

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO**

Civil Action No. _____

**THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY
OF ADAMS,**

Plaintiff,

v.

**LELAND ASAY,
SAMUEL VIDAL GOMEZ,
STACEY LYNN PARKIN f/k/a STACEY LYNN SPERA,
JERRY LEE RHEA,
DENNIS GLENN COEN,
HEATH ALLEN RUSSO,
LOUIE GEORGE SCHIMPF,
QUALITY PAVING CO., a Colorado corporation, and
QUALITY RESURFACING CO. n/k/a QUALITY PAVING CO.,
a Colorado corporation**

Defendants.

COMPLAINT

Plaintiff the Board of County Commissioners of the County of Adams (“the County” and “Adams County”), for its Complaint against Leland Asay, Samuel Vidal Gomez, Stacey Lynn Parkin f/k/a Stacey Lynn Spera, Jerry Lee Rhea, Dennis Glenn Coen, Heath Allen Russo, Louie George Schimpf, Quality Paving Co., and Quality Resurfacing Co. n/k/a Quality Paving Co. (collectively, the “Defendants”), states and alleges as follows:

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NATURE OF ACTION

1. This action involves a multi-million dollar fraudulent scheme perpetrated by high-ranking directors and employees within the Adams County Department of Public Works (“Public Works”), as well as corporate officers and employees of two long-time Adams County contractors, Quality Paving Company and Quality Resurfacing Company (collectively, the “Quality companies”). Conspiring together, these individuals and corporations developed and executed an extensive scheme of misbilling, overbilling, and fabricating completed work, daily run sheets, daily logs, invoices, contracts, and contract change orders submitted by the Quality companies for County road paving and resurfacing contracts which were then knowingly approved for payment by the corrupt co-conspirators within the Public Works department.

2. The brazen scheme ran the spectrum and included:

a. billing the County over \$500,000 on four projects for stockpiled materials when the contracts explicitly barred this charge (*see* Frauds 1, 21, 23, 33);

b. securing the funding and then billing the County to pave a road, 59th Place at Broadway, that does not exist (*see* Fraud 32);

c. charging the County twice and never performing the work (*see* Frauds 4, 6, 30);

d. securing the funding and then billing the County to apply crack seal—which is used only on paved roads—to a 5.7-mile dirt road as part of an \$83,000 change order for which no work was completed but the County was billed in full (*see* Fraud 36);

e. requesting funds to pave and repair roads in Strasburg and doing virtually none of the work while billing the County in full (*see* Frauds 30, 31, 43, 52);

f. inventing multiple projects and inflating other charges in one resurfacing invoice in order to ensure the Defendants stole sufficient funds under the 2007 contract (*see* Frauds 42, 47 to 51); and

g. having the audacity to defraud the County on the resurfacing project at the Adams County courthouse (*see* Fraud 38).

3. Using a series of no-bid and rigged-bid contracts as a license to steal, the Defendants defrauded Adams County and its citizens out of nearly \$9,000,000 in less than three years.

I. JURISDICTION AND VENUE

4. This Court has original jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution, laws, or treaties of the United States. Specifically, this action arises under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.*

5. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367, because all other claims are so related to those claims over which the Court has original jurisdiction as to form part of the same case or controversy under Article III of the United States Constitution.

6. Personal jurisdiction comports with due process under the United States Constitution and the long-arm statutes of Colorado. All of the Defendants, as detailed in the Parties section of this Complaint, are residents of the state of Colorado.

7. Venue is proper in this District under 28 U.S.C. § 1391(b) because all or nearly all of the events that give rise to the claims occurred in this District.

II. PARTIES

8. Plaintiff the Board of County Commissioners of the County of Adams is a board comprised of constitutional officers who act collectively as the governing board to manage the County's affairs and pursue legal action on the County's behalf, under Colo. Rev. Stat. §§ 30-11-101(a) and -103. There are three members of the board, each elected to serve four-year terms. At this time, W.R. "Skip" Fischer is the chairperson and represents District 1, Alice J. Nichol represents District 2, and Erik Hansen represents District 3.

9. Defendant Leland ("Lee") Asay, an individual, resides in the Todd Creek community in unincorporated Adams County, Colorado. For all times relevant to this Complaint, Defendant Asay was employed by the County as the Director of Public Works.

10. Defendant Samuel ("Sam") Gomez, an individual, resides in Thornton, Colorado. For all times relevant to this Complaint, Defendant Gomez was employed by the County as the construction manager for Public Works. Defendant Gomez reported directly to Defendant Asay.

11. Defendant Stacey Parkin, f/k/a Stacey Spera, an individual, resides in Golden, Colorado. For all times relevant to this Complaint, Defendant Parkin was employed by the County as a construction inspector for Public Works. She was the lone inspector for the Resurfacing Programs in 2006 to 2008, and reported directly to Defendant Gomez.

12. Defendant Jerry Rhea, an individual, resides in Broomfield, Colorado. For all times relevant to this Complaint, Defendant Rhea was the president and sole owner of Quality Paving and president and sole or majority owner of Quality Resurfacing, and was closely involved with the daily operations of both companies.

13. Defendant Dennis Coen, an individual, resides in Westminster, Colorado. For all times relevant to this Complaint, Defendant Coen was vice president of Quality Paving, and reported directly to Defendant Rhea.

14. Defendant Heath Russo, an individual, resides in Thornton, Colorado. Defendant Russo was employed by Quality Resurfacing during 2006 and 2007. Russo was responsible for cost estimations and daily operations, and reported directly to Defendant Rhea.

15. Defendant Louie Schimpf, an individual, resides in Northglenn, Colorado. In 2006, Quality Resurfacing hired Schimpf as the scheduling manager. In that role, he reported directly to Defendants Rhea and Russo.

16. Defendant Quality Paving Company (“Quality Paving”) is a Colorado corporation with its current principal place of business in Henderson, Colorado. At all relevant times, Defendant Quality Paving was the primary contractor for the Adams County roadway construction and paving programs. Defendant Rhea was, during all relevant times, the sole owner of Quality Paving, but, under information and belief, Defendant Rhea has since sold the Quality companies to Ryan and Scott Mahoney in early 2010. The County is not alleging that the Mahoney brothers had any involvement in the scheme.

17. Defendant Quality Resurfacing Company n/k/a Quality Paving Company (“Quality Resurfacing”) was a Colorado corporation with its principal place of business in Henderson, Colorado. At all relevant times, Quality Resurfacing was the primary contractor for the Adams County resurfacing programs. During all relevant times, Defendant Rhea was either the sole owner or controlling majority owner of Quality Resurfacing. Under information and belief, Defendant Rhea sold the Quality Companies to Ryan and Scott Mahoney in early 2010.

In addition, it is believed that, on May 24, 2010, Quality Resurfacing was merged into its sister company Quality Paving, and Quality Paving is the surviving entity which has assumed Quality Resurfacing's liabilities.

18. As used in this Complaint, the term the "RICO Defendants" collectively refers to the following defendants: Asay, Gomez, Parkin, Rhea, Coen, Russo, and Schimpf.

19. As used in this Complaint, the term the "Public Works Defendants" collectively refers to the following defendants: Asay, Gomez, and Parkin.

20. As used in this Complaint, the term the "Quality Defendants" collectively refers to the following defendants: Rhea, Coen, Russo, Schimpf, Quality Paving, and Quality Resurfacing.

III. FACTUAL ALLEGATIONS

a. Background on Investigation into Kickbacks

21. Over the course of several years, Defendant Asay used his position as Director of Public Works to influence the placement of millions of dollars in contracts which his department awarded annually to the Quality companies. Defendant Rhea, Asay's friend, ran the Quality companies, which began receiving contracts to perform paving and resurfacing projects from the County beginning as early as 1998. Paving contracts entailed the construction and paving of public roads throughout the County. Resurfacing contracts involved extending the life of previously-paved public streets and parking lots by applying crack seal, slurry seal, and pavement seal.

22. At first, the Quality companies secured these lucrative, often multimillion dollar, contracts by prevailing in competitive bidding against other paving and resurfacing companies.

However, beginning in approximately 2003, Asay and Gomez began funneling Public Works contracts to the Quality companies in three ways. First, Public Works Defendants would ostensibly have an open competitive bidding process for a project, but then would award the contract to Quality Paving or Quality Resurfacing even if the company was not the lowest bidder, thus rigging the bid. Second, after Quality Paving in 2003 and Quality Resurfacing in 2004 were awarded annual contracts, Asay, Gomez, and Rhea conspired to have the contracts renewed year after year without putting them out to bid again by representing to County officials that the Quality companies were willing to renew the contracts without raising their prices from the 2003 or 2004 levels, respectively, in exchange for being granted these no-bid, sole-source contracts. Third, Asay and Gomez induced the County into awarding Quality Paving additional, no-bid contracts by citing to Quality Paving's prior, allegedly high-quality work for the County. Then, once a contract was awarded to the Quality companies, the Defendants would conspire to secure funding for multiple, lucrative change orders to artificially inflate the value of the contract and thus create a larger budget from which to embezzle funds.

23. Under these no-bid or rigged bid arrangements, Quality Paving performed several major roadway construction and improvement projects for the County from 2005 to 2007, while Quality Resurfacing secured the annual contracts to apply crack seal, pavement seal, and slurry seal for the County in 2006 and 2007.

24. On April 4, 2008, Detectives Terry Miles and Jeremy Whytock of the Adams County Sheriff's Office were assigned to conduct an investigation into the business relationships and allegations of personal transactions between Asay and the Quality companies. At that time, there was no suspicion or belief by County officials that the County was not receiving all the

work for which it had contracted with the two companies or that it was being fraudulently deceived into paying for misbilled, overbilled, and fabricated invoices.

25. In May 2008, the Denver media published several stories alleging that Asay had steered millions of dollars in no-bid County contracts to his friend Rhea's companies, and that in return, Asay had received tens of thousands of dollars of work done at his house by the Quality companies and a related company, Thorngren Building Co., for which it was not clear if Asay had paid full value. In response to these allegations of kickbacks, Asay retired in June 2008.

26. On July 31, 2008, Detectives Miles and Whytock's investigation into kickbacks to Asay was presented to the District Attorney for the 17th Judicial District for review and filing of charges. At that time, the District Attorney determined that there was insufficient evidence to support a criminal filing.

27. On November 6, 2008, ABC Channel 7 ran a report that enabled the detectives to begin identifying potential witnesses concerning allegations of County employees receiving personal benefits from the Quality companies. Two former employees of Quality Resurfacing, Defendant Russo and his cousin Troy Beer, came forward with more details about kickbacks, alleging that Gomez, the project manager who supervised the Quality companies' projects with the County, had also received about \$19,000 of free work done at his house by the Quality companies, as well as Denver Broncos football tickets from Rhea. As a result of the Channel 7 report alleging his receipt of kickbacks, the County placed Gomez on investigative leave.

28. From later interviews with Russo, Beer, and other Quality companies' employees, the Detectives learned that Asay may have received approximately \$200,000 of services performed at his house by the Quality companies and related entities, either for free or at the

substantially discounted price of \$40,000, as well as other benefits like jewelry and \$5000 in cash. Gomez, besides the work completed at his house and the football tickets, received other Broncos memorabilia around Christmas from Rhea, including a \$400 Broncos lamp and a helmet autographed by Broncos great John Elway.

29. Russo and Beer, in follow up interviews with the detectives, also alleged that there had been a fraudulent scheme undertaken by Asay, Gomez, Rhea, and others to bilk the County of money on the Quality companies' contracts through misbilling, overbilling, and fabricating invoices and then knowingly approving them for payment. This was the first time the detectives became aware of any allegation of this sort. The detectives then refocused their investigation on those allegations and began a 22-month investigation of paving and resurfacing projects. During the course of the investigation, the detectives hired the engineering firms of Huitt-Zollars Inc. and Kumar & Associates to assist them with the technical aspects of the investigation and to help review and analyze 68,000 documents secured from the County and the Quality companies. The investigation included the Quality Paving contracts from late 2005 to 2007 and the roadway resurfacing projects for which the County hired Quality Resurfacing in 2006 through 2008. The detectives received the final reports on the County's road construction and resurfacing programs from Huitt-Zollars on March 1, 2010. The final report found that the Defendants had fraudulently misbilled, overbilled, and fabricated invoices for millions of dollars for which the County then paid the Quality companies. Adams County officials first became aware of the report's findings in summer 2010 when the arrest affidavits were unsealed and the District Attorney's Office provided the County with the March 1, 2010 Huitt-Zollars report.

30. After the detectives concluded further investigations to verify the Huitt-Zollars report, the District Attorney filed criminal charges against Defendants Gomez, Parkin, Rhea, Coen, Russo, and Parkin. The six have been charged with several hundred felonies of theft, conspiracy to commit theft, forgery, conspiracy to commit forgery, attempt to influence a public official, and embezzlement of public funds. On February 3, 2011, Russo pled guilty to one count of felony theft and one count of misdemeanor theft, in return for testifying against his co-defendants. Similarly, on May 19, 2011, Parkin pled guilty to one count of felony theft and one count of official misconduct, a misdemeanor, in return for testifying against her co-defendants.

31. The Huitt-Zollars report itemizes its findings by company (Quality Paving and Quality Resurfacing) and then by individual project performed by that company. This Complaint will similarly follow that order.

b. Quality Paving Projects

i. Background on Paving Projects

32. *Renewed Sole Source Contracts.* The scheme began with renewed, sole source contracts awarded by the County to Quality Paving for the County's annual paving program. The original contract had been awarded in 2003 by a competitive bidding process. Each year thereafter, the contract was renewed solely on the recommendation of Asay and Gomez, who represented to County officials that Quality Paving would agree to perform the contract at 2003 prices and for the same amount as the 2003 contract. An example of that promise by Quality Paving is Rhea's February 27, 2007 letter to Gomez "to clarify our position on cost for the potential extension of the Overlay Program for 2007," about which Rhea stated that "there will be no unit price increase for the 2007 season." Asay and Gomez would support the awarding of

the no-bid contract in a letter to County administration, such as their February 27, 2007 memorandum to Elizabeth Estrada, the Purchasing Agent in the County's Information Technology and Finance Department ("Finance Department") who was assigned to review Quality Paving contracts, advocating that the 2007 Paving Program be awarded as a sole-source contract to Quality Paving. Gomez admitted in an interview with the detectives that Asay "started the process for . . . continuation of the product . . . of the paving contract for Quality Paving" and stated that "[I]t wasn't my my [sic] recommendation. It would have to come back . . . back down through Lee Asay" in order for the contract to be renewed. The fraudulent projects awarded in this manner were the 2006 and 2007 Paving Programs.

