a clear violation of the conflict of interest provisions in the NBA's contract with the City for the MAD CDBG. The same conflict of interest provisions found in the Conceptual Plan contract are found in the MAD contract, including the section which reads: *"In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development."*⁸¹ In light of the fact that all available evidence indicates that LiMandri drafted the original grant application,⁴¹ participated in multiple project related discussions with Mannino once the NBA was awarded the grant,⁸⁴ and prepared the RFP for the project,⁸⁵ LiMandri was a *"consultant to the organization who has access to inside information."* LiMandri should have been prohibited from receiving any funds from the MAD CDBG. Instead, OSB reimbursement records indicate that over the life of the contract NCA received \$10,563.41 of the grant funds and had the potential of receiving \$30,000 if the project had been successful.⁴⁶ Note that the NBA's contract with the City regarding the MAD CDBG further required the NBA to adhere to the conflict of interest provisions in OMB Circular A-110 which is even more on point, reading in part *"contractors that develop or draft...invitations for bids and/or requests for proposals shall be excluded from competing for such procurements."*

In summary, it is the belief of investigators that starting on or about July of 2001 then NBA President Mannino attempted to profit from his position with the NBA by pursuing a contract to provide security services to the NBA.⁹² After being advised by then BID Council CEO Scott Kessler that such an arrangement would represent a conflict of interest, Mannino then turned to LiMandri who had only a few months before received a new contract to act as the NBA's Executive Director. Mannino and LiMandri then agreed to an arrangement whereby LiMandri would subcontract his Executive Director position to Mannino, along with its \$50,000 annual salary, and in exchange Mannino would ensure that LiMandri received a portion of the

⁸⁷ See Exhibit 78, NBA Organization Committee meeting minutes dated 8/30/2002 (Tag# 994639; Item# 14; Sub 2).

⁸⁸ See Exhibit 79, FD-302 dated 8/4/2005 from interview of Christopher Gonzalez of Keyser Marston.

⁸⁹ See Exhibit 80, FD-302 dated 8/23/2005 from interview of Brian Jewett of Muni Financial.

⁹⁰ See Exhibit 81, NBA Organization Committee meeting minutes dated 9/6/2002 (Tag# 994639; Item# 14; Sub 2).

⁹¹ See Exhibit 82, Contract between the City and the NBA re the MAD CDBG (Tag# 995882).

⁹² See Timeline entry 3 above.

Conceptual Plan CDBG which had been awarded to the NBA, as well as the subcontract for a MAD project providing LiMandri could secure CDBG funding.

It is further the belief of investigators that the sequence of events starting with the formulation of what would become LiMandri's proposal to the NBA Organization Committee on November 7, 2001 and ending with LiMandri's receipt of the subcontracts for the Conceptual Plan and MAD CDBG projects, represents a conspiracy to misappropriate public moneys in violation of sections 182 (a)(1) and 424 (a)(1) of the California Penal Code.

Violation #4: **Section 182 (a)(1)**
 Conspiracy to violate § 424 (a)(1) of the California Penal Code

Suspects: **LiMandri, Marco**
 Mannino, Paul

§ 182 (a)(1) reads: If two or more persons conspire to commit any crime.

§ 424 (a)(1) reads in part: Each officer of this state, or any country, city, town, or district of this state, and **every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who...: Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another;...** Is punishable by imprisonment in the state prison for two, three, or four years...

In order to determine whether the identified persons conspired to violate 424 (a)(1), the following four questions must be answered:

- 1) Did two or more persons conspire to commit any crime?
- 2) Did the conspiracy involve persons charged with the receipt or disbursement of public money?
- 3) Did said persons, conspire to appropriate the same *without authority of law* to their own use or to the use of another?
- 4) Was an overt act committed within the state of California?

1. Did two or more persons conspire to commit any crime?

It has been shown above that prior to November 3, 2001, Mannino and LiMandri had discussed the proposal LiMandri would make to the Organization Committee regarding the subcontracting of his Executive Director position to Mannino in exchange for CDBG funds.⁶⁶ LiMandri had advised Mannino that he wanted to get two Organization Committee members, Pretto and Sanguinetti, "*on board*" before the meeting.⁶⁶ LiMandri presented his proposal to Mannino, Pretto and Sanguinetti during the NBA Organization Committee meeting on November 7, 2001.⁶⁷ LiMandri's proposal was memorialized in the Organization Committee meeting minutes from November 7, 2001. LiMandri's proposal was subsequently approved unanimously and without modification by the NBA Board during the November 20, 2001 Board meeting. The commitment by the NBA Board to direct CDBG funds to LiMandri in exchange for subcontracting the Executive Director position to Mannino represents a misappropriation of public moneys (see below).

Nine Board members were present at the November 20, 2001 Board meeting in addition to LiMandri and Mannino, including Pretto, Sanguinetti, Eric Munro, Frank Pernicano, Steve Benjamin, Nancy Rossi, William Kenton, Paul Ward and Saeed Hosseni. From interviews

conducted with Pretto,⁶¹ Sanguinetti,⁹³ Munro⁹⁴ and Pernicano⁹⁵ it is the belief of investigators that the Board members were unwitting co-conspirators. All four of them indicated that they relied on Mannino and/or LiMandri to ensure that decisions by the Board were in adherence with the NBA's contracts with the City. Sanguinetti advised that Mannino and LiMandri represented to the Board that they knew what was right and wrong and were double-checking.

2. Did the conspiracy involve persons charged with the receipt or disbursement of public money?

§ 424 references "Public moneys" defined in § 426 of the California Penal Code. § 426 reads in part: "*all moneys belonging to the state, or any city, county, town, district, or public agency therein...*".

As discussed above in Section III, Case Background, the NBA operates primarily on BID fees released by the City to the NBA by means of a reimbursement system, and on CDBG funds. At the time LiMandri presented his proposal to the Organization Committee he was the NBA's Executive Director, responsible for creating and implementing budgets, making deposits, preparing bills, and supervising payroll accounting for the NBA.³⁴ Mannino was the President of the NBA. As President, Mannino was the signatory on the contract between the NBA and the City regarding the Conceptual Plan CDBG which allocated up to \$50,000 of City funds⁹⁶ to the NBA to prepare a conceptual plan for the North Bay community. As President, Mannino was also a voting member of the NBA Organization Committee and the NBA Board. From the North Bay Association Narrative prepared by Mannino, the Organization Committee "*evaluates and authorizes all expenditures, in accordance with the Board's approval and budgetary constraints.*"²³ NBA by-laws specify that NBA expenditures (i.e. "disbursements") must be approved by the Board.⁹⁷

3. Did said persons conspire to appropriate the same without authority of law to their own use or to the use of another?

The conspiracy between Mannino and LiMandri involved an arrangement to exchange LiMandri's Executive Director position to Mannino in exchange for CDBG funds. Over the life of the conspiracy LiMandri, as principal of NCA, received over \$51,000 in CDBG funds from the NBA. The use of CDBG funds is governed under Title 24 of the Code of Federal Regulations (CFR) authorized under title I of the Housing and Community Development Act of 1974 {see 42 U.S.C. 5301(c)}. At the time the NBA Board approved LiMandri's proposal to subcontract the Executive Director position to Mannino in exchange for CDBG funds, and throughout the life of the conspiracy, LiMandri was expressly prohibited under Title 24 of the CFR from obtaining a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity.^{98,99} This circumstance was further aggravated by LiMandri's participation in the preparation of the RFP's for both the Conceptual Plan and MAD projects.

⁹³ See Exhibit 83, FD-302 dated 4/9/2007 from interview of Leslie Sanguinetti.

⁹⁴ See Exhibit 84, Investigator's Report dated 10/18/2006 from interview of Eric Munro.

⁹⁵ See Exhibit 85, Investigator's Report dated 10/11/2006 from interview of Frank Pernicano.

⁹⁶ From footnote 65, CDBG funds are defined as "*funds allocated to the City by the United States Department of Housing and Urban Development (HUD) and disbursed by the City to the Contractor for the performance of services in connection with the CDBG Program.*"

⁹⁷ See Exhibit 86, NBA by-laws (Tag# 995882, Conceptual Plan folder).

⁹⁸ Title 24, Part 570, Section 611 (b) CFR.

⁹⁹ Title 24, Part 570, Section 611 (c) CFR.

Note that at the time LiMandri made his proposal both LiMandri and Mannino were already signatories on CDBG contracts.^{2,65} The contracts signed by LiMandri and Mannino both contain sections identifying the applicable conflict of interest provisions from the CFR. In addition, as described above, a copy of the contract signed by Mannino was found by investigators in the NBA office following execution of a search warrant. A section of the contract had been highlighted which contained language regarding conflict of interest. This highlighted section clearly indicated that LiMandri should have been prohibited from receiving subcontracts for CDBG projects from the NBA.

4. Was an overt act committed within the state of California?

The initial overt act committed by Mannino and LiMandri in furtherance of the conspiracy was the presentation to the NBA Organization Committee on November 7, 2001 of LiMandri's proposal to subcontract the Executive Director position to Mannino in exchange for CDBG funds. Following the Organization Committee meeting the proposal was presented to the full NBA Board for approval on November 20, 2001.³³ The minutes from the meeting clearly indicate that Mannino expressed an interest in receiving the subcontract for the Executive Director position. The minutes also indicate that LiMandri explained his proposal and advised the Board that "*since the NBA awarded this contract after engaging in the appropriate and required RFP interview and selection process, there was no reason to conduct another RFP process...*". Based on the input from Mannino and LiMandri, the proposal was approved by the Board.

The nature of LiMandri's proposal was concealed from OSB by the actions of Mannino. The November 20, 2001 NBA Board meeting minutes submitted to OSB document the Board's decision to support LiMandri's proposal. The minutes, which indicate they were prepared by Mannino, reference the November 7, 2001 Organization Committee meeting minutes and indicate that the "*contract particulars as they appeared in the November 7, 2001 Organization Committee minutes*" are attached.³³ What is, in fact, attached is a doctored version of the November 7, 2001 Organization Committee minutes that appear to have been prepared expressly for submission to OSB. The doctored version does not include the last conditions from LiMandri's proposal whereby LiMandri was to receive CDBG funds in exchange for subcontracting the Executive Director position.

Additional overt acts committed by Mannino and LiMandri include the following: a) the preparation and signing by Mannino and LiMandri of the subcontract for the Executive Director position;³⁴ b) the preparation by LiMandri of the RFP's for both the Conceptual Plan and MAD projects;^{75,77} and c) the drafting by LiMandri of the application for the MAD CDBG which then appears to have been submitted by Mannino.^{41,42}

The final act in furtherance of the conspiracy was Mannino's submission to OSB of the false or fraudulent records indicating that Graphic Solutions had been an applicant for the Conceptual Plan project subcontract. It is the belief of investigators that this was done in an attempt to conceal from OSB a failure on the part of the NBA to adhere to the City's Conflict of Interest Policy with regard to the subcontracting of the project (see above).

V(c). INVESTIGATION

In 2002, in addition to receiving the MAD CDBG, the NBA was awarded a CDBG to conduct a "Vagrant related reduction study".¹⁰⁰ This grant, hereafter referred to as the Vagrant Study CDBG, was awarded to the NBA on or about April 30, 2002, and had a value of \$20,000.¹⁰¹ Unlike with the Conceptual Plan and MAD projects, the NBA elected to conduct the Vagrant Study project "in-house", without subcontracting the work. The contract for the project was filed with the City Clerk's office on February 24, 2003.¹⁰² Included in the contract was the scope of services for the project reproduced below:

Scope of Services

Conduct analysis of vagrant-related criminal activity by performing tasks delineated below. For purposes of this study, vagrant-related criminal activity is defined as trespassing, soliciting and public intoxication.

Phase I

- 1. Evaluate relative factors to be included in surveys.*
- 2. Create direct mail survey and personal interview survey.*
- 3. Conduct mailing of survey.*
- 4. Conduct personal interviews.*
- 5. Compile statistical data.*
- 6. Compile report delineating results of surveys.*

Phase II (Complete this phase after the implementation of an area mitigation program, designed to remove factors contributing to, and enabling vagrant-related crime activity)

- 1. Conduct mailing of survey.*
- 2. Conduct personal interviews.*
- 3. Compile statistical data.*
- 4. Compile results of surveys.*
- 5. Create report delineating results of survey, also comparing results with previous survey results.*
- 6. Publicize report in an effort to educate community stakeholders to implement policies and procedures that will effectively reduce vagrant-related crime.*

The original contract indicated that work on the Vagrant Study project was to begin on July 1, 2002, and end on June 30, 2003.¹⁰² In a letter dated January 17, 2003 to Alissa Gabriel of OSB Mannino had requested that the Vagrant Study contract have a start date of June 1, 2002 to cover work that had already been completed on the project^{103,104} but this request was apparently denied. In an e-mail dated March 14, 2003 Gabriel advised Mannino that contract specified activities for the Vagrant Study which took place on or after July 1, 2002 could be paid for with Vagrant Study

¹⁰⁰ See Exhibit 87, Vagrant Study CDBG application on file with the CDBG office.

¹⁰¹ See Exhibit 88, Letter dated 5/10/2002 from Linares to "Dear CDBG Applicant" (Tag# 994639; Item# 14; Sub 1).

¹⁰² See Exhibit 89, Document No. C11947 filed February 24, 2003 (Tag# 995882).

¹⁰³ See Exhibit 90, Letter dated 1/17/2003 from Mannino to Alissa Gabriel of OSB (Tag# 995882).

¹⁰⁴ See Exhibit 91, Letter dated 1/17/2003 from Mannino to Alissa Gabriel of OSB found during search (Tag# 994639; Item# 14; Sub 2).

CDBG funds.¹⁰⁵ The e-mail also described the preferred method by which the NBA could receive reimbursement for Vagrant Study expenses (i.e. staff time) that the NBA had covered with BID funds while waiting for the project contract to be filed with the City Clerk on February 24, 2003. NBA was to submit Vagrant Study CDBG reimbursement requests for previous months (recall that reimbursements are done on a monthly basis) indicating the *actual* dates the work was performed. Reimbursement would be provided from the Vagrant Study CDBG funds. Since the NBA would have already been reimbursed for staff time on those dates out of BID funds,¹⁰⁶ Gabriel would deduct the amount reimbursed from CDBG funds from the NBA's next BID reimbursement request.

Note that the communication between Gabriel and Mannino described above is important to the investigation because it clearly indicates that Mannino was aware of a procedure by which billing "errors" with regard to staff time spent on a CDBG project that was inappropriately covered by BID funds could be corrected after the fact.

Available evidence indicates that by the beginning of June, 2003, Mannino concluded that the NBA would be unable to finish the Vagrant Study project by the contract's end date of June 30, 2003. In an e-mail dated June 4, 2003 from Mannino to Gabriel, Mannino requested an extension for the project.¹⁰⁷ This request was eventually approved and an amendment to the Vagrant Study contract was filed with the City Clerk on July 25, 2003, extending the contract duration to June 30, 2004.¹⁰⁸

A review by investigators of the reimbursement request submitted by the NBA to OSB for the Vagrant Study project indicated that on or about July 25, 2004 the NBA submitted a single reimbursement request for the entire \$20,000 value of the grant.¹⁰⁹ The request was approved and a \$20,000 payment was made to the NBA on or about August 24, 2004. The payment was subsequently deposited into the NBA's Union Bank account number 0100026074 on September 9, 2004.^{110,111}

As described above in the NBA's scope of services for the Vagrant Study, the end product of the project was a report delineating the results of the Phase II survey and comparing those results with the results of the Phase I survey. This report was then to be publicized in an effort to educate community stakeholders regarding policies and procedures to reduce vagrant-related crime. Even though the NBA had requested reimbursement for the entire \$20,000 value of the grant back in July of 2004,¹⁰⁹ by on or about June of the following year OSB had no record that a Vagrant Study report had been completed.

¹⁰⁵ See Exhibit 92, e-mail dated 3/14/2003 from Alissa Gabriel to Mannino (Tag# 995882).

¹⁰⁶ OSB policy appears to prohibit double-billing of staff time: an organization such as the NBA cannot receive reimbursement for the same staff time from two different sources. Thus, the NBA staff could bill their work time as spent working on a CDBG project or BID administration, but not both for the same work time.

¹⁰⁷ See Exhibit 93, e-mail that appears to be dated 6/4/2003 from Mannino to Gabriel requesting an extension for the Vagrant Study project (S73507_H73508 Bookmark Vagrant Study CDBG – General 1).

¹⁰⁸ See Exhibit 94, document no. C-12127 filed 7/25/2003 (Tag# 995882).

¹⁰⁹ See Exhibit 95, Request for Direct Payment packet for the Vagrant Study DP No. 4101416 (Tag# 995882).

¹¹⁰ See Exhibit 96 Union Bank deposit slip dated 9/9/2004 for \$23,867.13 with copy of associated \$20,000 and \$3,867.13 checks from the City of San Diego (Tag# 994639; Item# 5; Sub 1).

¹¹¹ See Exhibit 97, Union Bank statement for NBA account # 0100026074 for September of 2004 (Tag# 994639; Item# 5; Sub 1).

Recall from above that on or about June of 2005 investigators contacted representatives of OSB to obtain information regarding the subcontracting of CDBG's received by the NBA. On or about June 23, 2005 OSB sent a letter to the NBA requesting the following:⁵³

4. A copy of any final reports required by their contract for each completed CDBG funded project.
5. Documentation relating to the status of each incomplete CDBG funded project.
6. Documentation verifying compliance with the City's Conflict of Interest Policy.

Mannino provided the final report for the Vagrant Study CDBG project to OSB on or about July 15, 2005, along with the requested documents regarding the MAD CDBG project.^{54,112} The report provided by Mannino consists of a reproduction of the project's scope of services, a study overview section, a Phase I section and a Phase II section.¹¹³

The Phase I section of the report includes a copy of a "direct mail survey" titled "*North Bay Association Survey; Transient Related Crime Reduction Study*", SDPD statistical data regarding Beat 611 (the Midway area) calls for service for various vagrant-associated activities (i.e. Drunk in Public, Disturbing the Peace, etc.), and a table purporting to be the results from 50 surveys taken in June of 2002.

The Phase II section of the report includes a copy of a "direct mail survey" essentially identical to the Phase I survey but bearing the date "June 2004" underneath the title, a copy of a letter dated June 8, 2004 from Mannino to Midway area businesses regarding the survey, SDPD statistical data as in the Phase I section, and a table purporting to be the results from the June 2002 Phase I survey and the June 2004 Phase II survey. The Phase II section also includes a comparison between totals of SDPD calls for service for various vagrant-associated activities from April through July 2002 versus April through July 2004, a comparison of Phase I and Phase II survey results for seven of the survey questions, a two page study conclusion and subsections entitled "Mitigation Acts" and "Proposed Action - For North Bay".

As described in the report, the study was to have involved the gathering of crime statistics regarding vagrant-associated activities, and the polling of community members (defined as business owners, property owners, and residents) regarding their perception of the impact of vagrants on the community. The crime statistics and survey data was to have been collected before and after the implementation of a year long vagrant mitigation effort. The report presents tables of purported survey data along with graphs depicting how responses to specific survey questions changed after the implementation of the vagrant mitigation effort. The report also presents graphs depicting how the numbers of SDPD calls for service for various vagrant-associated activities changed after the implementation of the vagrant mitigation effort.

The primary focus of the report conclusion is the change in responses to specific survey questions when comparing Phase I versus Phase II survey results. The report concludes that the changes observed in the Phase I versus Phase II survey responses to questions such as "*What are the number of transients you observe daily in the North Bay area?*" or "*Do you consider yourself knowledgeable on the law as to public intoxication, trespassing and soliciting?*", reflect the success of the vagrant mitigation program described in the report. The report goes on to conclude

¹¹² See Exhibit 98, e-mail dated 7/26/2005 from Mannino to Gabriel re delivering MAD and Vagrant Study reports (S73714_H73715 Bookmark Vagrant Study CDBG - General 3).

¹¹³ See Exhibit 99, Vagrant Study report provided by Mannino to OSB.

that implementing a vagrant mitigation program similar to the one described in the report will reduce vagrant related crime.

On October 11, 2006, a County of San Diego search warrant was served on the office of the NBA.²² Evidence obtained as a result of the service of the search warrant and subsequent interviews indicates that the Vagrant Study report was prepared by Mannino only after he received the request for documents from OSB on or about June 23, 2005 (recall that the NBA had requested reimbursement for the entire \$20,000 value of the grant almost a year prior, in July of 2004). The evidence further indicates that the Vagrant Study report provided by Mannino to OSB contains fabricated data. The evidence also indicates that the Vagrant Study reimbursement request submitted by the NBA to OSB in July of 2004 did not reflect work conducted by Mannino or Thifault on the Vagrant Study project and was supported by fraudulent documents. It is the belief of investigators that the report was prepared by Mannino to conceal from OSB the fact that the NBA had obtained reimbursement for work that was never performed. It is further the belief of investigators that in order to finish the report Mannino, with the help of others, fabricated survey data. The evidence supporting these beliefs is discussed below.

A significant portion of the Vagrant Study report involves the comparison of the numbers of SDPD calls for service for various vagrant-associated activities from before versus after the implementation of the vagrant mitigation effort. For instance, the report compared the number of calls for service in Beat 611 for "Drunk in Public" that came in during April through July of 2002 with the number that came in during April through July of 2004 and concluded that the vagrant mitigation program had resulted in an 11% reduction in calls (this conclusion seems meaningless considering the fact that there was a 53% *increase* in "Drunk in Public" calls for service when comparing August through November of 2002 and 2004 rather than April through July). The calls for service data used to make the comparisons came from bar graphs found in the report. The bar graphs depict numbers of calls for service in Beat 611 per trimester from December of 1997 through March of 2005 for various vagrant-associated activities (i.e. "Drunk in Public"). The report Mannino submitted to OSB could not have been written without the data from the bar graphs.

Available information indicates that Mannino obtained these bar graphs approximately three weeks *after* OSB sent the NBA the request for the Vagrant Study final report on June 23, 2005. SDPD Community Relations Officer James K. Heppell of Western Division, Beat 611, was interviewed by investigators and advised that Mannino had contacted Heppell by telephone on or about July 5, 2005 and requested information regarding selected calls for service for Beat 611. Mannino informed Heppell that he needed the information right away. On July 12, 2005 Heppell e-mailed an EXCEL spreadsheet of calls for service data and charts for Beat 611 to Mannino.¹¹⁴ Heppell's information is corroborated by an e-mail communication discovered on the computer in Mannino's office from Heppell to Mannino dated July 12, 2005.¹¹⁵ Attached to the communication sent from Heppell to Mannino is an EXCEL workbook containing the identical bar graphs found in the Phase II section of the Vagrant Study report.

Available evidence indicates that only *after* Mannino contacted Heppell to obtain the calls for service data did work on the Vagrant Study report begin. Forensic examinations of NBA computers determined that the Phase I and Phase II survey data tables found in the Vagrant

¹¹⁴ See Exhibit 100, Investigator's Report dated 9/6/2005 from interview of Officer James Heppell.

¹¹⁵ See Exhibit 101, e-mail dated 7/12/2005 from Heppell to Mannino plus attachments (S73507_H73508 Bookmark Vagrant Study CDBG - General 3).

Study report were created July 11, 2005.¹¹⁶ The forensic examinations further determined that the table of contents page, the study overview section, the summary paragraph regarding the calls for service data comparisons, the summary paragraph regarding the Phase I and II survey results comparisons, the two page study conclusion, the six page "Proposed Action for North Bay" subsection, and the various title sheets found in the report, were all created between July 12 and July 14, 2005¹¹⁷ (recall that the report was submitted by Mannino to OSB on July 15, 2005).

The primary focus of the Vagrant Study report is the comparison of the Phase I versus Phase II survey results. It is the belief of investigators that in order to complete the Vagrant Study report, Mannino and others fabricated some of the survey results documented in the report.

In a manila folder labeled "Transient-Related Crime Surveys (Completed)" discovered on top of Mannino's desk during the search of the NBA's office were found approximately 50 completed Phase I surveys all clipped together.¹¹⁸ The top portion of the Phase I (and Phase II) survey provides spaces where the survey respondent can fill in their name, the name of their business and their contact information. This portion was filled-out in each of the 50 completed Phase I surveys. All but two of the surveys appear to have been filled-out by hand. The responses found in the 50 surveys match the Phase I survey response data provided in the Vagrant Study.

Along with the 50 completed Phase I surveys was found a table of survey results prepared by hand on notebook paper.¹¹⁹ A copy of the table was subsequently shown to Steven Viel, who was employed as the Director of the Community Service Program for the NBA between May of 2002 and July of 2003¹²⁰ (the Vagrant Study was conducted as part of the NBA's Community Service Program¹²¹). Viel advised that he had prepared the table and kept it updated as more of the Phase I surveys were returned.¹²² Viel further advised that the table should contain all of the Phase I surveys that had been returned to the NBA by the time Viel quit the organization in July of 2003. Viel's statements were corroborated by Viel's "Weekly Work Summary" and task sheets discovered during the search of the NBA office which indicate that Viel was tabulating the survey results starting in April of 2003¹²³ and was adding data from any new surveys as they came in.¹²⁴

An analysis of the table prepared by Viel indicates that it contains data from a total of 43 surveys rather than the 50 claimed in the Vagrant Study report. Thus, seven of the surveys used in the report appear to have been filled-out or fabricated some time after July of 2003.