33. *No-Bid Individual Contracts.* The second type of contract was for an individual project. For those projects, Asay and Gomez recommended that Quality Paving be awarded the contract without putting it out for bid based on the previous work which the company had done for the County. An example of such a recommendation was in November 2005, when Public Works requested from Purchasing Agent Estrada that the York Street project be sole sourced because "[t]he quote received from the contractor seems to be reasonable" and "Quality Paving is currently working on several Adams County projects and the Public Works Department is confident they will complete the project on time." These sole-sourced projects included the York Street project from 66th Avenue to Interstate 76, the 64th Avenue project from Lowell Boulevard to Little Dry Creek, and the 120th Avenue project from Trussville Road to Imboden Road.¹

¹ On the Washington Street Phase II project, the contract was put out for a competitive bid, and it was determined by Public Works employees in a July 13, 2005 memorandum that Quality

34. *Bid Process and Contract Formation.* Generally, the County would first draw up Project Construction Drawings and a Specifications book to define what the County sought to construct. The contractor, like Quality Paving, would then complete a bid form, listing the bid unit prices it would charge the County for every project specification. After Quality Paving was awarded the contract, it would sign an agreement with the County, with the agreement incorporating within it both the County's project specifications and Quality Paving's bid form. Purchasing Agent Estrada would then mail to Quality Paving hard copies of the contract in order for them to be signed.

35. *Change Order.* The agreement would govern the scope of and billing for the project unless it was later modified by a change order. A change order would originate first either from a letter by Quality Paving's Coen to Public Works' Gomez stating the reason needed for the contract revision or from an internal Public Works memorandum requesting a change in the contract, with the latter often used to expand the scope of the project and correspondingly increase the project's funding. Asay and Gomez would then write and sign a memorandum requesting the change order to Purchasing Agent Estrada, Richard Lemke, Estrada's supervisor who was the director of the County's Finance Department, or County Administrator James Robinson. Estrada would then draft the resolution on the change order which the Board of County Commissioners would then vote to approve. Approval of the change order by the Board would often result in an addendum to the contract being drafted. Estrada would then mail hard copies of the contract addendum to Quality Paving for it to be signed.

Paving was the "lowest responsible/responsive bidder" because other bids had alleged mathematical errors and purportedly required an "alternative bid adjustment."

36. *Duties at Quality Paving.* At Quality Paving, Rhea and Coen assigned work crews and determined which work was completed (and not completed but still invoiced). Coen also created the invoices sent to the County and filled out and signed the County's Application for Payment form which was required to accompany all invoices. Coen served as the main contact with the County regarding billing, and also ran internal meetings at Quality Paving when Rhea was unavailable.

37. *Duties at Quality Paving.* Rhea, as the owner and manager of the company, not only oversaw all elements of the paving program, but also involved himself in the daily operations of the company, including deciding the amount to bid on a particular project, signing all County contracts and addenda, and giving final approval on all invoices sent by Quality Paving to the County. Rhea normally initialed every invoice before it was sent out, and he would become upset if even one invoice went out without his approval. Rhea had such a tight hold over the finances of the two companies that reportedly every purchase over \$40 made by any employee had to be personally approved by him, despite the fact that his companies did more than \$25 million in business with just Adams County in 2006 and 2007.

38. *Duties at the County.* A County inspector would be onsite at the project to monitor progress and create a daily log of what items were used and what tasks had been performed that day. Carolyn Archuleta, a permit specialist within Public Works, was tasked with tracking on a spreadsheet the budget for paving programs by analyzing the daily logs as they arrived from the County inspector. Archuleta created the spreadsheet by reviewing the bid form and contract which listed all the pay items for the project along with the quantities and price. The spreadsheet was set up to track the project by authorized pay items. Gomez was the project

manager on all the relevant paving projects and oversaw their progress and budget. Asay, as the department head, had ultimate authority over all projects and was particularly involved in selecting Quality Paving to receive repeated, sole-source and no-bid, paving contracts as well as in securing additional funding for paving programs through writing, with Gomez, memoranda to other County officials for change orders.

39. *Paving Program Scheme.* It is difficult to generalize about the thirty-three fraudulent acts, costing nearly \$8 million, which the Defendants perpetrated during Quality Paving projects. Nevertheless, the schemes can be roughly broken down into: (1) billing for items which should have not cost the County anything; (2) improperly billing items at a higher price; (3) billing, often twice, for work that was not performed; (4) creating vague change orders to charge for work that was unclear and unneeded; (5) creating sham change orders and then using the money to cover for fraudulent cost overruns elsewhere; and (6) after securing the sole source contract by agreeing to maintain 2003 prices, improperly charging the county inflated 2006 and 2007 prices.

40. *Paving Program Scheme.* A key element of the Quality Paving fraudulent scheme was the Defendants using the Wednesday project meetings held at Public Works to conspire to change the accurate figures submitted in the County inspectors' logs to inaccurate, inflated totals devised by the Defendants. Gomez, Coen, Archuleta, any County inspector assigned to the project, and any Quality Paving foreman assigned to the project would attend the Wednesday meetings (although the inspector and foreman's role there was minimal). The ostensible purpose of the Wednesday meeting was to review the work done on the project during the previous week and to compare Archuleta's County spreadsheet derived from the daily logs

with Coen's Quality Paving records. In advance of the meeting, Coen would, with the knowledge and under the direction of Rhea, Gomez, and Asay, create falsified records misbilling, overbilling, and fabricating items. All the discrepancies that arose between Coen's fraudulent figures and Archuleta's spreadsheet would be reviewed and Gomez would pressure and intimidate Archuleta into accepting Coen's figures when they were higher than her figures or billing for line items which Archuleta believed were not included in the contract. After accepting all of Coen's fraudulent numbers at the meetings, Gomez would approve the inflated invoices that Purchasing Agent Estrada would later receive from Coen for these amounts. Gomez would also silence any issues raised by concerned County inspectors about Quality Paving's actions on projects. For example, County inspector Gordon Stevens was supervising a project when several county vehicles showed up with asphalt, although it was Quality Paving's contractual duty to provide the asphalt on its projects. When Stevens questioned Gomez about the situation, Stevens was "told to get the hell out of his office and never bring it up again."

41. *Paving Program Scheme.* Asay's role in the scheme, besides directing and overseeing the fabrication of the invoices, was to secure the sole-source contracts and lucrative change orders from the County so that Quality Paving received a constant stream of County funds—nearly \$2 million a month during the busy summer paving season—from which the Defendants could siphon off money through fraudulent billings. Asay also ensured that Quality Paving was paid as promptly as the company demanded. For example, on August 16, 2006, Asay had a check for \$321,642.86 to Quality Paving cancelled and reissued so that it could be picked up by Gomez in person and delivered that day to Quality Paving. The check, reissued as number 507923, replaced check number 507669 which had been mailed August 11, 2006, but

apparently had not arrived yet. The check paid invoices for the Washington Street Phase II project, the 2006 Paving Program, and the 64th Avenue project. On the canceled check is a note stating: “Quality would not wait for check in the mail. *Reissue per Lee Asay*” (emphasis added).

42. *Paving Program Scheme.* Asay, like Gomez, would also silence concerns raised by County employees about Quality paving projects and rubber stamp Quality Paving requests. For example, there was a game among Public Works employees to see how fast Asay would return a call giving approval to whatever additional expenses Quality Paving requested.

ii. Washington Street Phase II Project- State Highway 224 to 78th Avenue

43. *Fraud 1: Stockpiled Materials- County Billed for an Improper Item.* The bid form and plan specifications do not include a pay item for Stockpiled Materials. However, Quality Paving on three separate invoices billed a total of \$255,000 for stockpiled materials. The project specifications’ section 113.4, “Storage of Materials,” states: “Unless otherwise stipulated in the Project Special Conditions, no payment will be made for temporary storage of materials intended for use in the project.” Typically, when there is a stockpiled materials pay item in a contract, any amount paid for the materials is to be credited back when the material is used and invoiced. However, on the final invoice for Washington Street Phase II, the \$255,000 lump sum charge remains with no supporting documentation of direct or indirect accreditation. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly

approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.² **Damages: \$255,000.**

44. *Fraud 2: Unclassified Excavation- Nonbillable Trench Excavation Billed as Roadway Excavation.* The original project specifications and bid form contained two different pay items for Unclassified Excavation: Roadway and Trench. The Roadway excavation pay item is used for any dirt that requires removal from the roadway area, while Trench excavation is used for digging a trench. The distinction is significant because Roadway was bid and invoiced at \$8.75 per cubic yard whereas the Trench appears on the original bid form as a \$0 pay item (that is, the pay number, the contractor's unit price, and the total price are blacked out to prevent insertion of a value). Trench excavation is a nonbillable pay item because the design engineer noted this quantity as "for information only" to help the bidding contractors provide a more accurate bid. The project specifications' section 301 states: "In section 301.9, Basis of Payment, the final sentence shall be deleted and replaced with the following: *All trench excavation, bedding, backfill, and related work shall not be paid for separately but shall be considered incidental to the pipe being installed*" (emphasis added). Multiple daily logs between December 2005 and August 2006 specifically show nonbillable Unclassified Excavation (Trench) was performed but the work is charged on invoices as Unclassified Excavation (Roadway). Other daily logs do not specify the type of unclassified excavation but the only work done on those daily logs was nonbillable trench, as opposed to roadway, work. In total, \$90,020 was

² Related to Fraud 1, Coen was charged with theft (count 1 of his criminal complaint), conspiracy to commit theft (count 4), forgery (counts 7 to 9), and attempt to influence a public official (count 13). Gomez was charged with theft (count 36 of his criminal complaint), conspiracy to commit theft (count 53), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

improperly billed to the County. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.³ **Damages \$90,020.**

45. *Fraud 3: Unclassified Excavation in Change Order #3- Billed for Work Never Done.* Change Order #3, submitted March 1, 2006, added \$74,532.50 worth of Roadway excavation to the project. The entire quantity was billed on March 23, 2006, just three weeks later. However, this quantity of 8,518 cubic yards does not appear on any of the daily logs either prior to or after the invoice, and no other documentation was found indicating that this work was ever done. Coen, under the direction of Rhea, wrote the May 18, 2006 letter to Gomez seeking the funding for this fraudulent request. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #3 in a March 1, 2006 memorandum to Purchasing Agent Estrada, stating that it was needed “to cover additional excavation and waste quantities.” Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.⁴ **Damages \$74,532.50.**

³ Related to Fraud 2, Coen was charged with theft (count 16), conspiracy to commit theft (count 30), and attempt to influence a public official (count 62). Gomez was charged with theft (count 41), conspiracy to commit theft (count 58), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

⁴ Related to Fraud 3, Coen was charged with theft (count 25), conspiracy to commit theft (count 39), forgery (count 50), attempt to influence a public official (count 62). Gomez was charged

46. *Fraud 4: Unclassified Excavation in Change Order #7- Billed Twice for Work Never Done.* Change Order #7 added \$187,766.25 worth of Roadway excavation to the project. This change order sought an additional \$74,532.50 in Roadway excavation—the exact amount which had already been sought and billed, but never done, under Change Order #3, as detailed in Fraud 3, *supra*. Change Order #7 also sought \$90,020 in improperly billed trench work, totaling \$164,552.50 of charges that the County ended up paying for twice when it should not have been invoiced at all. Coen, under the direction of Rhea, wrote the October 11, 2006, and November 13, 2006 letters to Gomez seeking the funding for this fraudulent request. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #7 in a memorandum to Finance Director Lemke on November 28, 2006. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.⁵ **Damages \$164,552.50.**

47. *Fraud 5: Embankment (on-site, excluding trench backfill) - Billed for Improper Item.* The original contract bid documents included \$47,747 for Embankment (on-site, excluding trench backfill). Over the course of the project, \$120,872.50 was invoiced for Embankment, an overrun of \$73,125.50. The overrun was addressed in Asay and Gomez’s cover letter for Change

with theft (count 50), conspiracy to commit theft (count 67), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

⁵ Related to Fraud 4, Coen was charged with theft (count 26), conspiracy to commit theft (count 40), and attempt to influence a public official (count 62). Gomez was charged with theft (count 51), conspiracy to commit theft (count 68), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

Order #7, in which they described the work as “necessary to import additional materials due to unsatisfactory backfill material onsite.” However, the project specifications’ section 206 states: “Payment will not be made for fill construction to replace unsuitable material” and “[t]he cost thereof shall be included in the price bid for the construction of the items to which such fill is incidental or appurtenant.” The project specifications thus contradict the explanation given by Asay and Gomez in seeking the change order. In addition, multiple daily logs indicate that nonbillable trench embankment was completed but then fraudulently invoiced as “Embankment (On-Site *excluding Trench Backfill*)” (emphasis added). Coen, under the direction of Rhea, wrote the October 11, 2006, and November 13, 2006 letters to Gomez seeking the funding for this fraudulent change order. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #7 in a memorandum to Finance Director Lemke on November 28, 2006. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.⁶ **Damages \$73,125.50.**

48. *Fraud 6: Waste Material- Billed Twice for Work Never Done.* This is similar to Frauds 3 and 4, *supra*. The original contract bid included \$65,301.28 for Waste Material. Change Order #3 added \$61,845.52 in Waste Material on March 1, 2006, and that amount was promptly billed in its entirety on March 23, 2006. There is no documentation in the daily logs

⁶ Related to Fraud 5, Coen was charged with theft (count 15), conspiracy to commit theft (count 29), and attempt to influence a public official (count 62). Gomez was charged with theft (count 40), conspiracy to commit theft (count 57), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

that this work was ever done. In Change Order #7, an additional \$74,332.04 of Waste Material was approved. This amount included a request for the same \$61,845.52 which had been sought and improperly invoiced in Change Order #3, and thus the County again ended up paying twice for work which was never done.⁷ Coen, under the direction of Rhea, wrote the March 1, 2006 letter to Gomez seeking the funding for the Change Order #3. Coen, under the direction of Rhea, wrote the October 11, 2006, and November 13, 2006 letters to Gomez seeking the funding for the Change Order #7. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #3 in a March 1, 2006 memorandum to Purchasing Agent Estrada and the funding for Change Order #7 in a November 28, 2006 memorandum to Finance Director Lemke. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment, fully aware that the County was paying twice for work that was never done. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.⁸ **Damages \$123,691.04.**

49. *Abuse of Change Orders- General Discussion.* Per industry custom and practice, an approved and executed change order will include: (1) documentation showing the contractor or owner's field representative has made notes indicating additional work is expected and providing an initial cost estimate; (2) a formal written change order including a brief summary of the work needed and an explanation for its need, the location of the work through a written

⁷ It is unclear if the remaining \$12,486.52 of Waste Material invoiced under Change Order #7 was ever completed but the County is not pursuing this amount at this time.