Found in the same manila folder with the Phase I surveys were 50 Phase II surveys all clipped together.¹²⁵ The first 21 of these appear to be legitimate: the top portion of each survey was filled-out identifying the survey respondent, and questions on page two of the survey which call for a worded response (versus a check mark) were answered. An inspection of the remaining 29

¹¹⁶ See Exhibit 102, Phase I and Phase II date tables (H73528 Bookmark Vagrant Study CDBG – General 3).

¹¹⁷ See Exhibit 103, electronic documents found in "Grant Reports" folder re the Vagrant Study (H73528 Bookmark Vagrant Study CDBG – General 1).

¹¹⁸ See Exhibit 104, Phase I completed surveys (Tag# 994639; Item# 28, Sub 2).

¹¹⁹ See Exhibit 105, tabulation by Viel of Phase I survey results (Tag# 994639; Item# 28, Sub 2).

¹²⁰ See Exhibit 106, FD-302 dated 12/13/2005 from interview of Steven Viel.

¹²¹ See Exhibit 107, Economic Restructuring Committee meeting agenda dated 5/3/2002 (Tag# 994639; Item# 20; Sub 22).

¹²² See Exhibit 108, FD-302 dated 4/6/2007 from interview of Steven Viel.

¹²³ See Exhibit 109, Community Service Program Weekly Work Summary sheets (Tag# 994639; Item# 17; Sub 9).

¹²⁴ See Exhibit 110, Community Service Program task sheets re the Vagrant Study (Tag# 994639; Item# 28; Sub 5).

¹²⁵ See Exhibit 111, Phase II completed surveys (Tag# 994639; Item# 28, Sub 2).

surveys revealed only three which even partially identify their respondent. These include surveys purported to have been completed by "Lynn" from the Hampton Inn, Rich Israel from the San Diego Sockers, and Sean Saadeh from the "I PayOne Center". The top portion of the other 26 surveys were all left completely blank, as were the questions on page two of the surveys which call for worded responses.

However, 10 of the 26 un-attributed surveys were found with a post-it note stuck to the first page bearing one of the following handwritten names: "Cindy Lux"; "Joe DeSanti"; "Kerry"; "Martin Salem"; "Pete Peters"; "Eric"; "Ernie Hahn"; "Chuck"; "Natalia"; and "Corrie". On all but one of the post-it notes, directly under the name, was written either "(Sarasa)" or "(Sarasa Pen)". Note that "Sarasa" is a model of retractable gel ink pens manufactured by the Zebra Pen Corporation.¹²⁶ On the second page of each of these 10 surveys was stuck a second post-it note. Handwritten on each note are answers to the three questions in the survey that call for worded responses. In each case, these notes had been placed adjacent to the three questions, all found together on the second page of the survey. Such notes were also found on several of the other un-attributed surveys that do not bear a post-it note on the first page.

From handwriting analysis conducted on all of the post-it notes found stuck to the Phase II surveys it appears that the names and answers found on the post-it notes were all written by a single individual.¹²⁷ This individual is believed to be Mannino based on comparison of the handwriting on the post-it notes with examples found in Mannino's office.

Additional evidence obtained by investigators appeared to indicate that the names on the post-it notes were intended to identify individuals who had completed surveys. The same names found on the post-it notes attached to the un-attributed surveys were also found in Mannino's handwriting on three post-it notes stuck to the inside cover of the manila folder which contained the surveys. One note reads "Have 21"; "No Board Members"¹²⁸ (recall that 21 of the Phase II surveys appear to be legitimate). A second note reads "New ones for 2004 Survey" above a list of names including: "Natalia"; "Corrie"; "Joe D"; "Cindy"; and "Kerry". Checkmarks are found next to "Natalia"; "Corrie"; "Joe D"; "Cindy"; and "Kerry" under the heading "Done".¹²⁸ A third note reads "Board Members that did 2002:" above the following list of names: "Ernie"; "Chuck"; "Eric"; "Pete Peters"; "Martin Salem"; "Sean Saadeh"; and "Rich Israel". The note includes checkmarks next to each name under the heading "2004".¹²⁹

Interviews were conducted with a number of the individuals identified above to determine why their names were associated with the surveys found on Mannino's desk.

Cynthia Lux was interviewed on February 22, 2007.¹³⁰ During the interview Lux advised that she knows Mannino fairly well and has traveled with Mannino and his wife on several occasions. Lux was introduced to Mannino approximately seven or eight years prior by Kerry Paulson, the brother of her supervisor, Kevin Paulson. Lux advised that she has never owned a business, been employed, or resided in the Midway area (note that this would make her ineligible to be part of the

¹²⁶ See Exhibit 112, FD-302 dated 4/17/2007 regarding "Sarasa".

¹²⁷ See Exhibit 113, Questioned Documents Unit Lab Report #117280-07.

¹²⁸ See Exhibit 114, copy of post-it notes from inside cover of manila folder labeled "Transient-Related Crime Surveys (Completed)" (Tag# 994639; Item# 28, Sub 2).

¹²⁹ See Exhibit 115, copy of post-it notes from inside cover of manila folder labeled "Transient-Related Crime Surveys (Completed)" with top post-it note removed (Tag# 994639; Item# 28, Sub 2).

¹³⁰ See Exhibit 116, FD-302 dated 2/22/2007 from interview of Cynthia Lux.

survey¹³¹). Lux was shown a copy of one of the Phase II surveys. Lux advised that she never filled out such a survey, was never contacted and asked the questions found in the survey, and never gave anyone permission to use her name in association with such a survey.

Thinking that Kerry Paulson might be the "Kerry" found on the post-it note stuck to one of the un-attributed Phase II surveys, investigators attempted to interview Paulson. However, Paulson refused to be interviewed.

Joey DeSanti was interviewed on February 22, 2007.¹³² DeSanti advised that he is a friend of Mannino's and has known him for approximately five years. DeSanti further advised that he has never resided in the Midway area and from 2002 to 2007 never owned or been employed by a business in the Midway area (Note that this would make him ineligible to be part of the survey¹³¹). DeSanti was shown a copy of the Phase II survey to which his name was attached. DeSanti advised that he had never filled out such a survey, did not recall ever being contacted and asked the questions found in the survey, and did not recall ever giving permission to use his name in association with such a survey.

Martin Salem was interviewed on February 26, 2007.¹³³ Salem advised that he joined the NBA Board on or about October of 2004 and has known Mannino for three-and-a-half to four years. Salem operates "Fuller Liquor" located in the Midway area. Salem was shown a copy of a Phase I survey in which he was identified as the contact person at Fuller Liquor. This completed survey was found with the other completed Phase I surveys during the search of the NBA office. Salem advised that the handwriting on the document was not his and that he did not recall ever filling out such a survey or being contacted and asked the questions found in the survey. Salem was also shown a copy of the Phase II survey to which his name was attached. Salem confirmed that the handwriting on the post-it notes attached to the survey was not his. Upon an inspection of the survey questions Salem indicated that he could not have provided the answers found in the survey. Salem would not have been able to provide answers to the survey questions regarding the daily volume of customers or how much transients cost his business. Salem also indicated that the question "*When Witnessing Incidents of Trespassing Or Public Intoxication Do You Call The Police?*" was answered incorrectly: it was checked "Yes" in the completed survey but Salem and the people that work at his business essentially never call the police when dealing with trespassing or public intoxication.

Richard Israel was interviewed on February 26, 2007.¹³⁴ Israel advised that he got on the NBA Board in March of 2002 and served on the Board for less than two years. During that time Israel was employed by the Brento Corporation which represented the San Diego Sockers. The Sockers played their games at the San Diego Sports Arena located in the Midway area. Israel was shown a copy of a Phase I survey in which he was identified as the contact person for the San Diego Sockers. This completed survey was found with the other completed Phase I surveys during the search of the NBA office. Israel advised that the handwriting on the document was not his and that he did not recall ever completing a survey or talking to Mannino about the survey questions. Note that Israel was not shown the Phase II survey in which he was again identified as

¹³¹ From the Vagrant Study report provided by Mannino to OSB, the surveys were to have been completed by "community members" defined as business owners, property owners, and residents.

¹³² See Exhibit 117, FD-302 dated 2/22/2007 from interview of Joey Desanti.

¹³³ See Exhibit 118, FD-302 dated 2/26/2007 from interview of Martin Salem.

¹³⁴ See Exhibit 119, Investigator's Report dated 2/26/2007 plus supplemental dated 4/17/2007 from interview of Richard Israel.

the contact person at the San Diego Sockers as the handwriting on the document appears to be the same as found on the Phase I survey, which Israel advised was not his handwriting.

Sherman Peters, aka Pete Peters, was interviewed on March 6, 2007.¹³⁵ Peters advised that he has known Mannino for approximately 10 years and considers Mannino a close friend. Peters further advised that he only became associated with the Midway area after obtaining a business license for a real estate business in May of 2003 for which he used the address of Mannino's fitness club (3666 Midway Drive). Peters claimed that at that time he had an "area" in Mannino's fitness club but admitted that he never did any business there. At around the same time Peters obtained his business license he became an NBA Board member in order to develop contacts for his real estate business. Peters maintained his "area" at the fitness club for six to eight months before abandoning it. Since that time Peters has had no connection to the Midway area in any capacity as either resident, employee or business owner, though he is still listed as a Board member.

Peters was shown a copy of a Phase I survey in which he was identified as the contact person at the address of Mannino's fitness club. This completed survey was found with the other completed Phase I surveys during the search of the NBA office. Peters admitted that the handwriting on the survey was not his. Peters was also shown a copy of the Phase II survey to which his name was attached. Peters confirmed that the handwriting on the post-it notes attached to the survey was not his. Peters did not recall doing a survey in June of 2004 nor could he think of a justification for why he would be asked to answer any of the survey questions in light of the fact that he had no connection with the Midway area since abandoning his "area" in Mannino's fitness club.

Investigators contacted a representative at the Hampton Inn located in the Midway area in an attempt to locate the "Lynn" identified as the contact person on one of the Phase II surveys. Investigators were advised that the only "Lynn" that the survey could be referring to was Lynn Ammons.¹³⁶

Brandy Lynn Ammons, aka Lynn Ammons, was interviewed on March 6, 2007.¹³⁷ Ammons advised that she was employed as the Director of Sales at the Hampton Inn located in the Midway area between late 2003 and January 3, 2006. During this period Ammons was the only "Lynn" that worked at the Hampton Inn. Ammons was never an NBA Board member but attended some NBA functions on behalf of the Hampton Inn. Ammons first met Mannino during these functions. Ammons was shown a copy of the Phase II survey which identified the contact person as "Lynn" at the Hampton Inn. Ammons advised that the handwriting on the survey was not hers. She further advised that she never completed such a survey in person, nor was she ever called by anyone and asked the survey questions over the phone. Ammons would not have been able to provide answers to the financial questions in the survey such as the question regarding the estimated monthly negative financial impact caused by transients. Ammons also pointed out that the answer marked in the survey as "500+" for the "Daily Volume of Customers" would not have been an answer that she would have given: the hotel only has 194 rooms.

Sean Saadeh was interviewed on March 7, 2007.¹³⁸ Saadeh advised that he joined the NBA Board in the summer of 2004. At that time Saadeh was the Director of Booking and Marketing at

¹³⁵ See Exhibit 120, FD-302 dated 3/6/2007 from interview of Sherman Peters.

¹³⁶ See Exhibit 121, FD-302 dated 2/26/2007 from interview of Tom Whalen.

¹³⁷ See Exhibit 122, FD-302 dated 3/6/2007 from interview of Brandy Lynn Ammons.

¹³⁸ See Exhibit 123, FD-302 dated 3/7/2007 from interview of Sean Saadeh.

the San Diego Sports Arena. Saadeh quit the NBA Board in August of 2005 when he took a position in Glendale, Arizona. Saadeh was shown a copy of a Phase I survey in which he was identified as the contact person at the San Diego Sports Arena. This completed survey was found with the other completed Phase I surveys during the search of the NBA office. Saadeh advised that the handwriting on the document was not his and that he did not recall answering the questions found in the survey. Saadeh was also shown a copy of the Phase II survey in which he was identified as the contact person at the "I PayOne Center". Saadeh advised that the handwriting on the document was not his. Saadeh did not recall doing the survey and further advised that there was absolutely no way he took the survey based on the answers found. With regard to the question "*When Witnessing Incidents Of Trespassing Or Public Intoxication Do You Call The Police?*", the person who completed the survey checked "Yes" but Saadeh has never called the police. With regard to the question "*Have You Had Any Success Removing Transients Yourself?*", the person who completed the survey checked "Yes" but Saadeh has never had success removing a transient. And with regard to the question "*Do You Consider Yourself Knowledgeable on the Law as to Public Intoxication, Trespassing and Soliciting?*", the person who completed the survey checked "Yes" but Saadeh does not consider himself knowledgeable on this topic and would have answered "No".