⁸ Related to Fraud 6, Coen was charged with theft (counts 25 and 26), conspiracy to commit theft (counts 39 and 40), forgery (count 50), and attempt to influence a public official (count 62). Gomez was charged with theft (counts 50 and 51), conspiracy to commit theft (counts 67 and 68), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

description or plan sketch, a list of requested pay items, quantities, and unit costs, and an overall cost summary; (3) documentation showing the additional work was reviewed by the design engineer; and (4) forms or documents showing the appropriate approval for additional work. Here, by contrast, with the exception of Change Order #5, the other six change orders for Washington Street Phase II were submitted with minimal and vague documentation leaving out key pieces of information. Generally, the Washington Street Phase II change orders only list the pay items, respective quantities, unit prices, and an overall total cost. There is no documentation discussing why this work was needed, where this was work to be done, and sometimes, no indication of the size or material of what was supposed to be constructed.

50. *Fraud 7: Change Order #1- Vague and Unsupported Request.* For Change Order #1, the only documentation provided is a memorandum from Asay and Gomez stating: “This change order is due to the fact that there were line items omitted from the bid document. These unforeseen omissions add to the bid cost of the program, but should not exceed the amount budgeted for the Washington Street Project, Phase II.” The change order requested \$18,750 of Class 6 stabilization and \$38,250 of Rock Stabilization. The plans and specifications do not indicate the work is necessary and there is no proof that there was a consultation with the project’s design engineer on this matter, as per industry custom. Moreover, the project specifications’ section 102.1 states: “Each bidder by making his/her bid represents that: . . . (D) Cost of appurtenant items of work, material, and equipment not listed separately, not shown on the drawings or not specified but necessary to complete the Work in accordance with the Contract Documents are to be included in the unit price bid, or the total amount bid” In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #1 in a

January 24, 2006 memorandum to Purchasing Agent Estrada. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$57,000.**

51. *Fraud 8: Change Order #2- Unnecessary Work, Some Billed But Never Done.* Asay and Gomez's memorandum requesting Change Order #2, which totals \$99,632, is effectively identical to the prior change order request, again stating only that the items were "omitted from the bid document." The plans and specifications do not indicate the work is necessary. The items appear to relate to extraneous water encountered during the project, yet there is no documentation that the project's design engineer was consulted or a geotechnical report commissioned, as would be industry practice. Moreover, the project specifications' section 210.3 states in relevant part: "Dewatering shall be considered as incidental to the construction and all costs thereof shall be included in the various unit contract prices in the proposal" Because dewatering is specifically addressed in the specifications and considered a nonbillable incidental item, dewatering pay items were not "unforeseen omissions," as Asay and Gomez's memorandum stated, and if excessive dewatering had in fact been found, then the change order would need to have been written to override the specific project specifications. Furthermore, six of the eight items on the change order were invoiced but never appear on daily logs over the duration of the project, and thus the County paid for work that was never performed. Coen, under the direction of Rhea, wrote the January 24, 2006 letter to Gomez requesting the fraudulent change order. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #2 in a February 21, 2006 memorandum to Purchasing Agent

Estrada. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$99,632.**

52. *Fraud 9: Change Order #4- Inexplicable Request for Expensive Intricate Item.* Change Order #4, for \$194,890, was another improperly vague request, stating: “The following is a list of charges for Change Order #4 to cover additional work required on the Washington Street Project.” The largest item in the change order was an “additional traffic signal” at a cost of \$115,310. A traffic signal is an intricate system which requires design plans and specifications for the signal to be constructed—and ultimately to function—properly. The change order documents do not indicate that the project’s design engineer was consulted regarding design, layout, or functionality of this signal, nor do they indicate if this is a new, relocated existing, or temporary signal. Coen, under the direction of Rhea, wrote the May 18, 2006 letter to Gomez requesting the fraudulent change order. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #4 in a May 22, 2006 memorandum to Purchasing Agent Estrada. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$115,310.**

53. *Fraud 10: Change Order #6- Lump Sum and Double Billed.* Asay and Gomez’s memorandum requesting Change Order #6 states this change order is due to associated costs from a redesign of a block retaining wall on the project. The change order documents do not

include any pricing information. The six separate pay items are lumped together on the final invoice as “Change Order #6” and billed for \$75,423. Moreover, two items from Change Order #6, totaling \$11,740, were already in the original contract and bid form and thus appear to have been double-billed. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #6 in a July 26, 2006 memorandum to Purchasing Agent Estrada. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$75,423.**

54. *Fraud 11: Change Order #7- Among Many Fraudulent Elements, Covered Up Cost Overruns Elsewhere.* Change Order #7 was the last and largest change order of the Washington Street Phase II project, totaling \$611,696.42. There were multiple fraudulent elements to this change order, some of which have been discussed separately in Frauds 4 and 6, *supra*. Asay and Gomez requested this substantial change order but did not consult the project’s design engineer despite the alleged reason for the change order being “under estimation by engineer.” The order included laying additional underground pipe, which would require the assistance of an engineer to ensure proper layout and installation. Gomez continued to decline to seek input from an engineer even after Purchasing Agent Estrada, mindful of the scope of the change order, asked if he planned to consult the design engineer. The change order added \$91,665 in pipe, purportedly due to the engineer’s underestimation. However, this claimed underestimation is unsupported because the pipe quantities on the design plans match the bid estimate. Among the other items sought included Rip Rap (Type L & M) when Asay and Gomez’s stated reason—“for additional stabilization of slopes”—meant this should have been

charged as cheaper Rip Rap Stabilization, resulting in \$26,303.25 in overbilling.⁹ The change order also added \$22,825 for stabilization, when sections 204 and 401.3 of the project specifications stated that such stabilization is considered incidental to the work and would not be billed to the County. There is also no documentation in the change order requests filed by Quality Paving regarding any encounters with unsuitable materials.

55. Beyond the lack of documentation, the entire list was a sham to seek additional funds to cover up fraudulent cost overruns elsewhere. The first letter seeking the change order, from Coen, under the direction of Rhea, to Gomez on October 11, 2006, lists eleven specific pay items which had encountered overruns for a total cost of \$611,696.42. That list of items included:

Description	Bid Total	Actual Total	Difference
Potholing	\$3,000.00	\$35,700.00	\$32,700.00
Unclassified Excavation (Roadway)	\$41,063.75	\$228,830.00	\$187,766.25
Waste Material	\$85,301.28	\$139,633.32	\$74,332.04
Embankment (using onsite material, excluding trench backfill)	\$47,747.00	\$120,872.50	\$73,125.50
Type L Rip-rap	\$200.00	\$11,520.00	\$11,320.00
Type M Rip-rap	\$11,505.00	\$61,275.50	\$49,770.50
78" RCP (CIP)	\$747,000.00	\$813,750.00	\$66,750.00
12" PVC Pipe w/ concrete encasement	\$4,455.00	\$29,370.00	\$24,915.00
HMAP Patching (Grading SX, S, and SG)	\$9,375.00	\$57,960.00	\$48,585.00
Water Line Adjustment (6")	\$9,800.00	\$29,400.00	\$19,600.00

⁹ Rip rap is rock used along bridge abutments and pilings to protect against erosion.

Class 6 Stabilization	\$18,750.00	\$41,582.13	\$22,832.13
Total	\$978,197.03	\$1,569,893.45	\$611,696.42

56. Then, on November 13, 2006, Coen, under the direction of Rhea, wrote another letter to Gomez, with the exact same opening paragraph but now with eight pay items, all different from the original eleven pay items, yet the total for the eight items sought was *exactly the same* as for the original eleven pay items: \$611,696.42. This request did not list the original bid amount and actual cost, as the prior letter did, but just the claimed overrun amount.

Description	Claimed Overrun Amount
Traffic Control	\$25,000.00
Additional Traffic Control	\$14,690.00
Seeding	\$2,850.65
Sodding	\$7,456.26
Site Restoration	\$3,500.00
Survey	\$17,500.00
Grade S Paving	\$450,406.18
Grade SX Paving	\$90,293.33
Total	\$611,696.42

57. Therefore, it appears that Quality Paving was over budget for other pay items due to the Defendants' fraudulent scheme and the Defendants used this bogus change order to cover the upcoming expense of these items. Coen, under the direction of Rhea, wrote the October 11, 2006 and November 13, 2006 letters to Gomez seeking the funding for this fraudulent change order. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #7 in a November 28, 2006 memorandum to Finance Director Lemke. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these

billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.¹⁰ **Damages \$140,793.25.**

58. *Fraud 12: Nonbillable Incidental Items Recharacterized and Invoiced as Contract Pay Items.* There are multiple instances throughout the course of the Washington Street Phase II project where work appears on the County inspectors’ daily log but does not have a specific pay item on the original bid or plans. However, several of these incidental, nonbillable items on the daily logs appear on later invoices recharacterized as a pay item with a cost equivalent quantity. For example, the incidental, nonbillable items of a bike trail diversion and a message sign board were invoiced as 986.67 square yards of 8” thick crushed rock surfacing at a cost of \$9,126.70. In another instance, a nonbillable sewer tap fee on a daily log was recharacterized and invoiced as “reset water meter,” at a cost to the County of \$9,800. The following are specific examples of fraudulent recharacterizations:

Invoice #	Daily Log Description	Qty	Unit ¹¹	Invoice Pay Item	Qty	Unit	Cost
28572-DC	Clay cutoff wall	1	EA	Concrete collar	1	EA	\$1,125.00
28595-DC	Bike trail diversion	1	LS	8” thick crushed rock surfacing	986.67	SY	\$9,126.70
	Message sign boards	1	LS				
	Waterline tap fee	1	EA	Waterline adjustment (6”)	1	EA	\$9,800.00
	Sewer tap fee	1	EA	Waterline adjustment (6”)	1	EA	\$9,800.00

¹⁰ Related to Fraud 11, Coen was charged with theft (count 26), conspiracy to commit theft (count 40), and attempt to influence a public official (count 62). Gomez was charged with theft (count 51), conspiracy to commit theft (count 68), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

¹¹ In the unit column, “EA” stands for each, “LS” stands for lump sum, and “LF” stands for linear feet.

	Bypass existing 15" san. sewer	1	EA	Reset water meter	1	EA	\$1,500.00
	Repair existing 15" san. sewer	1	EA	Reset water meter	1	EA	\$1,500.00
28609-DC	Removal of bushes	3	EA	Remove asphalt pavement	450	SY	\$1,125.00
	Removal of pavestones	225	SF				
28627-DC	Clay cutoff wall	1	EA	Concrete collar	1	EA	\$1,125.00
28768-DC	Temp. striping 6" white	374	LF	Thermoplastic pavement markings	756	SF	\$1,285.20
	Double yellow	382	LF				
28786-DC	Tree relocation	1	EA	Clearing & grubbing	0	LS	\$1,000.00
28870-DC	Stabilization geogrid	2	Roll	Class 6 stabilization	100	Ton	\$1,250.00
29047-DC	Recycle asphalt	135	Ton	8" thick crushed rock surfacing	135	SY	\$1,248.75
	Temporary striping	9300	LF	Thermoplastic pavement markings	3069	SF	\$5,217.30
	Portable washout	1	EA	Rip-rap stabilization	381.2	Ton	\$9,720.60

59. In total, \$55,870.10 worth of nonbillable incidental items were recharacterized and invoiced as contract pay items by this fraudulent process. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.¹² **Damages \$55,870.10.**

60. *Fraud 13: Hot Mixed Asphalt Pavement ("HMAP") (Grading SX, S, or SG) invoiced as HMAP (Patching); Roads Improperly Constructed.* A review of the daily logs and invoices revealed that during the project, 284.92 tons of cheaper HMAP (Grading SX, S, or SG)

¹² Related to Fraud 12, Coen was charged with theft (counts 18 and 19), conspiracy to commit theft (counts 32 and 33), forgery (counts 42 to 49), and attempt to influence a public official (count 62). Gomez was charged with theft (counts 43 and 44), conspiracy to commit theft (counts 60 and 61), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

was invoiced as the more expensive HMAP (Patching), resulting in the County being overbilled by \$10,051.91. The second element of this fraudulent scheme is that Quality Paving tried to save money in this portion of the project (to cover up overbilling for fraudulent items elsewhere) by not laying down as much asphalt as the plan required. The original plan required about 27,000 tons of HMAP (SX, S, or SG) to be applied to the roadways, resulting in asphalt that was either nine or fourteen inches thick, depending on the location. Quality Paving only billed for 20,000 tons of the HMAP (SX, S, or SG), raising suspicions that the company cut corners by putting down less asphalt. A road that is not properly paved with enough asphalt will be too thin to handle the anticipated traffic flow, encounter premature failure, and reduce the roadway's overall life span. A study done by Kumar & Associates, an engineering firm, which took asphalt cores to determine the thickness of the roadway, confirmed that at multiple locations in the Washington Street project, the asphalt depth was up to 5.25 inches *less* than what the plans required. Rhea and Coen directed this fraudulent work and Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent work and the invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.¹³ **Damages \$10,015.91.**

¹³ Related to Fraud 13, Coen was charged with theft (counts 20 to 22), conspiracy to commit theft (counts 34 to 36), forgery (counts 51 to 55), and attempt to influence a public official (count 62). Gomez was charged with theft (counts 45 to 47), conspiracy to commit theft (counts 62 to 64), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

61. In total, as a result of the fraudulent practices committed in connection with the Washington Street Phase II project, the County was damaged in the amount of \$1,334,965.70 plus damages resulting from the improperly built road.

iii. York Street Project from Interstate 270 to Interstate 76

62. *Fraud 14: Traffic Signals- No Change Order Approving Item or Proof that Even Installed.* The “Traffic Signals” line item was not included in the original contract, but appeared on multiple invoices during the project, totaling \$265,532. No documentation was found approving this work through the required procedure of a change order. Moreover, there is no description of the labor or materials included in this lump sum, or the location where these traffic signals were to be installed. A traffic signal is an intricate system which requires design plans and specifications for the signal to be constructed and—ultimately to function—properly. The change order documents do not indicate that the project’s design engineer was consulted for design, layout, or functionality of this signal, nor do they indicate if this is a new, relocated existing, or temporary signal. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$265,532.**

63. *Fraud 15: Removal of Bushes Billed as Trees.* Project specifications’ section 202 states that the removal of trees less than three inches in diameter would not be separately invoiced. A total of 12 trees were in the project plans to be removed, all of which were over eight inches in diameter. However, the removal of 52 trees were invoiced and paid for, at an additional cost to the County of \$20,000. There were no change orders or any other mention of

additional trees being more than three inches in diameter, and there was a daily log listing the removal of 16 trees and 26 bushes that were then all billed as trees. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.¹⁴ **Damages \$20,000.**

64. *Fraud 16: Landscape Weed Barrier Fabric Overbilled.* Landscape weed barrier fabric was overbilled by 1600 square yards. A daily log listed 1400 square feet (156 square yards) used, but the invoice improperly changed the amount to 1400 square yards. Combined with another invoice where 350 square yards of fabric were used for unspecified reasons, the total cost to the county of the overbilled fabric was \$12,440. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.¹⁵ **Damages: \$12,440.**

65. *Fraud 17: Change Order #2- Vague and Unsupported.* Change Order #2 sought an additional \$67,532.75 for conduits, caissons, and traffic control. However, none of these

¹⁴ Related to Fraud 15, Coen was charged with theft (counts 23 and 24), conspiracy to commit theft (counts 37 and 38), forgery (counts 56 to 60), and attempt to influence a public official (count 62). Gomez was charged with theft (counts 48 and 49), conspiracy to commit theft (counts 65 and 66), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

¹⁵ Related to Fraud 16, Coen was charged with theft (count 27), conspiracy to commit theft (count 41), and attempt to influence a public official (count 62). Gomez was charged with theft (count 52), conspiracy to commit theft (count 69), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

three items were ever included in the daily logs or invoicing, but the County paid this amount, meaning that Quality Paving diverted and overcharged the County this money on other items. The change order itself is vague and does not indicate why or where this purported additional work was to be done. Instead, Asay and Gomez's memorandum states only: "This change order is due to the fact that additional costs have been incurred due to the inconsistencies of rehabilitating an existing area." Coen, under the direction of Rhea, wrote the August 21, 2006 letter to Gomez seeking the funding for this fraudulent change order. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #2 in an August 28, 2006 memorandum to Purchasing Agent Estrada. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$67,532.75.**

66. In total, as a result of the fraudulent practices committed in connection with the York Street project, the County was damaged in the amount of \$365,504.75.

iv. 2006 Paving Program

67. *Fraud 18: Contract Price vs. Invoice Price- Sole Source Contract Conditioned on 2003 Prices, but County Billed at Higher Prices.* Quality Paving received the sole source 2006 contract strictly conditioned on the company agreeing to follow the 2003 contract bid document and specifications, including pricing. To this point, the 2006 agreement states: "the Contractor shall perform the work under the Agreement in accordance with applicable quality standards, warranties, or other applicable standards as specified in the 'Contract Bid Documents and Specifications' for the 2003 Paving Program" Having made the explicit promise to charge

the County 2003 prices, the Defendants then disregarded the contract provision and instead charged the County 2006 prices. Those unit prices were laid out in Exhibit A, attached to the 2006 Paving Program, which defines the contractor's scope of work. At 2003 unit prices, Quality Paving should have charged the County \$1,241,648.39 less. Rhea and Coen conspired with Asay and Gomez to ensure that Quality Paving received the sole source contract. In furtherance of the scheme, Asay and Gomez wrote the memorandum supporting awarding Quality Paving the renewed sole source contract, and Gomez admitted in his interview with the detectives that Asay "started the process for . . . continuation of the product . . . of the paving contract for Quality Paving" and stated that "[I]t wasn't my my [sic] recommendation. It would have to come back . . . back down through Lee Asay" in order to be renewed. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$1,241,649.39.**

68. *Fraud 19: Mobilization, Traffic Control, Erosion & Sediment Control, and Clearing & Grubbing- Billed for Improper Items.* None of these items was included in the 2006 contract or the base 2003 contract documents, and thus these pay items were treated as nonbillable incidentals to the work. Several specific provisions of the project specifications confirm this conclusion. Section 106.6 states: "Mobilization and Traffic Control will not be paid for separately, but shall be included in the unit costs of the work bid." Section 305 concerns Erosion & Sediment Control and it is listed in the Contract Lump Sum Price at \$0. Section 201 states for Clearing & Grubbing that "it shall be paid for at the Contract Lump Sum Price," which was \$0. These items were first invoiced for \$115,000, then sought through Change Order #1 for

\$129,000 yet never charged again during the 2006 Paving Program. The items were then improperly invoiced for the same amount of \$115,000 for the 2007 Paving Program. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #1 in a June 19, 2006 memorandum to Purchasing Agent Estrada. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$115,000.**

69. *Fraud 20: Contract Scope of Work vs. Actual Work Done- \$1 Million of Work Remained in DuPont.* The County prepared an initial construction estimate based on an established series of locations, pay items, and quantities, which were attached to the construction contract in Exhibit A. At this point, the scope of work is established and agreed upon by both the County and contractor, as indicated in Section I, Part A of the contract itself, and could not be changed even by Gomez, as stated in the contract in Section IV, Part A (“The Project Manger for this Agreement shall be Sam Gomez The Project Manager does not have the authority to alter or modify the terms of this Agreement.”). The 2006 Paving Program set out the year’s project as rebuilding the roadways in the Dupont neighborhood and Exhibit A listed the fifteen streets in the neighborhood which encompassed the entirety of the year’s project. However, the 2006 Paving Program funds were diverted and spent on many other paving projects first. As a result, work in the Dupont neighborhood, which was to be the sole focus of the year’s paving program, did not even commence until Quality Paving was four months and sixteen (out of approximately forty) invoices into the contract. **Due to the late start, seven of the fifteen Dupont streets in the original scope of work remain unfinished as of February 2010, and it**

has been calculated it will cost \$1,086,995.39 to complete the 2006 Paving Program contract work which was never completed and the funds for which were misallocated to other projects. Rhea signed the contract and Coen oversaw the invoicing of the fraudulent work, and Asay and Gomez approved of Quality Paving's work outside of the contracted scope which left over a million dollars of work unfinished with the intent of completing the project through diverting a future year's paving project, which turned out to be (in part) the 2007 Paving Program. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$1,086,995.39.**

70. *Fraud 21: Stockpiled Materials- Billed for an Improper Item.* As with the Washington Street Phase II project, the bid and plans for the 2006 Paving Program do not include a pay item for Stockpiled Materials. However, Quality Paving billed \$80,000 for stockpiled materials. The project specifications' section 113.4, "Storage of Materials," states: "Unless otherwise stipulated in the Project Special Conditions, no payment will be made for temporary storage of materials intended for use in the project." Typically, when there is a stockpiled materials pay item in a contract, any amounts paid for the materials is to be credited back when the material is used and invoiced. However, on the final invoice for the 2006 Paving Program, the \$80,000 lump sum charge remains with no supporting documentation of direct or indirect accreditation. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on

behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.¹⁶

Damages: \$80,000.

71. In total, as a result of the fraudulent practices committed in connection with the 2006 Paving Program project, the County was damaged in the amount of \$2,523,644.78.

v. 64th Avenue from Lowell Boulevard to Little Dry Creek

72. *Fraud 22: Nonbillable Trench Billed as Unclassified Excavation.* There were multiple daily logs during the 64th Avenue project that logged Unclassified Excavation with notations of pipe work of “Pipe work only,” “Pipe, Inlet and MH work only,” or “Coming out of outfall structure.” These log entries, with the exception of MH (manhole), fall under excluded work in section 204.1 of the project specifications. \$51,199.78 of this work was improperly invoiced as Unclassified Excavation, which was a billable item. An additional amount of \$59,161.64 over the plan and bid specifications was invoiced without explanation or change order. Assuming Quality Paving followed the plan specifications, \$21,393.30 of this total mischarged amount should have been invoiced as Manhole work under Structure Excavation and Backfill. Netting out the three amounts ($\$51,199.78 + \$59,161.64 - \$21,393.30$), the County’s total loss for the misbilled work was \$88,698.09. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices

¹⁶ Related to Fraud 21, Coen was charged with theft (count 2), conspiracy to commit theft (count 4), forgery (count 10), and attempt to influence a public official (count 13). Gomez was charged with theft (count 37), conspiracy to commit theft (count 54), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraud.¹⁷ **Damages \$88,698.09.**

73. *Fraud 23: Stockpiled Materials- Billed for an Improper Item.* As with the Washington Street Phase II project and 2006 Paving Program, the bid and plans for the 64th Avenue project do not include a pay item for Stockpiled Materials. However, Quality Paving billed \$80,000 for stockpiled materials. The project specifications' section 113.4, "Storage of Materials," states: "Unless otherwise stipulated in the Project Special Conditions, no payment will be made for temporary storage of materials intended for use in the project." Typically, when there is a stockpiled materials pay item in a contract, any amounts paid for the materials is to be credited back when the material is used and invoiced. However, on the final invoice for the 64th Avenue project, the \$80,000 lump sum charge remains with no supporting documentation of direct or indirect accreditation. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen was charged criminally in connection with this fraudulent scheme.¹⁸ **Damages: \$80,000.**

74. In total, as a result of the fraudulent practices committed in connection with the 64th Avenue project, the County was damaged in the amount of \$168,698.

¹⁷ Related to Fraud 22, Coen was charged with theft (count 17), conspiracy to commit theft (count 31), and attempt to influence a public official (count 62). Gomez was charged with theft (count 42), conspiracy to commit theft (count 59), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

¹⁸ Related to Fraud 23, Coen was charged with forgery (count 11) and attempt to influence a public official (count 13).

vi. 120th Avenue from Trussville Road to Imboden Road

75. *Fraud 24: Roadway Embankment- Billed for Twice the Amount Needed.* The bid and plans call for 21,319 cubic yards of embankment but daily logs and invoices total 41,884 cubic yards, at an additional cost of \$49,492.45. No documentation was found that details why almost twice the amount of material shown on the bid was needed. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$49,492.45.**

76. *Fraud 25: Change Order #1- Covered Up Cost Overruns Elsewhere.* County inspector Gordon Stevens e-mailed Gomez and requested “up to 30,000 Cubic Yards additional material,” worth \$330,000, for the 120th Avenue project. Later, Coen sent a letter to Gomez requesting this import fill as well as other items, in a request that became Change Order #1. This indicates the Import Fill pay item was a “not-to-exceed” quantity where the contractor would only be paid for the work done up to the maximum quantity. The invoices and logs show 17,989 cubic yards of import fill, totaling \$197,879, were constructed and invoiced. With the remaining portion of this change order line item budget of \$132,121, the Defendants improperly diverted and misapplied the funds to cover overruns of other pay items when the authorization was for Import Fill only. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$132,121.**

77. *Fraud 26: Change Order #1- Vagueness.* Related to the previous fraud, Change Order #1 is vague and leaves out several key pieces of information, listing only the pay items, their respective quantities, unit prices, and an overall total cost. There is no documentation discussing why this work is needed, where the work is to be done, and in some instances no indication of the size or material of what is supposed to be constructed. Subtracting out the \$330,000 dealing with the Import Fill line item discussed in Fraud 25, the remainder of the order totaled \$108,687.50. Coen, under the direction of Rhea, wrote the January 25, 2007 letter to Gomez seeking the funding for this fraudulent change order. In furtherance of the scheme, under information and belief, Asay and Gomez secured the funding for Change Order #1 in a memorandum to Purchasing Agent Estrada. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$108,687.50.**

78. *Fraud 27: Subgrade Preparation- Inflated Invoices.* The bid and plans indicate that 63,874 square yards of subgrade preparation work was needed, but Quality Paving invoiced 98,690 square yards, at an additional cost to the County of \$63,016.96. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$63,016.96.**

79. In total, as a result of the fraudulent practices committed in connection with the 120th Avenue project, the County was damaged in the amount of \$353,317.91.

vii. 2007 Paving Program

80. *Fraud 28: Contract Price vs. Invoice Price- Sole Source Contract Conditioned on 2003 Prices, but County Billed at Higher Prices.* Quality Paving received the sole source 2007 contract strictly conditioned on the company agreeing to follow the 2003 contract bid document and specifications, including pricing. To this point, the 2007 agreement states: “the Contractor shall perform the work under the Agreement in accordance with applicable quality standards, warranties, or other applicable standards as specified in the ‘Contract Bid Documents and Specifications’ for the 2003 Paving Program” Having made the explicit promise to charge the County 2003 prices, the Defendants then disregarded the contract provision and instead charged the County 2007 prices. Those unit prices were laid out in Exhibit A, attached to the 2007 Paving Program, which defines the contractor’s scope of work. The prices were lower than those that Quality Paving had improperly charged in 2006, but remained above the 2003 unit prices required under the contract. At 2003 unit prices, Quality Paving should have charged the County \$743,191.67 less. Rhea and Coen conspired with Asay and Gomez to ensure that Quality Paving received the sole source contract. Rhea stated in his February 27, 2007 letter to Gomez “to clarify our position on cost for the potential extension of the Overlay Program for 2007” that “there will be no unit price increase for the 2007 season.” In furtherance of the scheme, Asay and Gomez wrote the memorandum supporting awarding Quality Paving the renewed sole source contract, and Gomez admitted in his interview with the detectives that Asay “started the process for . . . continuation of the product . . . of the paving contract for Quality Paving” and stated that “[I]t wasn’t my my [sic] recommendation. It would have to come back . . . back down through Lee Asay” in order to be renewed. Coen, under the direction of Rhea, created the fraudulent

invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$743,191.57.**

81. *Fraud 29: Mobilization, Traffic Control, Erosion & Sediment Control, and Clearing & Grubbing- Billed for Improper Items.* As with the 2006 Paving Program, none of these items was included in the 2007 contract or the base 2003 contract documents, and thus these pay items were treated as nonbilled incidentals to the work. Several specific provisions of the project specifications confirm this conclusion. Section 106.6 states: “Mobilization and Traffic Control will not be paid for separately, but shall be included in the unit costs of the work bid.” Section 305 concerns Erosion & Sediment Control and it is listed in the Contract Lump Sum Price at \$0. Section 201 states for Clearing & Grubbing that “it shall be paid for at the Contract Lump Sum Price,” which was \$0. These items were first invoiced for \$115,000—the exact same amount as in 2006—but this time no change order was even sought to cover up the fraud. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$115,000.**

82. *Fraud 30: Contract Scope of Work vs. Actual Work Done- Used the Following Year’s Budget to Pay for the Previous Year’s Unfinished Projects.* The County prepared an initial construction estimate based on an established series of locations, pay items, and quantities, which was attached to the construction contract as Exhibit A. At this point, the scope of work is established and agreed upon by both the County and contractor, as indicated in Section I, Part A

of the contract itself. However, the 2007 Paving Program funds were instead spent on multiple areas of the County which were not within the scope of the contract. Two of them were the 120th Avenue project and Dupont neighborhood from the 2006 Paving Program, as the RICO Defendants engaged in a Ponzi scheme, using the following year's budget to pay for the prior year's unfinished projects, when the prior year's projects were unfinished because of the Defendants' embezzlement.