Saadeh further advised that the Sports Arena did not change its name to the ipayOne Center (not "I PayOne Center" as written on the survey) until after the name change was approved by the San Diego City Council. Available evidence indicates that this took place on March 14, 2005, approximately nine months *after* the Phase II surveys were supposed to have been completed.¹³⁹

Based on the evidence described above, it is the belief of investigators that Mannino, with the help of others, fabricated the 26 un-attributed Phase II surveys, as well as the surveys found with them attributed to "Lynn", Rich Israel and Sean Saadeh, plus several of the Phase I surveys found, including those attributed to Martin Salem, Rich Israel, Pete Peters and Sean Saadeh. It is the belief of investigators that Mannino was in the process of providing information for the surveys, including the names to be used as the respondents and answers to the three survey questions that call for worded responses, so that the surveys could be completed by others. Mannino made sure to identify the type of pen he was using ("*Sarasa Pen*") in order to ensure that the surveys were completed in the same ink used to originally fill them out.

The results from the fabricated surveys were included in the survey data found in the Vagrant Study report and provided the basis for many of the conclusions found in the report. It is the belief of investigators that the inclusion of the fabricated data makes the report a false record. It is further the belief of investigators that Mannino attempted to pass or offer the report as true by submitting it to OSB in violation of California Penal Code Section 115 (a) and/or Section 132. It is the belief of investigators that the report was prepared by Mannino to conceal from OSB the fact that the NBA had obtained reimbursement for work that was never performed.

Violation #5: Section 115 (a) of the California Penal Code
Suspect: Mannino, Paul

§ 115 (a) reads: "Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

¹³⁹ See Exhibit 124, FD-302 dated 2/22/2007 regarding SIGNONSANDIEGO article.

In order to determine whether or not a violation of § 115 (a) took place, the following three questions must be answered:

- 1) Did Mannino *knowingly* offer a false instrument?
- 2) Was the instrument to be filed in any public office within this state?
- 3) Under what law might this instrument, if genuine, have been filed?

1. Did Mannino knowingly offer a false instrument?

The fabricated surveys were all discovered, along with blank Phase I and Phase II surveys, on Mannino's desk when the search of the NBA office was conducted on October 11, 2006. The post-it notes bearing names and answers to some of the survey questions which were found on the fabricated surveys were all prepared by a single individual. That individual is believed to be Mannino based on a comparison of the handwriting with examples found in his office. All of the survey data had been compiled in a table prepared by hand in what appears to be Mannino's handwriting.¹⁴⁰ The table was also found with the completed Phase I and Phase II surveys on Mannino's desk. The results from the fabricated surveys were included in the survey data found in the Vagrant Study report and provided the basis for many of the conclusions found in the report. The above indicates that not only was Mannino directly involved in the fabrication of surveys, but he was also directly involved in the compilation of the fabricated survey data for use in the Vagrant Study report. This report was then delivered by Mannino to OSB in response to their request.¹¹²

2. Was the instrument to be filed in any public office within this state?

The letter requesting the Vagrant Study report was sent to the NBA on City of San Diego letterhead from OSB. The letter specified that the documents were requested to close out individual CDBG files and address City audit issues.

3. Under what law might this instrument, if genuine, have been filed?

Part 570, Section 501(b) of the CFR indicates that the recipient (i.e. the City) is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The recipient is also responsible for determining the adequacy of performance under subrecipient (i.e. the NBA) agreements. The preparation of a final report was specified in the Vagrant Study project's scope of services.

Violation #6: Section 132 of the California Penal Code
Suspect: Mannino, Paul

§ 132 reads: **Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of a felony.**

¹⁴⁰ Exhibit 125, hand prepared table of Phase I and Phase II survey results found with completed surveys (Tag# 994639; Item# 28; Sub 2).

In order to determine whether or not a violation of § 132 (a) took place, the following two questions must be answered:

- 1) Did Mannino *knowingly* offer a forged document or record?
- 2) Did Mannino offer the document in evidence in response to any inquiry or investigation whatever, authorized by law?

1. Did Mannino knowingly offer a forged document or record?

§ 132 references "Forgery" defined in § 470 of the California Penal Code. § 470 (d) reads in part: "*Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery...*". The available evidence indicates that the Vagrant Study report represents a "forged document" and that Mannino knew it to be a forged document {see above in the section discussing violation of California Penal Code Section 115(a) under the heading "Did Mannino knowingly offer a false instrument?"}. Mannino then offered this forged document as true when he delivered the report to OSB.¹¹²

2. Did Mannino offer the document in evidence in response to any inquiry or investigation whatever, authorized by law?

As described above, on or about June 23, 2005 OSB sent a letter to the NBA requesting documents regarding CDBG projects including a copy of any final reports. Mannino provided the final report for the Vagrant Study CDBG project to OSB on or about July 15, 2005, along with the requested documents regarding the MAD CDBG project. E-mail communications between Mannino and Alissa Gabriel of OSB indicates that Mannino provided the Vagrant Study report to OSB in response to the OSB request.¹¹² OSB was authorized to make the request under Part 570, Section 501(b) of the CFR which indicates that the recipient (i.e. the City) is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The recipient is also responsible for determining the adequacy of performance under subrecipient (i.e. the NBA) agreements. In addition, the contract between the City and the NBA regarding the Vagrant Study CDBG project reads in part: "*At any time during normal business hours and as often as the City deems necessary, the Contractor and any or all subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this agreement.*"¹⁰²

V(c). INVESTIGATION (Cont.)

Recall from above that on or about July 25, 2004 the NBA had submitted a single reimbursement request for the entire \$20,000 value of the Vagrant Study grant.¹⁰⁹ The request was approved and a \$20,000 payment was made to the NBA on or about August 24, 2004. The payment was subsequently deposited into the NBA's Union Bank account number 0100026074 on September 9, 2004.^{110,111}

The NBA's reimbursement request for the Vagrant Study was signed by Vice President Eric Munro. The expenses identified in the request indicate that the entire \$20,000 value of the grant went to pay the salaries of Mannino and his Executive Assistant, Audrey Thifault. Along with the reimbursement request, the NBA provided supporting documentation for each of the expenses claimed. The supporting documentation for each expense claimed included a "Salary/Payroll Reimbursement Worksheet" and a copy of the corresponding paycheck written to either Mannino or Thifault. The worksheets, which appear to have been prepared by hand by Thifault,^{141,142} and certified by NBA Treasurer Nancy Rossi, provided the following information:

- The name of the NBA staff person;
- The pay period;
- The "CDBG Activities" (i.e. "Vagrant Study") performed by the staff person during the pay period;
- The number of hours spent on each CDBG Activity during the pay period;
- The number of work hours spent on non-CDBG Activities (i.e. BID administration) during the pay period;
- The percentage of total work time spent on CDBG Activities during the pay period;
- The total pay received by the staff person for the pay period;
- The amount requested for reimbursement from CDBG funds.

A summary of the information contained in the worksheets provided by the NBA in support of the Vagrant Study reimbursement request is provided in the table below:

Staff Person	Pay Period	CDBG Activity	# of Hours	% of Time	Amount Requested
Audrey Thifault	03/16/04 – 03/31/04	Vagrant Study	96	100%	\$1344.00
Audrey Thifault	04/01/04 – 04/15/04	Vagrant Study	88	100%	\$1232.00
Audrey Thifault	04/16/04 – 04/30/04	Vagrant Study	88	100%	\$1232.00
Audrey Thifault	05/01/04 – 05/15/04	Vagrant Study	80	100%	\$1120.00
Joe Mannino	05/01/04 – 05/15/04	Vagrant Study	80	100%	\$3541.67
Joe Mannino	05/16/04 – 05/31/04	Vagrant Study	80	100%	\$3541.67
Joe Mannino	06/01/04 – 06/15/04	Vagrant Study	80	100%	\$3541.67
Joe Mannino	06/16/04 – 06/30/04	Vagrant Study	44	55%	\$1946.99
Audrey Thifault	04/01/02 – 09/30/02	Vagrant Study	120	100%	\$2500.00

From the table, Thifault claimed to have worked exclusively on the Vagrant Study project for four straight pay periods, representing 352 hours of work, from March 16 to May 15, 2004. Mannino claimed to have worked exclusively on the Vagrant Study project for three straight pay periods, representing 240 hours of work, from May 1 to June 15, 2004. Mannino also claimed to have

¹⁴¹ The handwriting was identified as Thifault's by Meredith Dibdon Brown of OSB (see footnote 142)

¹⁴² See Exhibit 126, FD-302 dated 3/27/2006 from interview of Meredith Dibdon Brown.

worked an additional 44 hours on the Vagrant Study project during the June 16 to June 30, 2004 pay period. As indicated in the table, the final Vagrant Study expense claimed by the NBA, for \$2,500, was for 120 hours of work performed by Thifault almost two years *prior* to the submission of the reimbursement request. The expense was supported by a "Salary/Payroll Reimbursement Worksheet" along with a copy of Thifault's paycheck. Thifault's paycheck for this work was dated June 28, 2004, approximately two years after the work was supposedly done. The check was written only two days before the grant contract was set to expire and, at the time the check was written, the \$2,500 expense represented 100% of the funds remaining in the grant.

It is the belief of investigators that the claims regarding work performed by Mannino and Thifault on the Vagrant Study project are fraudulent. This belief is based on the wealth of records discovered during the search of the NBA office regarding work that was done on the project as well as the absence of any evidence of significant work product attributable to Mannino and Thifault. The evidence supporting this belief is discussed below.

Recall from above that Steven Viel was employed as the Director of the Community Service Program for the NBA starting in May of 2002 and continuing until he quit the organization in July of 2003.¹²⁰ The Vagrant Study was conducted as part of the NBA's Community Service Program.¹²¹ Viel was interviewed by investigators and advised that, while employed by the NBA, he performed the vast majority of the work on the Vagrant Study project including consulting with professors at local Universities regarding the survey content, typing up the survey, consulting with the SDPD regarding Police statistics, assembling the survey packets for mailing, stuffing the envelopes, delivering surveys, and organizing and tabulating survey results as they were returned. These activities represent Phase I of the project.

During the time Viel worked for the NBA Thifault was employed as Mannino's assistant at his fitness club where the NBA office was maintained. Viel further advised that while she was employed at the fitness club Thifault helped Viel with the Vagrant Study project. She did a little bit of the typing, composing letters, formatting of the questionnaire, stuffing envelopes, and helped with tabulating the responses. Viel estimated that Thifault put in around 25% as much time on the project as himself.¹²²

Viel's claim that he did the vast majority of the work on what was Phase I of the project is corroborated by numerous documents discovered during the search of the NBA office. Daily journals recording Viel's work activities from May 13 to November 19, 2002^{143,144} were discovered as well as computer-generated "Weekly Work Summary"¹²³ and task sheets¹²⁴ covering up until his departure from the NBA in July of 2003. Also discovered was a Vagrant Study activity log describing work done on the project, the hours allocated and the person who performed the work.¹⁴⁵ The log contains approximately 28 detailed entries, all in Mannino's handwriting. The first entry is dated May 13, 2002. The log includes entries regarding drafting/editing of the Phase I survey and consulting with both University professors and the SDPD. Entries dated June 19, 20, 24 and 25, 2002 indicate that over those four days 1,350 Phase I survey packets were prepared and stuffed into envelopes. The last entry is dated August 20, 2002 and describes the activity as "*Received and sorted surveys*". The log indicates that a total of 73 hours were spent on the project and for each entry the work was attributed to Viel. There was no entry in the log indicating any work was performed by Mannino or Thifault during this time period. From Viel's estimate

¹⁴³ See Exhibit 127, Viel's daily journal covering from 5/13/2002 to 8/29/2002 (Tag# 994639; Item# 28; Sub 5).

¹⁴⁴ See Exhibit 128, Viel's daily journal covering from 9/3/2002 to 11/19/2002 (Tag# 994639; Item# 17; Sub 9).

¹⁴⁵ See Exhibit 129, Vagrant Study activity log in Mannino's handwriting (Tag# 994639; Item# 28; Sub 5).

above, Thifault's help would have contributed less than 19 hours to the project over the time period covered by the log. Note that in the NBA's reimbursement request Thifault claimed to have worked 120 hours on the project over essentially the same time period covered by the log.