83. *Multiple Locations in Adams County Left Unpaved, Including the Street Where the Quality Companies Were Located.* As a result, after \$4.7 million was spent under the 2007 Paving Program, the paving of entire neighborhoods and towns that were supposed to be paved under the project remained incomplete and often not even started. These included: (1) **the Dupont neighborhood, with seven streets still unfinished despite being funded twice**, in the 2006 and 2007 Paving Programs, at a cost of \$1,086,995.39 to complete the remaining work; (2) **an industrial area east of Interstate 76 and north of East 96th Avenue, where none of the contracted five streets had been completed, including the street where the Quality companies were located**, at a cost of \$145,116.38; and (3) **the community of Strasburg, where none of the five streets had been completed**, at a cost of \$160,812.75. In furtherance of the scheme, Rhea signed the contract and Coen oversaw the invoicing of the fraudulent work, and Asay and Gomez approved of Quality Paving's work outside of the contracted scope which left more than one million dollars of work unfinished with the intent of funding the project for a third time through a future year's paving project. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$1,392,924.52.**

84. *Fraud 31: Change Order #2- Unpaved Roads in Strasburg Remain, County Billed in Full.* Change Order #2 requested an additional \$1,031,074.54 for the 2007 Paving Program so that eighteen additional streets in Strasburg could be completed. However, a field inspection by Huitt-Zollars in December 2009 concluded that eight of the eighteen streets within the change order had not been paved, although the change order's entire budget had been invoiced by Quality Paving and paid by the County. Huitt-Zollars estimated that there remained \$537,550.98 worth of work left to do in Strasburg. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #2 in an August 27, 2007 memorandum to County Administrator Robinson. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. **Damages \$537,550.98.**

85. *Fraud 32: Change Order #3- Billed for Paving a Nonexistent Road.* Change Order #3 requested adding two streets to the 2007 Paving Program: Franklin Street from 64th Avenue to 66th Avenue; and 59th Place from Broadway to the end of the cul-de-sac. These streets were added based on a memorandum written by Asay and Gomez requesting funding "to improve additional streets." Asay and Gomez originally sought \$600,000 for the project, but only secured \$239,999.48. The scheme for this change order took two forms. First, none of the work was ever done but the County was billed for the entire amount. Second, the second street, 59th Place at Broadway, *does not even exist.* There are no signed intersections between 58th Avenue and 60th Place along Broadway. Huitt-Zollars conducted a site inspection and could not locate it. Detectives Miles and Whytock also went to the area and could not find the street, and

confirmed its nonexistence by checking with Robert Kovacs, right of way specialist for the Public Works Department, who researched the area in the county's mapping, road, and tax databases and found no 59th Place at Broadway. Asay and Gomez secured the funding for Change Order #3 in a September 25, 2007 memorandum to Purchasing Agent Estrada. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez have been charged criminally in connection with this fraudulent scheme.¹⁹ **Damages \$239,999.48.**

86. *Fraud 33: Stockpiled Materials- Billed for an Improper Item.* As with the Washington Street Phase II project, 2006 Paving Program, and 64th Avenue project, the bid and plans for the 2007 Paving Program did not include a pay item for Stockpiled Materials. However, Quality Paving billed \$100,000 for stockpiled materials. The project specifications' section 113.4, "Storage of Materials," states: "Unless otherwise stipulated in the Project Special Conditions, no payment will be made for temporary storage of materials intended for use in the project." Typically, when there is a stockpiled materials pay item in a contract, any amounts paid for the materials is to be credited back when the material is used and invoiced. However, on the final invoice for the 2007 Paving Program, the \$100,000 lump sum charge remains with no supporting documentation of direct or indirect accreditation. Between the four projects, the

¹⁹ Related to Fraud 32, Coen was charged with theft (count 14), conspiracy to commit theft (count 28), and attempt to influence a public official (count 62). Gomez was charged with theft (count 39), conspiracy to commit theft (count 56), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

fraudulent charges for stockpiled materials cost the County \$515,000. Coen, under the direction of Rhea, created the fraudulent invoices and Applications for Payment when fully aware that these billings were not allowed under the contract specifications. Gomez knowingly approved the fraudulent invoices for payment on behalf of the County. Coen and Gomez were charged criminally in connection with this fraudulent scheme.²⁰ **Damages: \$100,000.**

87. In total, as a result of the fraudulent practices committed in connection with the 2007 Paving Program, the County was damaged in the amount of \$3,128,666.55. For all six of the Quality Paving projects investigated by the Adams County Sheriff's Office and analyzed by Huitt-Zollars, the County was damaged in the amount of \$7,874,797.78.

c. Quality Resurfacing

i. Background on Resurfacing Projects

88. There were three services provided to the County by Quality Resurfacing: (1) crack seal, (2) parking lot seal, and (3) slurry seal.

89. Crack seal is a process during which hot pour crack seal is applied to cracks in the asphalt. Crack seal is used to fill cracks to prevent them from growing larger or as a preparation for slurry seal or parking lot seal. Crack seal comes in 30-pound boxes and is in a solid form. It is then heated and applied in a rubbery liquid form. **Crack seal can only be applied to previously paved roads, and not dirt roads.**

²⁰ Related to Fraud 33, Coen was charged with theft (count 3), conspiracy to commit theft (count 6), forgery (count 12), and attempt to influence a public official (count 13). Gomez was charged with theft (count 38), conspiracy to commit theft (count 55), attempt to influence a public official (count 70), and embezzlement of public property (count 71).

90. Parking lot seal is a thin layer of a material similar to crack seal. The material is more liquid (lower viscosity) than crack seal when applied and is spread out into an approximately 1/16" thick layer across the surface of the pavement, sealing both the pavement and small cracks.

91. Slurry seal is a process by which a 3/8" thick layer of slurry material is overlaid on the street to extend the life of the asphalt. Slurry seal is mixed with a fine aggregate (sand) and applied in a thicker layer than the pavement seal. Slurry seal is generally dark black when it is laid but the aggregate and material used on the County's streets causes the color to turn red/pink in approximately one year.

92. *Sole Source Contract.* Like with the paving projects, the Defendants, principally Asay, Gomez, and Rhea, effectuated their fraudulent scheme by renewing the County resurfacing contract each year without putting it out to bid. Asay and Gomez wrote the December 12, 2005 memorandum to Purchasing Agent Lynn Baca supporting awarding Quality Resurfacing the renewed sole source contract for 2006, and Gomez admitted in his interview with the detectives that Asay "started the process for . . . continuation of the product . . . of the paving contract for Quality Paving" and stated that "[I]t wasn't my my [sic] recommendation. It would have to come back . . . back down through Lee Asay" in order to be renewed. With the contracts renewed at 2004 rates in order to avoid having them put out for bid, the Defendants then relied on inflating the materials billed and the claimed work done in order to embezzle funds. For example, on the morning of March 27, 2007, Gomez, Rhea, and Russo met in Rhea's office. Rhea told Russo, in Gomez's presence, that he did not want the 2007 Resurfacing contract going out to bid, and that he wanted it carried over at 2004 prices. When Russo pointed out that

Quality Resurfacing would lose money in 2007 with 2004 prices, Rhea told Russo, in Gomez's presence, that they would add more tonnage (crack seal) and more square yards (slurry seal) to make up for the low bid.

93. *Crack Seal Procedures- Quality Resurfacing.* Each day that a Quality Resurfacing crew was assigned to crack seal, the crew's foreman would complete a crew log including the date, customer, location(s), list of crew members and hours worked. The bottom half of the crew log included a section to list the amount of crack seal used. Crack seal comes in 30-pound boxes. As a box was used, the foreman would collect the box top. At the end of the day, the foreman would count the box tops and record the number on the crew log. The foreman would then turn in his crew log at the end of the day. The box tops were either turned into the Quality Resurfacing office for storage or retained in the foreman's vehicle. In 2006 and 2007, Defendant Schimpf, a manager for Quality Resurfacing, reviewed the work noted on the crew log, particularly the amount of crack seal used that day, and should have recorded that information on a Crack Seal Daily Quantity Report ("daily report"). Schimpf would fax a copy of the daily report to Defendant Parkin to inform the County how much crack seal was being used each day. As a result, Parkin, as well as the rest of the County employees, would not receive the foreman's crew logs, but only Schimpf's transcribed figures on the daily report.²¹ Separately, Defendant Russo would use the crew log's information about hours worked and crack seal applied to enter the information into a computer database to assist in determining

²¹ It was only when Detectives Miles and Whytock subpoenaed Quality Resurfacing's business records and Huitt-Zollars conducted their review of them that the foremen crew logs were found and the discrepancy was discovered between the crack seal totals on the crew logs and those reported by Schimpf on the daily report.

Quality Resurfacing's actual costs at 2006 rates rather than the 2004 rates which it was charging the County. Once a week, Russo would do a costing report on resurfacing projects and show it to Rhea.

94. *Crack Seal Procedures- Public Works.* Parkin was the Adams County Public Works inspector assigned to the Resurfacing Programs. Parkin was supposed to travel to locations that were to be treated with crack seal that day and verify that the work was being completed. According to Parkin's statements to the detectives, in 2006, she received and counted the box tops to verify the count logged by the foreman and compared that amount to the daily report she received from Schimpf. Parkin stated that beginning in 2007, Gomez told her not to worry about counting the box tops and so she no longer would receive and count the box tops from the Quality Resurfacing foremen in order to verify the totals on Schimpf's daily reports. It is the practice of Colorado municipalities and counties who are contracting for crack seal work to require that the crews retain box tops and then for the municipality or county inspector assigned to that project to double-check the company's totals by counting the box tops. Using Schimpf's daily log and her own count of the box tops, Parkin would enter the date and location that crack seal was laid and the total tons for the day on an Adams County Public Works Daily Log (the "county log"). The daily report and the county log would be turned in to Permit Specialist Archuleta, who would enter them into the spreadsheet of the budget which she had created for the project. Gomez would receive the daily reports and county logs from Parkin along with an invoice from Quality Resurfacing so he could verify the amounts on the invoice and approve the invoice for payment.

95. *Crack Seal Scheme.* The effort to defraud the County on Quality Resurfacing projects took several forms. First, Russo, at Rhea's direction, would instruct Schimpf to inflate the amount of crack seal boxes listed on the daily report which was submitted to the County. Parkin, although purportedly checking the box tops in 2006 before Gomez told her to stop in 2007, would approve Schimpf's daily report totals and incorporate them into the county log even when the daily report total was far greater than the box tops total. Second, Russo, after doing his weekly costing report, would show it to Rhea, who would then inflate the invoice, sometimes by 27% above the 2006 cost (which would be a much larger increase on the invoice which was priced at 2003 rates). Rhea would approve the invoice, knowing it contained inflated figures, and have the fraudulent invoice sent to the County. Within Public Works, Parkin stated that if she ever raised a concern with Gomez that the daily reports or invoices sent from Quality Resurfacing were too high, Gomez would tell her to do what he told her and not question it, and that he and Rhea would take care of it. Parkin did not raise the issue with anyone else and continued to knowingly use Quality Resurfacing's fraudulent totals. This same process was used to bill the County, sometimes more than once, for roads that were not even crack sealed at all, despite Parkin's alleged daily inspection of all work sites. Gomez then knowingly approved the fraudulent invoices for payment by the County.

96. *Parking Lot Seal Procedure and Scheme.* The parking lot seal program followed the procedures of crack seal. The Defendants' scheme involved two elements: (1) billing for work not done; and (2) charging for more expensive slurry seal when parking lot seal had been used.

97. *Slurry Seal Procedures- Quality Resurfacing.* After ensuring the street was cleared of all vehicles, the crew laid the slurry seal with a machine calibrated to apply the proper thickness. The crew completed a daily run sheet which included the street name, the length and width of the street, the square yards covered with slurry, and the number of pounds per square yard used. The County was billed based on how many square yards of slurry were applied. To determine the amount of square yards applied, the crew foreman measured the area covered and verified this amount with the onsite County inspector. If there was a discrepancy between the crew foreman and inspector's calculations, the two would measure the area again. Russo was in charge of creating the daily run sheet and invoices for Quality Resurfacing, with Rhea reviewing the numbers. The daily run sheet was then provided to the County inspector, either by fax or by hand.

98. *Slurry Seal Procedure- Public Works.* The County inspector, who was Parkin at all relevant times, met the slurry crew at the job site and ensured that all vehicles had been moved. Parkin stated that she would measure the area to be covered before the slurry seal was applied. Parkin should have stayed with the slurry crew throughout the day, so that she could verify the square yards covered with the crew foreman and receive the daily run sheet from him. After verifying the square yards covered and receiving the daily run sheet, Parkin completed an Adams County Public Works Daily Log (the "county log").

99. *Slurry Seal Scheme.* Russo would show the slurry cost in 2003 prices to Rhea as well as what the actual cost of the project was at 2006 rates for Quality Resurfacing, and Rhea would inflate the County's daily run sheet and/or invoice to equal the 2006 cost plus a profit margin, which was sometimes 27%. Similar to crack seal, Parkin would accept whatever figures

Russo and Rhea from Quality Resurfacing had indicated were used. When she questioned Gomez about this procedure, he told her to do as she was told and that he and Rhea would take care of it. In some instances, the County paid for the resurfacing of roads that were never done at all, despite Parkin allegedly supervising the projects on site. At the end of 2007, Rhea and Gomez instructed Russo to work with Parkin to create a list of fake and inflated daily run sheets and invoices in order for Quality Resurfacing to realize its desired profits, and Gomez ensured that the fraudulent invoices would be approved. The most glaring example of this fraud was Invoice 4090-HR (discussed *infra* in Frauds 42 and 47 to 51), which contained numerous fabricated charges paid by the County for work that was never completed or was completed but overcharged.

ii. 2006 Crack Seal Projects

100. *Fraud 34: Invoice 3673-HR- Inflated Tonnage on the Daily Reports and County Logs.* The crew logs totaled 20.175 tons of crack seal used. The faxed daily reports and Parkin's resulting county logs totaled 22.28 tons. The County was billed and paid for 22.28 tons. Total loss to the County for this invoice was \$2,483.90. Rhea, Russo, and Schimpf fraudulently inflated the daily reports and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Russo, Schimpf, Gomez, and Parkin were charged criminally in relation to this scheme.²² **Damages \$2,483.90.**

²² Related to Fraud 34, Russo was charged with theft (count 9), conspiracy to commit theft (count 11), attempt to influence a public official (count 13), and forgery (count 27). Schimpf was charged with theft (count 2), conspiracy to commit theft (count 5), attempt to influence a public official (count 8), and forgery (counts 9 to 11). Gomez was charged with theft (count 14), conspiracy to commit theft (count 17), attempt to influence a public official (count 20), and embezzlement of public property (count 21). Parkin was charged with theft (count 2),

101. *Fraud 35: Invoice 3791-HR- Inflated Tonnage on the Daily Reports and County Logs, Further Inflation on Invoice.* The crew logs totaled 2.25 tons, whereas the faxed daily reports and Parkin’s resulting county log totaled 3.51 tons. The county was then billed and paid for an even more inflated total of 3.85 tons. Total loss to the County for this invoice was \$1,888. In addition, all of the work completed on this invoice was outside of the contracted scope of work. Rhea, Russo, and Schimpf fraudulently inflated the daily reports and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Russo, Schimpf, Gomez, and Parkin were charged criminally in relation to this scheme.²³ **Damages \$1,888.**

102. *Fraud 36: Crack Seal Change Order #2- Billed for Crack Seal on a Dirt Road.* Asay and Gomez sought this change order for \$83,000 in a memorandum stating that “there is additional work that needs to be done within the project and there are available funds.” The scope of the work was outlined in Exhibit 1 to the change order and included nine streets in the Green Estates subdivision as well as crack sealing a 15.7-mile section of Bromley Lane/152nd Avenue. However, Huitt-Zollars and the detectives discovered that the scope of work would be impossible, as Bromley Lane/152nd Avenue becomes a dirt road after 10 miles. In other words,

conspiracy to commit theft (count 6), embezzlement of public property (count 9), attempt to influence a public official (count 10), and forgery (counts 11 to 13).

²³ Related to Fraud 35, Russo was charged with theft (count 10), conspiracy to commit theft (count 12), attempt to influence a public official (count 13), and forgery (count 28). Schimpf was charged with theft (count 3), conspiracy to commit theft (count 6), attempt to influence a public official (count 8), and forgery (count 12). Gomez was charged with theft (count 15), conspiracy to commit theft (count 18), attempt to influence a public official (count 20), and embezzlement of public property (count 21). Parkin was charged with theft (count 3), conspiracy to commit theft (count 7), embezzlement of public property (count 9), attempt to influence a public official (count 10), and forgery (count 14).

Asay and Gomez secured the funding for a change order to complete “additional work” in order for the County to be billed to crack seal 5.7 miles of a dirt road, when crack seal can only be applied to a paved road.

103. *Work Billed, But Not Performed, in 2006.* Moreover, the September 30, 2006 invoice for this change order, which was dated eleven days *before* the change order was even approved on October 11, 2006, billed the County \$83,000 for slurry work when this was a contract for crack seal. Moreover, despite payment in full, there are no crew logs, faxed daily reports, or county logs to document that any of the change order work (slurry or crack seal) was performed in 2006. It appears that some of the work within Change Order #2 was completed in 2007 and 2008—after the County paid again for this work. Once again, the County would only end up with finished roads once it had paid twice (and been ripped off in the process to crack seal a dirt road). Rhea, Russo, and Schimpf fraudulently inflated the daily reports and invoice. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #2 in a June 19, 2006 memorandum to Purchasing Agent Lynn Baca. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice, prior even to having a binding contract, for the wrong service, and for a fictitious project. Russo and Gomez were charged criminally in relation to this scheme.²⁴ **Damages \$83,000.**

104. In total, as a result of the fraudulent practices committed in connection with the 2006 Crack Seal Program, the County was damaged in the amount of \$87,391.90.

²⁴ Related to Fraud 36, Russo was charged with theft (count 1), conspiracy to commit theft (count 4), attempt to influence a public official (count 13), and forgery (count 29). Gomez was charged with theft (count 1), conspiracy to commit theft (count 2), forgery (count 3), attempt to influence a public official (count 4), and embezzlement of public property (count 5).

iii. 2007 Parking Lot Seal Program

105. The parking lots for three County buildings were contracted to be sealed during the year's program: the Honnen Building, the Adams County Justice Center, and the Public Works Building. The Defendants schemed to overcharge the County on all three projects.

106. *Fraud 37: The Honnen Building-Charged for More Expensive Slurry Seal, Failed to Complete the Work.* The Honnen Building houses a Head Start center as well as a food bank. A site inspection in January 2010 by Huitt-Zollars revealed that most of the lot had pavement seal applied to it, but the back area of the lot had not been completed and the lot on the whole had more cracking as compared with other parking lots which had been sealed. In addition to not completing the project, the sealing of the parking lot was improperly charged as more expensive slurry seal, at a cost to the County of \$1,848. Rhea, Russo, and Schimpf fraudulently inflated the daily reports and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. **Damages \$1,848.**

107. *Fraud 38: The Justice Center Building- Charged for More Expensive Slurry Seal.* To show the audacity of the Defendants' fraudulent scheme, Defendants defrauded the County in performing work at the Justice Center, which houses the Adams County courthouse. For the resurfacing project at the County's courthouse, the defendants overcharged the County in two ways. First, Quality Resurfacing improperly recorded the parking lot seal application as the more expensive slurry seal on the daily logs, which Parkin incorporated into the county logs, at a cost of \$6,823.60. In addition, the crew logs showed that 1.88 tons of parking lot seal were applied but the faxed daily logs and county logs claimed 6.99 tons were used—almost four times as much—at a cost to the County of \$6,029.80. Rhea, Russo, and Schimpf fraudulently inflated

the daily logs and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Parkin was charged criminally in connection with this fraudulent scheme.²⁵ **Damages \$12,853.40.**

108. *Fraud 39: The Public Works Building- Charged for More Expensive Slurry Seal, Failed to Complete the Work.* To further their fraudulent scheme, the Defendants were even willing to improperly complete the paving project at their own Public Works Building. First, as with the Honnen Building, pavement seal was not applied to the whole parking lot, as Huitt-Zollars' January 2010 site inspection revealed that the northern portion of the parking lot had not been treated. In addition, as with the Justice Center, Quality Resurfacing improperly recorded the parking lot seal application as the more expensive slurry seal on the daily log, which Parkin incorporated into the county log, at a cost of \$1,879.36. Rhea, Russo, and Schimpf fraudulently inflated the daily logs and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. **Damages \$1,879.36.**

109. In total, as a result of the fraudulent practices committed in connection with the 2007 Parking Lot Seal Program, the County was damaged in the amount of \$16,580.76.

iv. 2007 Crack Seal Program

110. *Fraud 40: Invoice 4003-HR- Inflated Invoices, Paid Twice for Work to Be Completed Once.* Continuing the criminal scheme begun in the 2006 Crack Seal program, there was an increasing pattern in the 2007 program of Quality Resurfacing inflating the crew log totals when it created the daily report for Parkin, and Parkin, at Gomez's direction, accepting

²⁵ Related to Fraud 38, Parkin was charged with theft (count 55), conspiracy to commit theft (count 56), forgery (count 57), attempt to influence a public official (count 58), and embezzlement of public property (count 59).

those numbers without hesitation for the resulting county log. For Invoice 4003-HR, the crew logs totaled 12.91 tons of crack seal used. The faxed daily reports and Parkin's resulting county log totaled 20.25 tons. The County was billed and paid for 20.25 tons, at a loss of \$8,661.20. Crew logs indicate that Quality Resurfacing applied crack seal to 152nd Avenue during this time, when the county had contracted and paid for that street to be completed the previous year under the 2006 Crack Seal Program's Change Order #2. This is another example of the County only receiving completed work after paying for it twice. Rhea, Russo, and Schimpf fraudulently inflated the daily reports and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Rhea, Russo, Schimpf, Gomez, and Parkin were charged criminally in relation to this scheme.²⁶ **Damages \$8,661.20.**

111. *Fraud 41: Invoice 4034-HR- Inflated Tonnage on the Daily Reports and County Logs.* The crew logs totaled 42.63 tons of crack seal used. The faxed daily reports and Parkin's resulting county log totaled 66.93 tons. The County was billed and paid for 66.93 tons, at a loss of \$28,674. Rhea, Russo, and Schimpf fraudulently inflated the daily reports and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice.

²⁶ Related to Fraud 40, Rhea was charged with theft (count 2), conspiracy to commit theft (count 4), and attempt to influence a public official (count 7). Russo was charged with theft (count 2), conspiracy to commit theft (count 5), attempt to influence a public official (count 13), and forgery (count 30). Schimpf was charged with theft (count 1), conspiracy to commit theft (count 4), attempt to influence a public official (count 7), and forgery (counts 13 to 18). Gomez was charged with theft (count 7), and conspiracy to commit theft (count 9). Parkin was charged with theft (count 4), conspiracy to commit theft (count 8), embezzlement of public property (count 9), attempt to influence a public official (count 10), and forgery (counts 15 to 20).

Rhea, Russo, Schimpf, Gomez, and Parkin were charged criminally in relation to this scheme.²⁷

Damages \$28,674.

112. *Fraud 42: 4090-HR- Inflated Tonnage on the Daily Reports and County Logs; Paid Twice for Work to Be Completed Once.* The crew logs totaled 4.2 tons of crack seal used. The faxed daily reports and Parkin's resulting county log totaled 4.65 tons. The County was billed and paid for 4.65 tons, at a loss of \$531. Crew logs indicate that Quality Resurfacing applied crack seal to 152nd Avenue during this time, when the county had contracted and paid for that street to be completed the previous year under the 2006 Crack Seal Program's Change Order #2. This is another example of the County only receiving completed work after having paid for it twice. More significantly, the bill totals \$49,716.98, which equals 42.13 tons, but there is no evidence to account for the additional 37.48 tons of crack seal. This unaccounted for 37.48 tons was paid by the County for a loss of \$44,604. This is an example of the fabricated totals in invoice 4090-HR, which Rhea and Gomez had Russo and Parkin create in order for Quality Resurfacing to make additional, illegitimate profits at the end of the 2007 resurfacing contract. Rhea, Russo, and Schimpf fraudulently inflated the daily reports and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Rhea,

²⁷ Related to Fraud 41, Rhea was charged with theft (count 8), conspiracy to commit theft (count 9), and attempt to influence a public official (count 10). Russo was charged with forgery (count 31). Schimpf was charged with theft (count 1), conspiracy to commit theft (count 4), attempt to influence a public official (count 7), and forgery (counts 19 to 33). Russo was charged with forgery (count 31). Gomez was charged with theft (count 16), conspiracy to commit theft (count 19), attempt to influence a public official (count 20), and embezzlement of public property (count 21). Parkin was charged with theft (count 1), conspiracy to commit theft (count 5), embezzlement of public property (count 9), attempt to influence a public official (count 10), and forgery (counts 21 to 35).

Russo, Schimpf, Gomez, and Parkin were charged criminally in relation to this scheme.²⁸

Damages \$45,135.

113. *Fraud 43: Crack Seal Change Order #2- Billed But No Work Performed in Strasburg.* Asay and Gomez secured a change order for a \$51,920 increase in the budget in order to seal sixteen additional streets in Strasburg which otherwise would not have been paved. Having secured a change order in order to seal streets in Strasburg, they did not perform any of the work and there is no evidence that a single Strasburg street was ever crack sealed under this Change Order. Of course, the County nevertheless was billed and paid in full despite no work being performed. Rhea, Russo, and Schimpf fraudulently inflated the daily reports and invoice. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #2 in a June 19, 2006 memorandum to Purchasing Agent Baca. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. **Damages \$51,920.**

114. In total, as a result of the fraudulent practices committed in connection with the 2007 Crack Seal Program, the County was damaged in the amount of \$134,390.20.

v. 2007 Slurry Seal Program

115. *Fraud 44: Invoice 4003-HR- Inflated Totals on the Invoice.* The daily run sheets and Parkin's county logs totaled 116,420 square yards of slurry seal used. However, the invoice

²⁸ Related to Fraud 42, Rhea was charged with theft (count 1), conspiracy to commit theft (count 3), and attempt to influence a public official (count 7). Russo was charged with theft (count 3), conspiracy to commit theft (count 6), attempt to influence a public official (count 13), and forgery (count 32). Schimpf was charged with theft (count 1), conspiracy to commit theft (count 4), attempt to influence a public official (count 7), and forgery (count 34). Gomez was charged with theft (count 6) and conspiracy to commit theft (count 8). Parkin was charged with theft (count 1), conspiracy to commit theft (count 5), embezzlement of public property (count 9), attempt to influence a public official (count 10), and forgery (count 36).

to Quality Resurfacing totaled 158,760 square yards, which the County paid at a loss of \$35,051.20. Rhea and Russo fraudulently inflated the daily run sheets and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Russo was charged criminally in relation to this scheme.²⁹ **Damages \$35,051.20.**

116. *Fraud 45: Invoice 4003-HR- Inflated Totals on the Daily Run Sheet.* The daily run sheets and Parkin's county logs totaled 84,480 square yards of slurry seal used on Imboden Road from 88th Avenue to 120th Avenue. However, a Huitt-Zollars engineer conducted a site visit and verified the square yardage of the area, as Parkin was supposed to do as the County inspector, and determined that 63,360 square yards would be reasonable. The amount overcharged by Quality Resurfacing and approved by Parkin caused the County \$16,061.20 in damages. Rhea and Russo fraudulently inflated the daily run sheets and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Rhea, Russo, Gomez, and Parkin were charged criminally in relation to this scheme.³⁰ **Damages \$16,061.20.**

117. *Fraud 46: Invoice 4034-HR- Inflated Totals on the Invoice.* The daily run sheets and Parkin's county logs totaled 264,166 square yards of slurry seal used. However, the invoice to Quality Resurfacing totaled 312,480.36 square yards, which the County paid at a loss of

²⁹ Related to Fraud 44, Russo was charged with theft (count 7), conspiracy to commit theft (count 8), attempt to influence a public official (count 13), and forgery (count 30).

³⁰ Related to Fraud 45, Rhea was charged with theft (count 14), conspiracy to commit theft (count 20), and attempt to influence a public official (count 23). Russo was charged with theft (count 19), conspiracy to commit theft (count 25), attempt to influence a public official (count 26), and forgery (count 30). Gomez was charged with theft (count 25), conspiracy to commit theft (count 31), attempt to influence a public official (count 34), and embezzlement of public property (count 35). Parkin was charged with theft (count 42), conspiracy to commit theft (count 48), embezzlement of public property (count 49), and attempt to influence a public official (count 50).

\$36,718.91. Rhea and Russo fraudulently inflated the daily run sheets and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Rhea, Russo, and Gomez were charged criminally in relation to this scheme.³¹ **Damages \$36,718.91.**

118. *Fraud 47: Invoice 4090-HR- Inflated Totals on the Daily Run Sheet.* This is the first of five slurry seal frauds committed in invoice 4090-HR, in an effort by Rhea and Gomez to inflate Quality Resurfacing's profits at the end of the 2007 resurfacing contract. The daily run sheets and Parkin's county logs totaled 50,762.50 square yards of slurry seal used on 168th Avenue from Hudson Street to the surface change to dirt. The County had originally estimated that this area would need 10,625 square yards of slurry applied. The detectives and a Huitt-Zollars engineer conducted separate site visits and each concluded that the area covered was approximately what the County had estimated. The amount overcharged by Quality Resurfacing and approved by Parkin caused the County \$30,496.90 in damages. Rhea and Russo fraudulently inflated the daily run sheets and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Rhea, Russo, Gomez, and Parkin were charged criminally in relation to this scheme.³² **Damages \$30,496.90.**

³¹ Related to Fraud 46, Rhea was charged with theft (count 5), conspiracy to commit theft (count 6), and attempt to influence a public official (count 7). Russo was charged with forgery (count 31). Gomez was charged with theft (count 10), conspiracy to commit theft (count 11), attempt to influence a public official (count 12), and embezzlement of public property (count 13).