As stated above, Viel appears to have kept meticulous records regarding his daily work activities and work performed specifically on the Vagrant Study and other Community Service Program-related projects.^{123,124,143,144,146} Viel's records indicate that very little work was performed on the Vagrant Study project between the last Vagrant Study activity log entry dated August 20, 2002 and Viel's departure from the NBA in July of 2003. In fact, Viel's records indicate that the *only* work conducted on the Vagrant Study during this period involved the collection and tabulation of the results from a total of 43 completed surveys as well as the obtaining of SDPD data. Note that Viel's records indicate that he did perform vagrant mitigation activities during this period. As noted in the project's Scope of Service, such activities were to take place after Phase I was completed and before Phase II was started. However, such activities were not part of the project and were ineligible for CDBG funding, a fact Mannino clearly understood.^{147,148}

In July of 2003 Viel quit his position with the NBA. Also in July of 2003 the Board approved the hiring of Thifault as a bookkeeper at \$14 per hour.¹⁴⁹ At the time Thifault was hired Mannino described her as the "present NBA bookkeeper" and noted that she had provided bookkeeping services for the NBA for the past 18 months without compensation from the NBA. Mannino made no reference to any work she performed on the Vagrant Study project.

Recall from above that from May 13 to August 20, 2002, NBA records corroborate that Viel conducted Phase I of the Vagrant Study which included consultations with professors at local Universities regarding the survey content, typing up the survey, consultations with the SDPD regarding Police statistics, assembling 1350 survey packets for mailing, delivering surveys, and sorting completed surveys. A Vagrant Study activity log prepared by Mannino himself reflects that Viel's entire effort represented a total of 73 hours of work.¹⁴⁵

In contrast, in the Vagrant Study reimbursement request, Thifault claimed to have worked 352 hours on the project between March 16 and May 15, 2004, a time frame during which no survey was created or distributed, no survey results were tabulated, and no reports were generated. The Vagrant Study Scope of Services (see above) indicates that personal interviews were to be conducted as part of Phase I and Phase II of the project but there is no evidence such interviews were conducted by either Thifault or Mannino and no interview results were included in the final report. Thifault could not have spent 352 hours working on the Phase II survey as the Phase II survey is identical to the Phase I survey except for the addition of "*June 2004*" underneath the title and a change in the NBA address listed on page two. Nor could Thifault have spent significant time between March 16 and May 15 on preparing and stuffing Phase II survey packets as the survey did not go out until on or about June 8.¹⁵⁰ And unlike the Phase I survey packet which

¹⁴⁶ See Exhibit 130, Viel's Community Service Program daily activity calendar (Tag# 994639; Item# 17; Sub 9).

¹⁴⁷ The original Vagrant Study CDBG application identified vagrant mitigation as one of the project's phases. Mannino was advised by City Community Development Administrator Ernie Linares via certified mail that the mitigation phase was not an eligible CDBG activity (see footnote 148) and the mitigation phase was subsequently left out of the project's Scope of Services. A copy of the letter from Linares and Mannino's original application were found among the Vagrant Study documents on Mannino's desk during the search of the NBA office.

¹⁴⁸ See Exhibit 131, letter dated 3/8/2002 from Linares to Mannino regarding ineligible phase of Mannino's initial Vagrant Study CDBG proposal plus Mannino's initial grant application (Tag# 994639; Item# 28; Sub 4).

¹⁴⁹ See Exhibit 132, NBA Board meeting minutes dated 7/15/2003 (Tag# 995882).

¹⁵⁰ The 6/8/2004 date is based on the Phase II survey cover letter, a copy of which was included in the final report.

appears to have been sent out to over 1000 businesses, the Phase II survey was only sent out to the respondents to the Phase I survey, which totaled 50 or fewer individuals.¹⁵¹ Thifault also could not have spent significant time between March 16 and May 15 on tabulating survey results. Recall from above that Viel had tabulated the results from 43 of the 50 Phase I surveys used in the Vagrant Study report and no other tabulation attributable to Thifault was discovered during the search of the NBA office except the electronic table prepared in July of 2005.¹⁵² In fact, no corroborating evidence was found during the search of the NBA office that Thifault performed any work on the Vagrant Study project during the March 16 and May 15, 2004 timeframe claimed in the Vagrant Study reimbursement request.

In the Vagrant Study reimbursement request Mannino claimed to have worked 284 hours on the project between May 1 and June 30, 2004, including three straight pay periods, representing 240 hours of work, from May 1 to June 15, 2004. During the search of the NBA office conducted on October 11, 2006, Mannino's 2004 daily planner was discovered.¹⁵³ A review of the entries in Mannino's planner contradicts his claims regarding work performed on the Vagrant Study. The planner, which appears to contain thousands of entries describing meetings, "to do" items, and reminders, contains only a few dozen references to the Vagrant Study project. Approximately half of these references appear to be reminders for Mannino to prepare the Vagrant Study reimbursement request, i.e. "*Do Vagrant Study Reimbursement now – before June 30*" or "*Do Vagrant Billing & new surveys*". Note that the reimbursement request was not actually submitted until on or about July 25, 2004 and the "*new surveys*" were essentially unchanged from the Phase I surveys. Between May 1 and June 30, 2004 were found only 12 entries regarding the Vagrant Study. Most are unspecific, i.e. "*Vagrant Grant*". One such entry, dated June 9, 2004, reads "*Do survey cover letter & survey all who answered 1st survey*". In almost every case, each of these entries was found among ten or more other entries for the same day regarding non-Vagrant Study related tasks, reminders or issues, such as "*Do Conceptual Plan*", "*Review SDF Acct files*"; "*Do TTF agenda & minutes*"; and "*12:00 Chris – Conceptual Plan*". Besides the generation of the cover letter for the Phase II survey, the preparation and mailing of 50 survey packets, and the preparation of the Vagrant Study reimbursement request itself, there is no evidence of any other Vagrant Study-related work product generated by Mannino between May 1 and June 30, 2004, the time-frame during which Mannino claimed to have worked 284 hours on the project.

With regard to the final Vagrant Study expense claimed by the NBA in the Vagrant Study reimbursement request (see above), it is the belief of investigators that Thifault was given the gross \$2,500 paycheck as a bonus rather than for work she performed on the Vagrant Study between April 1 and September 30, 2002. Recall from above that Viel estimated that she had put in approximately 19 hours on the Vagrant Study over this time period. The NBA Board appears to have approved this \$2,500 payment to Thifault during a meeting on May 18, 2004.¹⁵⁴ Mannino indicated to the Board that Thifault "*should be considered to receive payment for hours worked in the past that she was never compensated for, as well as a bonus for extra worthy hours and effort put forth during the move of the NBA office.*" The minutes indicate that a motion was made and approved to allocate \$2500 to Thifault as compensation for "*previously unpaid work hours (125 hours x \$14 = \$2500)*" but the allocation clearly represented a bonus. The faulty math alone (125

¹⁵¹ See Exhibit 133, NBA Board meeting minutes dated 6/22/2004 (Tag# 995882).

¹⁵² The tables of Phase I and Phase I & II survey results used in the report were discovered on the computer hard drive at Thifault's desk. A computer forensic analysis indicates that these documents were created on 7/11/2005 (see footnote 116).

¹⁵³ See Exhibit 134, Mannino's 2004 day planner (Tag# 994639; Item# 25; Sub1).

¹⁵⁴ See Exhibit 135, NBA Board meeting minutes dated 5/18/2004 (Tag# 995882).

hours x \$14 = \$1,750, not \$2,500) indicates that the final figure of \$2,500 had been decided on regardless of the number of hours worked or Thifault's pay-rate at the time of \$14 per hour.¹⁵⁵ At Thifault's pay rate she would have to have worked nearly 180 hours to warrant a gross \$2,500.

Mannino's own planner for the day of the Board meeting listed "*Audrey Bonus*" among other agenda items for the Board meeting.¹⁵³ And in an NBA budget spread sheet from two months after the allocation was approved by the Board, Mannino appears to have made the notation "*May 16-31, June 1-15, June 16-30, + 2,500 BONUS*" in the margin next to the Vagrant Study line item.¹⁵⁶ Note that the dates and "*2,500 BONUS*" correspond to the last four expenses claimed by the NBA in the Vagrant Study reimbursement request (see above).

A sheet of notes in Mannino's handwriting entitled "*Vagrant Grant*" discovered during the search of the NBA office appears to be an initial draft of the Vagrant Study reimbursement request.¹⁵⁷ On the same sheet of notes, next to the \$2,500 expense for Thifault, Mannino made the notation "*Choose dates for Audrey Billing (Stevens time)*", indicating that Mannino intended to attribute the dates and hours Steven Viel worked on the project as Thifault's. A second sheet of notes in Mannino's handwriting indicates that Mannino had to try several times to come up with a distribution of hours and dates that would total \$2,500.¹⁵⁸ This distribution was reproduced on a third sheet of notes in Mannino's handwriting which bears the heading "*2,500 Bonus*".¹⁵⁹ This third sheet clearly indicates that Mannino's calculations were based on a pay rate for Thifault of \$20 per hour, representing a 40% increase above Thifault's \$14 per hour NBA pay rate.

Based on the information provided above, it is the conclusion of investigators that Mannino and Thifault could not have performed the work claimed in the Vagrant Study reimbursement request submitted by the NBA. It is the belief of investigators that the reimbursement request submitted to OSB represents a fraudulent claim which was prepared and submitted to illegitimately obtain the Vagrant Study grant funds in violation of sections 182 (a)(1) and 72 of the California Penal Code. The reimbursement request was submitted along with supporting documents, including Salary/Payroll Reimbursement Worksheets prepared by Thifault^{141,142} and certified by NBA Treasurer Nancy Rossi. These worksheets represented certifications of the work performed by Mannino and Thifault on the Vagrant Study. It is the belief of investigators that the claims found in the worksheets are false and the submission of the worksheets to OSB is in violation of sections 182 (a)(1) and 115 (a) of the California Penal Code. Finally, it is the belief of investigators that Mannino, Thifault and Rossi conspired to misappropriate, and succeeded in misappropriating, CDBG funds from the Vagrant Study project to provide Thifault with a \$2,500 bonus in violation of 182 (a)(1) and 424 (a)(2) of the California Penal Code.

Violation #7:	Section 182 (a)(1) <i>Conspiracy to violate § 72 of the California Penal Code</i>
Violation #8:	Section 72
Suspects:	Mannino, Paul Thifault, Audrey Rossi, Nancy

¹⁵⁵ See Exhibit 136, NBA Board meeting minutes dated 1/20/2004 (Tag# 995882).

¹⁵⁶ See Exhibit 137, NBA Profit & Loss Budget vs. Actual spreadsheet (Tag# 994639; Item# 29; Sub 4).

¹⁵⁷ See Exhibit 138, sheet of notes in Mannino's handwriting entitled "*Vagrant Grant*" (Tag# 994639; Item# 5; Sub 8).

¹⁵⁸ See Exhibit 139, sheet of notes in Mannino's handwriting entitled "*Dates Work was performed*" (Tag# 994639; Item# 5; Sub 8).

¹⁵⁹ See Exhibit 140, sheet of notes in Mannino's handwriting entitled "*2,500 Bonus*" (Tag# 994639; Item# 5; Sub 8).

§ 182 (a)(1) reads: If two or more persons conspire to commit any crime.

§ 72 reads: **Every person who, with intent to defraud, presents for allowance or for payment to any county, city, or district board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars (\$1,000), or by both such imprisonment and fine, or by imprisonment in the state prison...**

In order to determine whether the identified persons conspired to violate § 72, and did violate § 72, the following three questions must be answered:

- 1) Did two or more persons conspire to commit any crime?
- 2) Did the conspiracy involve the presentation, with intent to defraud, of a false or fraudulent claim or writing to any city or officer authorized to allow or pay the same if genuine?
- 3) Was said false or fraudulent claim or writing presented to any city or officer authorized to allow or pay the same if genuine?

1. Did two or more persons conspire to commit any crime?

The preparation of the fraudulent Vagrant Study reimbursement request submitted to OSB on or about July 25, 2004 involved the direct participation of three people, Mannino, Thifault and Rossi. Entries in Mannino's 2004 daily planner indicate that Mannino was responsible for the preparation of the reimbursement request.¹⁵³ Notes found in Mannino's handwriting indicate that he was the one who came up with the dates during which work on the project would be claimed as well as the dollar amounts of each expense claimed.¹⁵⁷ The claims in the Vagrant Study reimbursement request were supported by Salary/Payroll Reimbursement Worksheets submitted along with the reimbursement request. The worksheets identify the name of the staff person (Mannino or Thifault) and pay period, the CDBG activity ("Vagrant Study"), the hours spent on the CDBG activity during the pay period, and the amount requested for reimbursement for CDBG funds. The worksheets were all prepared by Thifault and were all certified by Rossi as true. This included the final Vagrant Study expense for \$2,500 claimed for work purported to have been performed by Thifault in 2002. Rossi, a Board member since 2001, was present during the Board meeting on July 15, 2003 when Thifault was hired¹⁴⁹ and therefore must have known that Thifault was not an NBA employee in 2002. And as Rossi was the NBA Treasurer who signed virtually all of Thifault's paychecks, Rossi must have been aware that a gross \$2,500 paycheck for 120 hours of work was not consistent with Thifault's pay rate at the time of \$14 per hour. Hence Rossi must have been aware that the check represented a bonus for Thifault rather than for work she performed on the Vagrant Study.

2. Did the conspiracy involve the presentation, with intent to defraud, of a false or fraudulent claim or writing to any city or officer authorized to allow or pay the same if genuine?

The fraudulent nature of the Vagrant Study reimbursement request is discussed in detail above. The discussion indicates that the work claimed in the request to have been done on the Vagrant Study could not have been done during the time periods specified in the request. The discussion also indicates that the time claimed to have been spent working

on the project was not consistent with, nor corroborated by, the work product generated.

The fraudulent Vagrant Study reimbursement request and supporting documentation were prepared for the purpose of submission to the City's Office of Small Business which authorizes reimbursement of CDBG expenses. Note that Mannino was aware of a procedure by which past billing "errors" involving staff time spent on a CDBG project but inadvertently covered by BID funds could be corrected after the fact.¹⁰⁵

3. Was said false or fraudulent claim or writing presented to any city or officer authorized to allow or pay the same if genuine?

From OSB records, the Vagrant Study reimbursement request was submitted on or about July 25, 2004.¹⁰⁹ The request was approved and a \$20,000 payment was made to the NBA on or about August 24, 2004. The payment was subsequently deposited into the NBA's Union Bank account number 0100026074 on September 9, 2004.^{110,111}

Violation #9: **Section 182 (a)(1)**
 Conspiracy to violate § 115 (a) of the California Penal Code

Violation #10: **Section 115 (a)**

Suspects: **Mannino, Paul**
 Thifault, Audrey
 Rossi, Nancy

§ 182 (a)(1) reads: If two or more persons conspire to commit any crime.

§ 115 (a) reads: "Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

In order to determine whether the identified persons conspired to violate § 115 (a), and did violate § 115 (a), the following four questions must be answered:

- 1) Did two or more persons conspire to commit any crime?
- 2) Did the conspiracy involve the offering of any false instrument to be filed in any public office within this state?
- 3) Might the instrument, if genuine, been filed or recorded under any law of this state or of the United States?
- 4) Was said instrument offered to be filed?

1. Did two or more persons conspire to commit any crime?

Along with the submission of the Vagrant Study reimbursement request were submitted Salary/Payroll Reimbursement Worksheets. See section above discussing violation of California Penal Code Section 72 under the heading "Did two or more persons conspire to commit any crime?" As discussed in the section, the preparation of the worksheets involved the participation of Mannino, Thifault and Rossi. As discussed in detail above, these worksheets contain material statements that are false. All three suspects, Mannino, Thifault and Rossi, must have known that the fraudulent Salary/Payroll Reimbursement

Worksheets, submitted to OSB along with the Vagrant Study reimbursement request, might be maintained on file with OSB.

2. Did the conspiracy involve the offering of any false instrument to be filed in any public office within this state?

The fraudulent nature of the Salary/Payroll Reimbursement Worksheets that were submitted along with the Vagrant Study reimbursement request is discussed in detail above. The only purpose for preparing Salary/Payroll Reimbursement Worksheets is to support reimbursement requests for CDBG related activities. To obtain reimbursement for CDBG related activities the worksheets must be submitted along with the reimbursement request.

3. Might the instrument, if genuine, been filed or recorded under any law of this state or of the United States?

Part 570, Section 501(b) of the CFR indicates that the recipient (i.e. the City) is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The recipient is also responsible for determining the adequacy of performance under subrecipient (i.e. the NBA) agreements. As part of this oversight responsibility, the City distributes CDBG funds through a reimbursement process. This process involves the submission of reimbursement requests by subrecipients such as the NBA to the City's Office of Small Business (OSB).

4. Was said instrument offered to be filed?

From OSB records, the Vagrant Study reimbursement request, including the fraudulent Salary/Payroll Reimbursement Worksheets, was submitted on or about July 25, 2004.¹⁰⁹ The request was approved and a \$20,000 payment was made to the NBA on or about August 24, 2004. The payment was subsequently deposited into the NBA's Union Bank account number 0100026074 on September 9, 2004.^{110,111}

Violation #11: **Section 182 (a)(1)**
 Conspiracy to violate § 424 (a)(2) of the California Penal Code

Violation #12: **Section 424 (a)(2)**

Suspects: **Mannino, Paul**
 Thifault, Audrey
 Rossi, Nancy

§ 182 (a)(1) reads: If two or more persons conspire to commit any crime.

§ 424 (a)(2) reads: Each officer of this state, or any country, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who...: uses the same for any purpose not authorized by law;... Is punishable by imprisonment in the state prison for two, three, or four years...

In order to determine whether the identified persons conspired to violate § 424 (a)(2), and did violate § 424 (a)(2) the following four questions must be answered:

- 1) Did two or more persons conspire to commit any crime?
- 2) Did the conspiracy involve persons charged with the receipt or disbursement of public money?
- 3) Did said persons, conspire to use said public money for any purpose not authorized law?
- 4) Was said public money used for any purpose not authorized by law?

1. Did two or more persons conspire to commit any crime?

The final Vagrant Study expense claimed in the Vagrant Study reimbursement request submitted to OSB was for work purported to have been performed by Thifault in 2002. As discussed in detail above, this gross \$2,500 paycheck was actually provided to Thifault as a bonus rather than for work she performed on the Vagrant Study. Thifault gross \$2,500 paycheck could not have been directed to Thifault without the direct involvement of Mannino, Thifault and Rossi.

Mannino obtained authorization from the NBA Board to provide Thifault the gross \$2,500 bonus during a Board meeting on May 18, 2004.¹⁵⁴ Mannino indicated to the Board that Thifault "*should be considered to receive payment for hours worked in the past that she was never compensated for, as well as a bonus for extra worthy hours and effort put forth during the move of the NBA office.*" No mention was made regarding work performed on the Vagrant Study. Rossi was present during the meeting.

Mannino's own notes, from both before and after the May 18, 2004 Board meeting, describe the gross \$2,500 paycheck to Thifault as a bonus.^{153,156,159} The check subsequently written to Thifault on June 28, 2004 was prepared by Thifault herself.¹⁰⁹ The memo line indicates that the check was written for work performed by Thifault on the Vagrant Study. The check was signed by Rossi. Accompanying the check was a Salary/Payroll Reimbursement Worksheet, also prepared by Thifault, which claimed that the gross \$2,500 paycheck was for 120 hours of work performed by Thifault on the Vagrant Study in 2002. The worksheet was also signed by Rossi. The claim that Thifault spent 120 hours on the Vagrant Study project in 2002 was contradicted by Steven Viel who was an employee at the NBA in 2002 and worked extensively on the Vagrant Study project.¹²²

Rossi, a Board member since 2001, was present during the Board meeting on July 15, 2003 when Thifault was hired¹⁴⁹ and therefore must have known that Thifault was not an NBA employee in 2002. And as Rossi was the NBA Treasurer who signed virtually all of Thifault's paychecks, Rossi must have been aware that a gross \$2,500 paycheck for 120 hours of work was not consistent with Thifault's pay rate at the time of \$14 per hour. Hence Rossi must have been aware that the check represented a bonus for Thifault rather than for work she performed on the Vagrant Study.

2. Did the conspiracy involve persons charged with the receipt or disbursement of public money?

§ 424 references "Public moneys" defined in § 426 of the California Penal Code. § 426 reads in part: "*all moneys belonging to the state, or any city, county, town, district, or public agency therein...*".

At the time the gross \$2,500 paycheck was written to Thifault, Rossi was Treasurer of the NBA and an NBA Board member. As Treasurer, Rossi was an authorized signatory on NBA checks.⁹⁷ Rossi was the signatory on all of the disbursements related to the Vagrant Study.

At the time the gross \$2,500 paycheck was written to Thifault, Mannino was the Executive Director of the NBA. Mannino's responsibilities outlined in his contract with the NBA indicate that Mannino was responsible for creating and implementing budgets, making deposits, preparing bills, and supervising payroll accounting.¹⁶⁰ Mannino's fiscal responsibilities pertained to CDBG funds as well, including the Vagrant Study funds.

3. Did said persons, conspire to use said public money for any purpose not authorized law?

As discussed in detail above, the gross \$2,500 paycheck written to Thifault from Vagrant Study CDBG funds was actually provided to Thifault as a bonus rather than for work she performed on the Vagrant Study. The use of CDBG funds is governed under Title 24 of the Code of Federal Regulations (CFR) authorized under title I of the Housing and Community Development Act of 1974 (see 42 U.S.C. 5301(c)). From a letter found on Mannino's desk during the search of the NBA office, Mannino had been informed by OSB on or about September of 2002 that Federal regulations prohibited the use of CDBG funds for "non-project related administration costs".¹⁶¹

4. Was said public money used for any purpose not authorized by law?

From OSB records, the NBA received reimbursement for the gross \$2,500 paycheck written to Thifault on or about August 24, 2004. The payment was subsequently deposited into the NBA's Union Bank account number 0100026074 on September 9, 2004.^{110,111} The check written to Thifault out of the NBA's Union Bank of California account number 0100026074 representing her \$2,500 gross paycheck was prepared on July 28, 2004. This check was not cashed until on or about July 9, 2005, almost a year after it was written.¹⁶²

¹⁶⁰ See Exhibit 141, Mannino's employment contract for administration of the NBA signed by Mannino on 1/1/2003 (Tag# 995882).

¹⁶¹ See Exhibit 142, letter dated 9/4/2002 from Alissa Gabriel of OSB to Mannino regarding FY 2003 CDBG recipients (Tag# 994639; Item# 28; Sub 4).

¹⁶² See Exhibit 143, Union Bank of California bank statement for NBA account number 0100026074 for 6/1/2005 – 6/30/2005 (Tag# 994639; Item# 7; Sub 6).

V(d). INVESTIGATION

During the October 11, 2006 search warrant service,²² investigators found a document labeled "Internal Memo".¹⁶³ That memo was found in the NBA office in a black 3 inch binder labeled "North Bay Meeting Notices July 2004 to June 2005". Based on this memo, investigators launched the final probe concerning this case. The memo was titled as follows:

Internal Memo

RE: Kenton Project
DATE: September 20, 2004
SUBJECT: Results of meeting, September 17, 2004
PRESENT: Bill Kenton Rich Israel
Joe Mannino Eric Munro

The memo laid out the details of a meeting that took place on September 17, 2004. The meeting was between a local developer, Bill Kenton, and three members of the NBA, including Mannino, Board member Rich Israel and NBA Vice President Eric Munro. According to the memo, during the meeting the NBA members requested that Kenton pay the NBA approximately \$100,000 in exchange for NBA's support of his redevelopment project in the Midway area. Specifically, the NBA would provide:

- 1) Original vision
- 2) Subsidy assistance
- 3) Fee waivers
- 4) Land acquisition assistance
- 5) Strategy development and;
- 6) Community support

Bill Kenton is a developer with an office located in the Midway area. According to the above referenced memo,¹⁶³ during the meeting Kenton told the three NBA members that their offer was "outrageous". Kenton later told investigators¹⁶⁴ "the lever was put" to him and that the NBA member's offer was "extortion."

At the time the meeting with the NBA members took place, Kenton was working on the Gateway redevelopment project in the Midway area. Being a redevelopment project as opposed to a regular development project meant that there would be certain benefits available to him, such as subsidy assistance; fee waivers; and land acquisition assistance. However, these benefits that Mannino, Israel and Munro offered to Kenton under the auspices of the NBA, were not benefits the NBA could provide: subsidy assistance, fee waivers and land acquisition assistance are matters to be voted on by the Redevelopment Agency of San Diego.

The Redevelopment Agency relies on the recommendations given to it by a local area "Redevelopment Project Area Committee" (PAC), in this case the North Bay PAC. The PAC bases its recommendations on votes taken during their meetings as to what projects and what types of assistance should be approved. CH&SC, Section 33386 reads in part:

¹⁶³ See Exhibit 144, an "Internal Memo" dated 9/20/2004 (Tag# 994639; Item# 14; Sub 4).