³² Related to Fraud 47, Rhea was charged with theft (count 11), conspiracy to commit theft (count 17), and attempt to influence a public official (count 23). Russo was charged with theft (count 15), conspiracy to commit theft (count 21), attempt to influence a public official (count 26), and forgery (count 32). Gomez was charged with theft (count 22), conspiracy to commit theft (count 28), attempt to influence a public official (count 34), and embezzlement of public property (count 35). Parkin was charged with forgery (count 37), conspiracy to commit forgery (count 43), embezzlement of public property (count 49), and attempt to influence a public official (count 50).

119. *Fraud 48: Invoice 4090-HR- Inflated Totals on the Daily Run Sheet.* The daily run sheets and Parkin's county logs totaled 51,000 square yards of slurry seal used on 152nd Avenue between Hayesmount Road and Watkins Road. A Huitt-Zollars engineer conducted a site visit and calculated that the amount of slurry seal applied was 32,111 square yards. The amount overcharged by Quality Resurfacing and approved by Parkin caused the County \$14,355.64 in damages. Rhea and Russo fraudulently inflated the daily run sheets and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Rhea, Russo, Gomez, and Parkin were charged criminally in relation to this scheme.³³ **Damages \$14,355.64.**

120. *Fraud 49: 4090-HR- Billed But No Work Completed.* The daily run sheets and Parkin's county logs claimed that 57,050 square yards of slurry seal were applied to 56th Avenue between Monaghan Road³⁴ and Imboden Road. A Huitt-Zollars engineer conducted a site visit and found that the road had not been treated with slurry seal in 2007 or at any time since then. The amount invoiced by Quality Resurfacing and approved by Parkin for work that was never done caused the County \$43,358 in damages. Rhea and Russo fraudulently inflated the daily run sheets and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the

³³ Related to Fraud 48, Rhea was charged with theft (count 16), conspiracy to commit theft (count 22), and attempt to influence a public official (count 23). Russo was charged with theft (count 17), conspiracy to commit theft (count 23), attempt to influence a public official (count 26), and forgery (count 32). Gomez was charged with theft (count 27), conspiracy to commit theft (count 33), attempt to influence a public official (count 34), and embezzlement of public property (count 35). Parkin was charged with forgery (counts 40 and 53), conspiracy to commit forgery (count 46), embezzlement of public property (count 49), and attempt to influence a public official (count 50).

³⁴ The criminal complaints against Defendants and Huitt-Zollars report incorrectly spell this road as Monahan Road.

fraudulent invoice. Rhea, Russo, Gomez, and Parkin were charged criminally in relation to this scheme.³⁵ **Damages \$43,358.**

121. *Fraud 50: 4090-HR- Billed But No Work Completed.* The daily run sheets and Parkin's county logs claimed that 46,500 square yards of slurry seal was applied to 88th Avenue between Imboden Road and Denver International Airport. The detectives and a Huitt-Zollars engineer conducted separate site visits and each concluded that that the road had not been treated with slurry seal in 2007 or at any time since then. The amount invoiced by Quality Resurfacing and approved by Parkin for work that was never done caused the County \$35,340 in damages. Rhea and Russo fraudulently inflated the daily run sheets and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Rhea, Russo, Gomez, and Parkin were charged criminally in relation to this scheme.³⁶ **Damages \$35,340.**

122. *Fraud 51: 4090-HR- Billed But No Work Completed.* The final invoice 4090-HR fraud, the daily run sheets and Parkin's county logs claimed that 6,600 square yards of slurry seal

³⁵ Related to Fraud 49, Rhea was charged with theft (count 12), conspiracy to commit theft (count 18), and attempt to influence a public official (count 23). Russo was charged with theft (count 16), conspiracy to commit theft (count 22), attempt to influence a public official (count 26), and forgery (count 32). Gomez was charged with theft (count 23), conspiracy to commit theft (count 29), attempt to influence a public official (count 34), and embezzlement of public property (count 35). Parkin was charged with theft (count 38), conspiracy to commit theft (count 44), embezzlement of public property (count 49), attempt to influence a public official (count 50), and forgery (count 53).

³⁶ Related to Fraud 50, Rhea was charged with theft (count 13), conspiracy to commit theft (count 19), and attempt to influence a public official (count 23). Russo was charged with theft (count 18), conspiracy to commit theft (count 24), attempt to influence a public official (count 26), and forgery (count 32). Gomez was charged with theft (count 24), conspiracy to commit theft (count 30), attempt to influence a public official (count 34), and embezzlement of public property (count 35). Parkin was charged with theft (count 39), conspiracy to commit theft (count 45), embezzlement of public property (count 49), attempt to influence a public official (count 50), and forgery (count 53).

was applied to 77th Avenue between Pennsylvania Street and Washington Street. A Huitt-Zollars engineer conducted a site visit and found that the road had not been treated with slurry seal in 2007 or at any time since then. The amount invoiced by Quality Resurfacing and approved by Parkin for work that was never done caused the County \$5,016 in damages. This street was also outside of the scope of the contract and two change orders, and yet the phantom invoice was still approved by Parkin and Gomez. Rhea and Russo fraudulently inflated the daily run sheets and invoice. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. Rhea, Russo, Gomez, and Parkin were charged criminally in relation to this scheme.³⁷ **Damages \$5,016.**

123. *Fraud 52: Change Order #2- Strasburg Streets in “Dire Need of Slurry Seal” Funded and then Misappropriated.* Asay and Gomez first sought this change order for \$299,716.98 in a July 17, 2007 memorandum to County Administrator Robinson, requesting that the County reallocate the money from the chip seal to slurry seal program because Public Works could complete more streets that way. The two invoked the need for this work in Strasburg: “At this time, this would be a logical solution due to the *additional subdivisions in Strasburg that are in dire need of slurry seal*” (emphasis added). Asay and Gomez then sent a second memorandum on September 25, 2007, this time to Purchasing Agent Estrada, repeating their

³⁷ Related to Fraud 51, Rhea was charged with theft (count 15), conspiracy to commit theft (count 21), and attempt to influence a public official (count 23). Russo was charged with theft (count 14), conspiracy to commit theft (count 20), attempt to influence a public official (count 26), and forgery (count 32). Gomez was charged with theft (count 26), conspiracy to commit theft (count 32), attempt to influence a public official (count 34), and embezzlement of public property (count 35). Parkin was charged with theft (count 41), conspiracy to commit theft (count 47), embezzlement of public property (count 49), attempt to influence a public official (count 50), and forgery (count 51).

request to transfer the entire chip seal budget to slurry seal and claiming that the additional streets were included “to maintain the integrity of the roadways in the County.” Like past schemes, of the 89 streets added in Change Order #2, seven had already been contracted to be slurried under Change Order #1 to the 2007 Slurry Seal Program, which was only approved in August 2007, concurrent with Asay and Gomez seeking funding for the same streets in Change Order #2. Moreover, despite payment in full, there are no daily run sheets or county logs to document that any of the change order work was completed in 2007. That includes the streets in Strasburg in “dire need” of slurry, as well as the seven streets that the County paid for twice to have slurried yet were never done. Rhea and Russo fraudulently inflated the daily run sheets and invoice. In furtherance of the scheme, Asay and Gomez secured the funding for Change Order #2 in a July 17, 2007 memorandum to Robinson and a September 25, 2007 memorandum to Estrada. Gomez and Parkin inflated the county logs and ensured the County paid the fraudulent invoice. **Damages: \$299,716.98.**

124. In total, as a result of the fraudulent practices committed in connection with the 2007 Slurry Seal Program, the County was damaged in the amount of \$516,114.83. For all of the Quality Resurfacing projects analyzed by Huitt-Zollars and investigated by the Adams County Sheriff’s Office, the County was damaged in the amount of \$754,457.69. Combining the Quality Paving and Quality Resurfacing projects, the County was damaged in the amount of \$8,629,255.47.

d. The RICO Defendants Engaged in Extensive Mail Fraud in Violation of RICO

125. In order to defraud the County, the RICO Defendants engaged in a pattern of racketeering activity in violation of RICO, 18 U.S.C. § 1961 *et seq.*

126. Specifically, the RICO Defendants routinely engaged in mail fraud to further the scheme to defraud the County out of millions of dollars. The RICO Defendants used the mails by causing checks to be sent from the County to the Quality companies. These checks were only paid after Rhea, Coen, Russo, and Schimpf at the Quality companies and Asay, Gomez, and Parkin at Public Works had conspired to secure sole source contracts and change orders, inflate daily reports, daily run sheets, county logs, and invoices, submit invoices for work never completed, and then have those invoices approved and paid.

127. *Adams County Information Technology and Finance Department Mailing Policy.* It was and remains the policy of the County Finance Department to mail all checks unless otherwise indicated. The department documents if either of two alternative methods to mailing are used: (1) wire transfers, by stamping the invoice “wire transfer” and/or attaching the wire confirmation paperwork created by the transaction to the invoice; and (2) hand-pickup of the check, by maintaining a signout log of all checks that have been signed out to either a County employee or a vendor for pickup in person.

128. The following checks were not wire transferred or included in the signout log, and all bear indicia of having been mailed consistent with the County policy. Checks marked “bundled” reflect the practice of one check being paid to cover multiple invoices from multiple projects. The check amount may also have included invoices for projects not covered by the scope of the detectives and Huitt-Zollars’ investigation.

129. At least thirty-four checks were mailed to Quality Paving, totaling \$7,774,181.72. Although some of those funds were for other projects and for services properly rendered, much

of the money was for misbilled, overbilled, and fabricated invoices which were knowingly approved for payment as part of the fraudulent scheme.

Check #	Invoice(s) & Project(s)	Check Issued Date	Amount
491684 (bundled)	28407-DC Washington St.	11/2/2005	\$287,818.68
493526	28476-DC Washington St.	12/6/2005	\$159,917.24
493909 (bundled)	28537-DC Washington St.	12/9/2005	\$232,558.69
494719 (bundled)	28572-DC Washington St. 28567-DC York St.	12/27/2005	\$382,502.37
495038 (bundled)	28581-DC Washington St.	1/4/2006	\$93,351.84
495472 (bundled)	28595-DC Washington St 28590-DC York St.	1/11/2006	\$274,216.77
495851 (bundled)	28612-DC York St. 28609-DC Washington St.	1/18/2006	\$319,254.75
496182 (bundled)	28627-DC Washington St. 28625-DC York St.	1/25/2006	\$272,843.01
496567 (bundled)	28639-DC Washington St.	1/31/2006	\$211,366.30
497298 (bundled)	28647-DC York St. 28646-DC Washington St.	2/9/2006	\$96,952.86
497622 (bundled)	28661-DC Washington St. 28660-DC York St.	2/15/2006	\$210,006.29
497241 (bundled)	28694-DC York St. 28693-DC Washington St.	2/22/2006	\$175,697.57
498432 (bundled)	28705-DC York St 28702-DC Washington St.	3/3/2006	\$308,507.21
498822	28718-DC York St.	3/9/2006	\$34,238.23
499483	28746-DC York St.	3/23/2006	\$62,363.13
499788 (bundled)	28755-DC 2006 Paving 28754-DC York St. 28753-DC Washington St.	3/28/2006	\$513,161.33
500310 (bundled)	28763-DC 2006 Paving 28762-DC Washington St.	4/5/2006	\$189,278.16
500861 (bundled)	28770-DC 2006 Paving 28769-DC York St. 28768-DC Washington St.	4/13/2006	\$353,611.54
501317	28786-DC Washington St.	4/21/2006	\$130,966.78

501951 (bundled)	28810-DC Washington St. 28804-DC 2006 Paving 28803-DC Washington St.	5/3/2006	\$296,807.33
502317 (bundled)	28817-DC York St. 28816-DC Washington St. 28815-DC 2006 Paving	5/10/2006	\$168,712.68
502527	28818-DC 64 th Ave.	5/12/2006	\$166,641.85
502689 (bundled)	28834-DC 2006 Paving 28833-DC Washington St. 28832-DC 64 th Ave.	5/17/2006	\$147,404.92
503065 (bundled)	28855-DC Washington St. 28840-DC 64 th Ave.	5/23/2006	\$119,185.22
504437 (bundled)	28903-DC 64 th Ave. 28902-DC York St. 28898-DC 2006 Paving 28897-DC Washington St. 28884-DC 64 th Ave. 28883-DC York St. 28882-DC Washington St. 28881-DC 2006 Paving	6/16/2006	\$625,190.74
504599 (bundled)	28919-DC 2006 Paving 28917-DC 64 th Ave. 28916-DC Washington St.	6/21/2006	\$185,206.00
504685	28918-DC York St.	6/22/2006	\$16,780.93
504929 (bundled)	28936-DC Washington St. 28935-DC York St. 28934-DC 64 th Ave. 28933-DC 2006 Paving	6/28/2006	\$210,841.43
505662 (bundled)	28952-DC 2006 Paving 28951-DC Washington St.	7/10/2006	\$117,129.50
505720	28953-DC 64 th Ave.	7/11/2006	\$102,876.18
505914 (bundled)	28976-DC 2006 Paving 28975-DC Washington St. 28974-DC York St. 28973-DC 64 th Ave.	7/14/2006	\$601,560.64
506039 (bundled)	28995-DC 64 th Ave. 28994-DC Washington St. 28993-DC 2006 Paving	7/18/2006	\$180,070.89
506938 (bundled)	29018-DC 64 th Ave. 29017-DC Washington St.	8/1/2006	\$200,256.18
507148 (bundled)	29004-DC 64 th Ave. 29003-DC 2006 Paving 29002-DC Washington St.	8/3/2006	\$326,904.48

130. Four checks were mailed to Quality Resurfacing, totaling \$231,836.15.

Check #	Invoice & Project	Check Issued Date	Check Amount
501842	3673-HR 2006 Resurfacing	5/2/2006	\$23,661.36
501952	3686-HR 2006 Resurfacing	5/2/2006	\$8,920.80
503481	3670-HR 2006 Resurfacing	5/31/2006	\$92,556.83
504438	3674-HR 2006 Resurfacing	6/16/2006	\$106,697.16

131. In addition to the thirty-eight checks sent to the Quality companies at the behest of the Public Works Defendants as part of the fraudulent scheme, the Public Works Defendants also had mailed to the Quality companies at least twelve signed contracts, contract addenda, and purchase agreements in furtherance of the scheme. These contracts and contract addenda enabled the RICO Defendants to maintain a continued string of County paving and resurfacing projects, worth approximately \$25 million, which the RICO Defendants could exploit for misbilled, overbilled, and fabricated invoices which were knowingly approved for payment. These mailings include:

a. On September 23, 2005, Purchasing Agent Estrada mailed to Rhea an application to add the Colorado Department of Transportation as an additional insured on Quality Paving's certificate of insurance, a condition of permit approval for the Washington Street Phase II project.

b. On October 18, 2005, Purchasing Agent Estrada mailed to Rhea a letter attaching the purchase order, the County document created by approval of a public contract, for the Washington Street Phase II project. Estrada's letter also references her separate mailing the week before of the fully executed contract for the same project.

c. On March 17, 2006, Purchasing Agent Baca mailed to Rhea the signed, original contract for the 2006 Paving Program.