¹⁶⁴ See Exhibit 145, FD-302 dated 12/4/2006 from interview of Bill Kenton.

"The redevelopment agency through its staff, consultants, and agency members shall, upon the direction of and approval of the legislative body consult with, and obtain the advice of, the project area committee concerning those policy matters which deal with the planning and provision of residential facilities or replacement housing for those to be displaced by project activities. The agency shall also consult with the committee on other policy matters which affect the residents of the project area. The provisions of this section shall apply throughout the period of preparation of the redevelopment plan and for a three-year period after the adoption of the redevelopment plan, subject to one-year extensions by the legislative body."

The only body that could have an effect on whether Kenton received subsidy assistance, fee waivers, and land acquisition assistance was the North Bay PAC, of which Mannino was both a voting member and Chairman, a fact that Kenton was keenly aware of.

On December 4, 2006 investigators interviewed Kenton.¹⁶⁴ During that interview Kenton said that he recalled the amount of money that Mannino wanted was \$10,000, not \$100,000. He told investigators that he felt the NBA members had "put the lever to" him and that their offer seemed like extortion. He said that he probably would have paid the money if that was the only thing standing between success and failure of the project, since he had already spent over \$100,000 on it. He said there were other obstacles that needed to be addressed first, so he refused to pay them at that time. Kenton said at the time of this meeting, he knew that Mannino was a member of the North Bay PAC and had influence with that committee. Kenton also said he knew Mannino had influence with Alex Greenwood, a redevelopment agency staff member and the North Bay Redevelopment Project Manager employed by the City of San Diego.

The events and timeline surrounding the Gateway redevelopment project and the meeting between Kenton and the three NBA members, Mannino, Israel and Munro, were as follows:

Timeline

1. In an e-mail dated September 27, 2002 Mannino writes a letter inviting developers to call upon the NBA to provide information and community support for any "smart growth redevelopment". The letter does not state the NBA would charge a fee for this. On a copy of the e-mail there was a yellow sticky note that read; "e mailed to developers @ 2:40 P on 10-2-02."¹⁶⁵
2. In a "corporate resolution" dated October 1, 2003, the NBA designated Mannino to be their representative on the North Bay PAC.
3. On October 11, 2003 Mannino submitted his North Bay Project Area Committee "Candidate Registration" form to the City of San Diego's Community and Economic Development Department, stating that he was a member of a "community organization" in the area, the North Bay Association of San Diego.¹⁶⁶

¹⁶⁵ See Exhibit 146, copy of an e-mail from Mannino to developers (Tag# 994639; Item# 20; Sub 21)

¹⁶⁶ See Exhibit 147, Mannino's "Candidate Registration" form for the North Bay PAC (Tag# 994639; Item# 21; Sub 18).

4. Kenton's involvement in the "Gateway redevelopment project" was initiated by Mannino. According to Bill Kenton's statement,¹⁶⁴ it was Mannino who originally put him in contact with Alex Greenwood, Redevelopment Agency staff member, employed by the City of San Diego to pursue the project.
5. At the July 20, 2004 NBA Board meeting:¹⁶⁷
 - a) Mannino reported on the "Kenton Property Development" and noted the possibilities resulting from a relationship between the NBA and this project. Mannino further reported on his "relationship" with Kenton and announced that Kenton had authorized Mannino to represent him in dealings with the Redevelopment Agency.
 - b) NBA Vice President Munro moved to direct staff to work on the Kenton project and specifically represent that the NBA supported the project and to lobby on Mr. Kenton's behalf. The motion was approved by the Board.
 - c) President Pretto stated he would like staff to research any possibility of a "conflict of interest" regarding this relationship.
 - d) Mannino stated that he has made a decision to not personally gain or benefit from property development.
6. On July 30, 2004, on behalf of developer Bill Kenton, Mannino met with Alex Greenwood, the Project Manager for North Bay Redevelopment from the City of San Diego's Redevelopment Agency staff, in regard to the "North Bay Gateway redevelopment project."¹⁶⁸
7. On August 16, 2004 Mannino e-mailed Hank Cunningham, Director of the City of San Diego's Community and Economic Development Department (staff for the Redevelopment Agency). In the e-mail, Mannino stated that the NBA intended to play an active role assisting select, approved development projects and that one such project was the "KENTON project". Mannino stated that he recognized that their "lobbying" activity for such projects was consistent with the goals of the BID's, City policy and applicable law (he didn't cite any law). The e-mail does not mention that the NBA would seek a financial benefit for this lobbying effort.¹⁶⁹
8. On August 17, 2004 Mannino wrote a letter to Kenton. The letter had the NBA letterhead on it. Mannino signed the letter as the Executive Director of the NBA but by reading the body of the letter, one would think it was an elected North Bay PAC member writing it. In the letter, Mannino advised Kenton that gaining community support for shifting subsidy funds was not guaranteed but the Redevelopment Agency seemed to support their (Mannino and Kenton's) view that the Gateway project was the Agency's #1 concern and would warrant such a "monumental shift".

¹⁶⁷ See Exhibit 148, NBA Board of Directors meeting minutes from the July 20, 2004 (Tag# 995882).

¹⁶⁸ See Exhibit 149, handwritten notes prepared by Mannino, entitled "Internal Memo" (Tag# 994639; Item# 19; Sub

5).

¹⁶⁹ See Exhibit 150, e-mail from Mannino to Hank Cunningham dated 8/16/2004 (Tag# 994639; Item# 21; Sub 13).

He went on to write that *"it appears as though the full resources of the Agency will be allocated to this project."*¹⁷⁰

9. On August 17, 2004 Mannino wrote Kenton another letter. The letter was again on NBA letterhead and Mannino had signed it as the NBA Executive Director. This letter addressed concerns that Alex Greenwood had brought up during his meeting with Mannino. Mannino went on in the letter to write that the "eminent domain" issue would cause significant controversy which would cause a negative impact on things like subsidies. Additionally Mannino told Kenton that it would be important to gain possession of most of the properties needed for the "Gateway" project and to have a "strategy" to deal with people who did not want to sell their property.¹⁷¹
10. On September 16, 2004 Mannino wrote an e-mail to NBA Board member Rich Israel. In the e-mail, Mannino gave Israel instructions on what to say during a meeting they had planned for the next day (September 17, 2004). Mannino advised Israel there are three points he wanted him to make. The first two essentially laid out the reason why they were having the meeting and what benefits the NBA could bring to Kenton's project. The third point addressed what the NBA wanted in return. Mannino advised Israel they would want 1% of development costs with terms as follows: a slight retainer, a sum to be paid upon completion of the project and a monthly assessment of \$5.00 per unit. In the fifth paragraph of the letter, Mannino wrote that perhaps the most valuable resource the NBA could bring to Kenton was the **"ability to get more of a subsidy from the City (Millions more)"**.¹⁷²
11. On September 17, 2004 a meeting took place between Kenton, Mannino, Israel and Munro. During the meeting the members of the NBA offered Kenton benefits and services including, but not limited to, "the original vision", "subsidy assistance", "fee waivers", "land acquisition assistance", "strategy development" and "community support", in exchange for payments amounting to \$100,000.¹⁶³
12. On September 20, 2004 one of the three men from the NBA who attended the September 17, 2004 meeting with Kenton prepared the "Internal Memo" that began this line of inquiry. Whoever wrote it, did so in the third person and put it on paper with an NBA letterhead. The memo outlines the offer they made to Kenton in where the NBA would provide benefits and services including, but not limited to, "the original vision", "subsidy assistance", "fee waivers", "land acquisition assistance", "strategy development" and "community support". The memo goes on to indicate that the NBA would want payments amounting to \$100,000 from Kenton for these services. According to the memo Kenton remarked that the NBA's offer was "outrageous". He said he would pay a couple of thousand dollars and give an unwritten promise to pay more when the project was done. He added that he thought he should be entitled to the NBA services free of charge.¹⁶³

¹⁷⁰ See Exhibit 151, letter dated 8/17/2004 from Mannino to Kenton (Tag# 994639; Item# 14; Sub 4).

¹⁷¹ See Exhibit 152, letter dated 8/17/2004 from Mannino to Kenton (Tag# 994639; Item# 14; Sub 4).

¹⁷² See Exhibit 153, e-mail dated 9/16/2004 from Mannino to Rich Israel (Tag# 994639; Item# 19; Sub 5).

13. On September 20, 2004 Mannino prepared a letter to Kenton which read that due to the substantial difference between their offer and Kenton's counter offer they had instructed NBA staff to postpone activities on his behalf.¹⁷³
14. At the September 21, 2004 NBA Board meeting Mannino addressed the Board in regarding the Kenton project. He stated that the NBA had no obligation to act as a public relations firm for any member of the community and that the matter with Kenton was going to be a separate *"business opportunity that would benefit the entire business community."*¹⁷⁴
15. On October 16, 2004 Mannino sent Kenton an e-mail. Mannino advised Kenton that if there was a chance to arrive at an agreement he wanted to *"minimize the likelihood of information about our present status becoming common knowledge."*¹⁷⁵
16. On December 13, 2004 Mannino sent Alex Greenwood, San Diego Community and Economic Development Department employee (Redevelopment Agency staff) an e-mail. In the e-mail Mannino explained that Kenton had decided not to retain the NBA and therefore the NBA would not be acting in a public relations or advisory capacity for Kenton. Mannino never mentioned that Kenton had refused to pay the NBA the sum it wanted for its services.¹⁷⁶
17. On March 2, 2005, Kenton made a presentation of his "Gateway project" to the North Bay PAC. During the presentation Kenton commented that he had the support of Mannino and the NBA. According to a witness at the meeting, Christopher Clifford,¹⁷⁷ Mannino had Kenton's proposal sent to a PAC subcommittee meeting that would occur on March 21, 2005.
18. On March 15, 2005 during the NBA Board of Directors meeting Mannino commented that Kenton "inferred" that the NBA and Mannino supported his Gateway redevelopment project. Mannino then said that Kenton's statement was "inappropriate".¹⁷⁸
19. On March 17, 2005 Mannino sent Kenton an e-mail giving him advice on what he should present at the North Bay PAC Project Review subcommittee meeting on March 21, 2005. Mannino also wrote that the NBA hoped that the problems inherent in the project would be solved over time, allowing for NBA support.¹⁷⁹
20. On March 21, 2005 Kenton made his proposal at the North Bay PAC Project review subcommittee meeting. According to a witness, Christopher Clifford, who was present at the meeting, Kenton's proposal was getting "crucified" due to ethical issues. Kenton then tried to address those issues by stating he had discussed them with Mannino and that Mannino had given the okay. According to Clifford, Mannino became visibly frustrated when that occurred.¹⁷⁷

¹⁷³ See Exhibit 154, letter dated 9/20/2004 from Mannino to Kenton (Tag# 994639; Item# 14; Sub 4).

¹⁷⁴ See Exhibit 155, NBA Board of Directors meeting minutes from the 9/21/2004 (Tag# 994639; Item# 14; Sub 4).

¹⁷⁵ See Exhibit 156, e-mail dated 10/16/2004 from Mannino to Kenton (Tag# 994639; Item# 19; Sub 5).

¹⁷⁶ See Exhibit 157, e-mail dated 12/13/2004 from Mannino to Alex Greenwood (Tag# 994639; Item# 25; Sub 1).

¹⁷⁷ See Exhibit 158, FD-302 dated 7/12/2005 from interview of Christopher Clifford.

¹⁷⁸ See Exhibit 159, NBA Board meeting minutes dated 3/15/2005 (Tag# 994639; Item# 14; Sub 5).

¹⁷⁹ See Exhibit 160, e-mail dated 3/17/2005 from Mannino to Kenton (Tag# 994639; Item# 14; Sub 5).

21. Sometime in early April 2005, before the April 6, 2005 North Bay PAC meeting, Mannino met with Christopher Clifford. Mannino told Clifford that he intends on voting for a 90 day moratorium on Kenton's proposal, essentially tabling it. Mannino then asked Clifford if he wanted to redevelop the property in question (Clifford is one of the property owners in the area that was being considered for the Gateway project). Clifford told Mannino that he might. Mannino then told Clifford he could help him in that endeavor.¹⁷⁷
22. At the April 6, 2005 North Bay PAC meeting, Mannino voted to table Kenton's Gateway redevelopment project.¹⁸⁰ The project essentially died at this point.

Mannino, as the North Bay PAC Chairman (a public official), violated California Penal Code Sections 68 and 653(f) when he recruited two NBA board members, Israel and Munro, and the three of them asked developer Bill Kenton for \$100,000 (or \$10,000 as Kenton recalled) in exchange for subsidy assistance, fee waivers and land acquisition assistance services under the auspices of the NBA.

Violation #13: Section 68(a) of the California Penal Code
Violation #14: Section 653(f) of the California Penal Code
Suspect: Mannino, Paul

§ 68(a) reads in part: Every **executive or ministerial officer**, employee, or appointee of the State of California, a county or city therein, or a political subdivision thereof, **who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his or her vote, opinion, or action** upon any matter then pending, or that may be brought before him or her in his or her official capacity, shall be influenced thereby, is punishable by imprisonment in the state prison for two, three, or four years and, in cases in which no bribe has been actually received, by a restitution fine of not less than two thousand dollars (\$2,000) or not more than ten thousand dollars (\$10,000) or, in cases in which a bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or two thousand dollars (\$2,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or ten thousand dollars (\$10,000), whichever is greater, and, in addition thereto, forfeits his or her office, employment, or appointment, and is forever disqualified from holding any office, employment, or appointment, in this state.

§ 7.6. Defines "Bribe": The word "bribe" signifies **anything of value or advantage, present or prospective**, or any promise or undertaking to give any, asked, given, or accepted, **with a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity.**

§ 7.3. Defines "Corruptly": The word "**corruptly**" imports a wrongful **design to acquire or cause some pecuniary or other advantage** to the person guilty of the act or omission referred to, **or to some other person.**

¹⁸⁰ See Exhibit 161, North Bay Redevelopment PAC meeting minutes from 4/6/2005 on file with the City.

§ 7. Defines "person": The word **"person"** includes a corporation as well as a natural person.

§ 653(a) reads in part: **Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe,** or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars (\$10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

Mannino is the Chairman of the North Bay PAC. PAC members are "Public Officials". The "Political Reform Act of 1974", Title 9, Chapter 2 of the California Government Code defines what a "Public Official" is:

§ Section 82048(a) reads in part: **Public official** means every member, **officer**, employee or consultant of a state or **local government agency**.

§ 82041 reads in part: A **local government agency** means "a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

§ 82048.5 reads in part: "**Special district**" means any agency of the state established for the local performance of governmental or proprietary functions within limited boundaries. "**Special district**" includes a county service area, a maintenance district or area, an improvement district or zone, an air pollution control district, or a **redevelopment agency**. "Special district" shall not include a city, county, city and county, or school district.

Since a "special district" includes a "Redevelopment Agency" and a PAC is a political subdivision or a board of the redevelopment agency, its members are "public officials".

According to California Health and Safety Code, the members of these PACs are "elected representatives" and "shall serve without compensation."

§ 33385 reads in part: The project area committee shall only include, when applicable, elected representatives of residential owner occupants, residential tenants, business owners, and existing organizations within the project area. Each group shall be adequately represented. Each organization represented pursuant to this subdivision shall appoint one of its members to the project area committee. No project area committee member may be appointed by the legislative body or the redevelopment agency or any member of either body. **The members of the committee shall serve without compensation.**

PAC members are required to complete "Statements of Economic Interests" per California Government Code.

§ 87200 reads in part: This article is applicable to **elected** state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, **members of planning commissions**, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

§ 87203 reads in part: **Every person who holds an office** specified in Section 87200 shall, **each year** at a time specified by commission regulations, **file a statement disclosing his investments, his interests in real property and his income during the period since the previous statement** filed under this section or Section 87202. The statement shall include any investments and interest in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

And finally, PAC meetings are subject to the Ralph M. Brown act, per California Health and Safety Code.

§ 33385 (h) reads in part: The **meeting of a project area committee** shall be subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).

By asking for money in exchange for something only the North Bay PAC could influence "subsidy assistance", "fee waivers" and "land acquisition services", Mannino, Israel and Munro made it clear to Kenton that he would have Mannino's support, and vote, at the North Bay PAC if he paid for the so called services of the NBA. Kenton knew of Mannino's position and influence with the North Bay PAC, as evidenced by the letter found during the October 11, 2006 search warrant service on the NBA office.¹⁷¹ The letter was dated August 17, 2004, one month before the September 17, 2004 meeting took place between Kenton and the NBA members. The letter was from Mannino to Kenton and had the NBA letterhead on it. Mannino signed the letter as the Executive Director of the NBA but by reading the body of the letter, one would think it was an elected North Bay PAC member writing it. In the letter, Mannino advised Kenton that gaining community support for shifting subsidy funds was not guaranteed but the "Redevelopment Agency" seemed to support their (meaning Mannino's and Kenton's) view that the Gateway project was the Agency's #1 concern and would warrant such a "monumental shift". He went on to write that *"it appears as though the full resources of the Agency will be allocated to this project."* With that information in the balance, Mannino, Israel and Munro then asked (at the September 17, 2004 meeting) that Kenton pay the NBA \$100,000 for subsidy assistance, among other things. Investigators believe that a payment to the NBA in regard to "subsidy assistance" for Kenton's project amounts to only one thing, Mannino's support and vote at the North Bay PAC.

Furthermore, the offer of an "original vision" was another item the NBA could not offer and had no right to financially gain from. There already existed an "original vision" for the North

Bay Area, a document known as the "North Bay Conceptual Plan". Anyone conducting a redevelopment or a development project in the North Bay Area would be required to adhere to certain guidelines in that plan. It is available through the North Bay Redevelopment Project Area Committee. It is not a document that can be sold by anyone or any organization.

The offer of providing continued "Community support" contingent on Kenton's payment of money constitutes a violation of CPC, Sections 664(a)-518.

Violation #15: Sections 664(a)-518 of the California Penal Code
Suspect: Mannino, Paul

§ 664 (a) reads in part: **Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration...**

§ 518 reads in part: Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

"Community support" was something the NBA could offer Kenton. Investigators believe that by offering continued support in exchange for \$100,000 constituted a violation of California Penal Code, Sections 664(a)-518 – Attempt Extortion because there would be a consequence if the fee was not paid. The NBA represents all of the businesses in the North Bay area which is predominantly a business area. It is clear that support from the NBA would be imperative to the success of Kenton's project. It is also clear that Kenton knew the NBA's support was necessary, especially given the fact that their Executive Director was also the Chairman of the North Bay PAC. The NBA, as a non profit public benefit corporation, exists for the sole purpose of improving the business district. Their support or lack thereof for any development or redevelopment project should be based on the merits of the project as it relates to their sole purpose, community improvement. This was established when the NBA began their relationship with Kenton and was clearly in support of his project. In fact, Mannino actively lobbied for Kenton's project, as evidenced by the above referenced communications and meetings.^{167,168,169,170,171} After the September 17, 2004 meeting, during which Kenton refused to pay the NBA what they wanted (\$100,000), the NBA and Mannino both withdrew their support for Kenton's project. In fact, the final result was Mannino voting to table Kenton's proposal at the April 6, 2005 North Bay PAC meeting. The tabling of the project essentially killed it, leaving Kenton with a \$100,000 loss of expenses.

In comparing Kenton's project to another redevelopment project in the North Bay area, the "Stella Project", it became clear just how important the NBA and Mannino's support is for such projects. What also became clear are the roles both of them should have in relation to developers. The Stella project developer, Constellation Property Group, received both the NBA and Mannino's support. Consequently, their project was approved by the San Diego Redevelopment Agency and was awarded a 1.7 million dollar subsidy at the June 21, 2005 San Diego Redevelopment Agency meeting. The minutes from that meeting¹⁸¹ show that the agency referred to "Redevelopment Agency Report # RA-05-22" for their deliberations

¹⁸¹ See Exhibit 162, San Diego Redevelopment Agency meeting minutes from 6/21/2005 on file with the City.

on whether or not to approve the project and the subsidy. In report # RA-05-22¹⁸², under "other recommendations", it shows that the North Bay PAC voted to approve the Stella project at their June 1, 2005 meeting¹⁸³.

On March 20, 2007 investigators interviewed the Constellation Property Group's "Development Director", Wayne Hann.¹⁸⁴ Hann told investigators that Mannino never asked them for a payment of any kind and they never compensated Mannino for his support or the support of the NBA.

It is clear that Mannino and the NBA supplied the very kind of support and services they were offering Kenton. The June 21, 2005 NBA Board meeting minutes¹⁸⁵ indicate that Mannino made the following report:

"Mr. Mannino reports on various issues covered at the last PAC meeting including an update on the status of the Constellation Group project, noting that the PAC supported the project and recommended a 1.7 million subsidy. Mr. Mannino notes that the request for an individual Community Plan Amendment to the Planning Commission was tabled and a workshop was called for. Mr. Mannino states that he testified before the Commission supporting the project, and then invites those Board members interested to contact him for specific questions."

Additionally, found in the October 11, 2006 search warrant service on the NBA office was a document on one of their computers.¹⁸⁶ The document was a type written statement entitled as follows:

*Title: Stella Rezone
Speaker: Eugene/Wayne
Time:*

The document was found with other material^{187,188,189} that suggests it was a statement to be read by either Hann or Marchese from the Constellation Group at the NBA's 2006 "Awards Banquet". The Constellation Group was the "cocktail hour sponsor" for that banquet. They were also receiving a "Development Project of the Year Award" from the NBA. The document begins with the sentence;

"I represent the Constellation Property Group"

¹⁸² See Exhibit 163, Redevelopment Agency report # RA-05-22 on file with the City.

¹⁸³ See Exhibit 164, North Bay Redevelopment PAC meeting minutes dated 6/1/2005 on file with the City.

¹⁸⁴ See Exhibit 165, Investigator's Report dated 3/20/2007 from interview of Wayne Hann.

¹⁸⁵ See Exhibit 166, NBA Board of Directors meeting minutes dated 6/21/2005 (Tag# 994639; Item# 21; Sub 8).

¹⁸⁶ See Exhibit 167, "Stella Rezone" document (Tag# 994639; Item# 28; Sub 1).

¹⁸⁷ See Exhibit 168, document relating to the NBA 2006 awards banquet, flier showing that the Constellation Group was sponsoring the cocktail hour (Tag# 994639; Item# 28; Sub 1).

¹⁸⁸ See Exhibit 169, document relating to the NBA 2006 awards banquet, flier showing that the "2006 Development Project of the Year" was the Constellation Group (Tag# 994639; Item# 28; Sub 1).

¹⁸⁹ See Exhibit 170, Document relating to the NBA 2006 awards banquet, Document entitled "2006 Awards Banquet (Awards review)" (Tag# 994639; Item# 28; Sub 1).

It goes on to thank the NBA and "Joe Mannino" for his help in getting "community support", "rezoning" and a "1.3 million dollar subsidy". In the second & third paragraph of the document it reads:

"On the Stella project, the risk of not getting the rezoning approved, and losing those hundreds of thousands of dollars, was very real. In addition, since we are providing 13 affordable housing units, that cost us about 1.7 million, we needed a subsidy from the Redevelopment Agency to cover some of that cost. Luckily for us, this community has the BID, because it was Joe Mannino that was critically instrumental in getting us the community support and rezoning, and a 1.3 million dollar subsidy for the affordable housing. Joe helped us at the local level, at Community Planning Group meetings, and at the City level with the Planning Commission, the Redevelopment Agency, and the City Council."

Hann advised investigators that he did not prepare this document and to his knowledge neither did Eugene Marchese. Investigators believe that Mannino himself prepared this speech for either Hann or Marchese to read at the NBA's 2006 banquet.

Based on interviews conducted with Munro and Israel, it is the belief of investigators that they were unwitting participants in asking Kenton for a bribe and the attempted extortion. In fact, during the interview of Israel he admitted that the term "PAC" was only vaguely familiar to him and that he really didn't know much about redevelopment.

V(e). INVESTIGATION

Investigators attempted to obtain statements from the suspects listed above to clarify their participation in the events described above.

On October 11, 2006 Nancy Rossi agreed to be interviewed by investigators,¹⁹⁰ but shortly after starting the interview and answering only preliminary questions, Rossi told us she wanted to have her lawyer present for any further interview.

Paul Mannino's, Marco LiMandri's and Audrey Thifault's attorneys contacted investigators and advised them that their clients would not submit to interviews without assurances/conditions. Statements were not obtained from those individuals.

Investigators are submitting this case to the San Diego County District Attorney's Office for review, requesting that Paul Mannino, Marco LiMandri, Audrey Thifault and Nancy Rossi be charged with the applicable and enumerated violations listed herein.

Respectfully Submitted by SDPD Detective Dan Vile and FBI SA Gerald K. Cook

¹⁹⁰ See exhibit 171, Investigator's Report dated 10/11/2006 from interview of Nancy Rossi.