- d. Separately, on March 17, 2006, Purchasing Agent Baca mailed to Rhea the signed, original contract and purchase order for the 2006 Pavement Seal Program.
- e. On May 9, 2006, Purchasing Agent Estrada mailed to Rhea four copies of addendum #1 to the York Street contract which required Rhea's signature.
- f. On June 6, 2006, Purchasing Agent Estrada mailed to Rhea a fully executed addendum #1 to the York Street contract.
- g. On August 15, 2006, Purchasing Agent Estrada mailed to Rhea four copies of addendum #2 to the York Street contract which required Rhea's signature.
- h. On September 28, 2006, Purchasing Agent Estrada mailed to Rhea the signed, original contract and purchase order for the 120th Avenue project.
- i. On October 25, 2006, Purchasing Agent Estrada mailed to Rhea the signed second addendum to the 64th Avenue contract (reflecting change order #3) and accompanying purchase order.
- j. On March 29, 2007, Purchasing Agent Estrada mailed to Rhea the signed, original contract for the 2007 Paving Program.
- k. Separately, on March 29, 2007, Purchasing Agent Estrada mailed to Rhea the signed, original contract and purchase order for the 2007 Pavement Seal Program.
- l. On October 24, 2007, Purchasing Agent Estrada mailed to Rhea the signed addendum to the 2007 Paving Program contract (reflecting change order #1) as well as the signed addendum to the 2007 Pavement Seal Program contract (reflecting change order #2).

132. Each of the fifty uses by the RICO Defendants of the mails detailed in this Complaint constitutes a predicate act of mail fraud in furtherance of the scheme to defraud the County.

e. Beyond Mail Fraud, the RICO Defendants Engaged in Additional Criminal Acts in Violation of COCCA

133. In order to defraud the County, the RICO Defendants engaged in a pattern of racketeering activity in violation of the Colorado Organized Crime Control Act (“COCCA”), Colo. Rev. Stat. § 18-17-101 *et seq.*

134. Beyond the above fifty instances of mail fraud, there were multiple other acts which constituted a pattern of racketeering activity in violation of COCCA. For hundreds of these acts, Defendants have been charged criminally. These racketeering acts include:

135. *Theft.* Multiple Defendants were charged with theft and conspiracy to commit theft, in violation of Colo. Rev. Stat. § 18-4-401. Those defendants and counts include:

a. Gomez: Counts 1-2, 6-11, 14-19, 22-33, 36-69.

b. Parkin: Counts 1-8, 37-48, 55-56.

c. Rhea: Counts 1-6, 8-9, 11-22

d. Coen: Counts 1-6, 14-41.

e. Russo: Counts 1-12, 14-25.

f. Schimpf: Counts 1-6.

g. Although not charged criminally with theft, Asay conspired to steal millions of dollars from the County by securing sole source contracts for Quality Paving and Resurfacing that would result in the County being overbilled and charged for work that was not

complete. Asay also conspired to steal County funds by sending memoranda to secure lucrative, often completely fraudulent change orders. Asay also ensured payments for fraudulent invoices were made promptly by the County to Quality Paving and Quality Resurfacing.

136. *Forgery.* Multiple Defendants were charged with forgery, in violation of Colo. Rev. Stat. § 18-5-102. Those defendants and counts include:

- a. Gomez: Count 3.
- b. Parkin: Counts 11-36, 51-54, 57.
- c. Coen: Count 7-12, 42-61.
- d. Russo: Counts 27-33.
- e. Schimpf: Counts 9-34.

f. Although not charged criminally with forgery, Rhea had final authority on all fraudulent invoices submitted by the Quality companies and exercised tight control over the operation of his companies such that all inflated daily logs, daily run sheets, and invoices created by Coen, Russo, and Schimpf would only have been created and sent to the County under Rhea's direction.

g. Although not charged criminally with forgery, Asay, with Gomez, authored numerous memoranda which secured funding for change orders that were at best vague and unclear and at worst were completely fabricated, such as change order #2 to slurry seal the streets in "dire need" in Strasburg that was invoiced when no work was completed.

137. *Attempt to Influence a Public Official.* Multiple Defendants were charged with attempt to influence a public official, in violation of Colo. Rev. Stat. § 18-8-306. Those defendants and counts include:

- a. Gomez: Counts 4, 12, 20, 34, 70.
- b. Parkin: Counts 10, 50, 58.
- c. Rhea: Counts 7, 10, 23.
- d. Coen: Counts 13 and 62.
- e. Russo: Counts 13 and 26.
- f. Schimpf: Counts 7 and 8.
- g. Although Asay has not been charged criminally, his actions in attempting

to influence a public official mirror those of Gomez. An example is his forced cancellation and reissue of check number 507966 by the County Finance Department for \$321,642.86 to Quality Paving so that it could be picked up by Gomez in person and hand delivered that day to Quality Paving. This incident was discussed in more detail in paragraph 41, *supra*. Asay also influenced County employees, including those within his department like Parkin and Permit Specialist Archuleta as well as those in other departments like Purchasing Agent Estrada, to accept and pay fraudulent invoices sent by the Quality companies.

138. As an example of Asay's influence even among his co-conspirators, Purchasing Agent Estrada on January 23, 2007, wrote an email to remind Gomez to review and approve Invoice 29353-DC for \$143,898.30 for the 120th Avenue project. Estrada had emailed Gomez twice already, on January 18 and 19, 2007, asking for his approval of this invoice and had heard nothing. On January 23, Estrada wrote Gomez for a third time: "Sam I have this invoice on my desk. Have you approved it yet? Just following up before Rich [Information Technology and Finance Director Lemke] gets a call from Quality or Lee." Gomez approved of the invoice nineteen minutes after Estrada sent this email invoking Asay.

139. *Criminal Possession of a Forged Instrument.* Although not charged criminally with this crime, every defendant knowingly possessed forged daily logs, daily run sheets, county logs, and invoices and used them to defraud the County, and thus committed this crime as well. See Colo. Rev. Stat. § 18-5-105.

140. *Computer Crime.* Although not charged criminally with this crime, every defendant accessed the computer or computer network in multiple ways to execute or devise the scheme to defraud, in violation of Colo. Rev. Stat. § 18-5.5-102(1)(b). For example:

a. Asay used a computer, sometimes through his assistant Pat Bishop, to secure the sole source contracts and change orders to fund this fraudulent scheme.

b. Gomez used a computer to compose and send memoranda requesting fraudulent change orders. Gomez also used his email to approve hundreds of fraudulent invoices for payment and communicate with Rhea and Coen as to fraudulent invoices, contracts, and change orders. He also used his email to communicate with Parkin regarding fraudulent county logs.

c. Parkin used her email to communicate with Russo, Schimpf, and Gomez about fraudulent daily logs, daily run sheets, county logs, and invoices. Parkin also used her computer to create fraudulent county logs.

d. Rhea used a computer, or had others like Coen, Russo, and Schimpf use a computer at his direction, to artificially inflate daily logs, daily run sheets, and invoices for the Quality companies.

e. Coen used a computer to compose requests for fraudulent change orders and to create fraudulent invoices for Quality Paving projects. Coen also emailed Gomez these fraudulent change order requests.

f. Russo used a computer to conspire with Rhea to artificially inflate daily logs, daily run sheets, and invoices for Quality Resurfacing and email them to Parkin.

g. Schimpf used a computer to create fraudulent daily logs for Quality Resurfacing projects and email them to Parkin.

FIRST CLAIM FOR RELIEF

Violation of RICO under 18 U.S.C. § 1962(c)

(Against the RICO Defendants)

141. Adams County incorporates all allegations contained in this Complaint as if fully set forth herein.

142. The County is a “person” under 18 U.S.C. §§ 1961(3) and 1964(c).

143. Each of the RICO Defendants is a “person” under 18 U.S.C. §§ 1961(3) and 1962(c).

144. The Department of Public Works, Quality Paving, and Quality Resurfacing were a group of persons associated in fact for the common purposes of constructing, improving, and/or repairing roadways pursuant to the Adams County Roadway Construction and Resurfacing Programs and of conducting the fraudulent scheme described in this Complaint: namely, fraudulently misbilling, overbilling, and fabricating completed work, daily run sheets, daily logs, county logs, invoices, contracts, and change orders, and then knowingly approving the invoices for payment by the County. As a result, the Department of Public Works, Quality Paving, and

Quality Resurfacing constitute an association-in-fact enterprise within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) (the “RICO Enterprise”).

145. During all relevant times, the RICO Enterprise was engaged in and its activities affected interstate commerce, including Interstates 76 and 270 and Denver International Airport.

146. As detailed in this Complaint, all of the Defendants were each employed by and/or associated with the RICO Enterprise.

147. Each of the RICO Defendants knowingly conducted and/or participated in the conduct of the RICO Enterprise’s affairs, as described in this Complaint, through a pattern of racketeering activity, as that phrase is defined in 18 U.S.C. § 1961(1), (5). Each of the RICO Defendants participated in the operation and/or management of the RICO Enterprise, either within its upper management, in the case of Defendants Asay, Gomez, Rhea, and Coen, or in knowingly implementing the decisions made by upper management, in the case of Defendants Parkin, Russo, and Schimpf.

148. The pattern of racketeering activity consisted of at least fifty acts of mail fraud in violation of 18 U.S.C. § 1341. Specifically, the RICO Defendants engaged in an intentional scheme to defraud the County and to obtain money or property from the County through false or fraudulent pretenses, representations, and promises.

149. For the purpose of furthering and executing the scheme to defraud, the RICO Defendants regularly caused matters and things to be placed in a post office or authorized depository, or deposited or caused to be deposited matters or things to be sent or delivered by the United States Postal Service. The details of the mailings are set forth above in paragraphs 125 to

132, *supra*. The fifty mailings detailed in this Complaint each constitute a predicate act of mail fraud because each mailing furthered and executed the scheme to defraud the County.

150. The RICO Defendants used the mails on a regular basis for the above stated purposes to further and execute the scheme to defraud the County. For example, every time RICO Defendants at the Quality companies—Rhea, Coen, Russo, and Schimpf—sent a fraudulent invoice to the County and schemed to have it approved for payment, RICO Defendants within Public Works—Asay, Gomez, and Parkin—caused the County to mail a check for the fraudulent amount to Defendants. In addition, the RICO Defendants mailed or caused to be mailed contracts and contract addenda from the County to the Quality companies, when those contracts and contract addenda provided the approximately \$25 million budget from which the RICO Defendants siphoned funds. It was reasonably foreseeable to each RICO Defendant that the United States mails would be used in furtherance of the scheme, and the mails were in fact used on at least fifty occasions between September 2005 and October 2007 to further and execute the scheme to defraud.

151. The predicate acts of mail fraud constitute a pattern of racketeering activity as defined in 18 U.S.C. § 1961(5). The predicate acts were not isolated events, but related acts aimed at the common purpose and goal of inducing the County to issue payment for misbilled, overbilled, and fabricated invoices. All of these predicate acts were related to the fraudulent scheme made pursuant to the Adams County Paving and Resurfacing Programs and each RICO Defendant was a common participant in the predicate acts, while the County and its citizens were the common victims.

152. Each of the RICO Defendants participated in the scheme to defraud knowingly, willfully, and with the specific intent to defraud the County into paying fraudulent invoices. Those fifty-two instances of fraud have been detailed in paragraphs 32 to 124, *supra*, and form the basis of hundreds of criminal charges filed against Defendants Gomez, Parkin, Rhea, Coen, Russo, and Schimpf.

153. The RICO Defendants' scheme to defraud the County and its citizens extended over a period of at least two and one-half years, from 2005 through 2008. The predicate acts, which stretched over two years from September 2005 to October 2007, were the RICO Enterprise's manner of conducting its business and posed a threat of continuing racketeering activity, but for the Denver media uncovering the kickbacks paid to Asay and Gomez by Rhea on behalf of the Quality companies and the subsequent retirement of Asay and involuntary leave of Gomez.

154. As a direct and proximate result of the RICO Defendants' violation of 18 U.S.C. § 1962(c), the County has been injured in its business or property within the meaning of 18 U.S.C. § 1964(c). These injuries, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*.

155. As a result of their misconduct, the RICO Defendants are jointly and severally liable to the County for its losses, in an amount to be determined at trial.

156. In addition, pursuant to 18 U.S.C. § 1964(c), the County is entitled to recover threefold its damages plus costs and attorney fees from the RICO Defendants.

SECOND CLAIM FOR RELIEF

Conspiracy to Violate RICO under 18 U.S.C. § 1962(d)

(Against the RICO Defendants)

157. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

158. Each of the RICO Defendants conspired to violate 18 U.S.C. § 1962(c) by agreeing to conduct and participate, directly or indirectly, in the conduct of the affairs of the RICO Enterprise through a pattern of racketeering activity. This agreement was in violation of 18 U.S.C. § 1962(d).

159. The RICO Defendants committed and caused to be committed a series of overt predicate acts of racketeering in furtherance of the conspiracy, including but not limited to the acts described in this Complaint.

160. As a direct and proximate result of the overt predicate acts of racketeering and of the RICO Defendants' violation of 18 U.S.C. § 1962(d), the County has been injured in its business or property within the meaning of 18 U.S.C. § 1964(c). These injuries, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*.

161. As a result of their conspiracy in violation of 18 U.S.C. § 1962(d), the RICO Defendants are jointly and severally liable to the County for its losses, in an amount to be determined at trial.

162. In addition, pursuant to 18 U.S.C. § 1964(c), the County is entitled to recover threefold its damages plus costs and attorney fees from the RICO Defendants.

THIRD CLAIM FOR RELIEF

Violation of COCCA under Colo. Rev. Stat. § 18-17-104(3)

(Against the RICO Defendants)

163. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

164. The County is a “person” as defined in Colo. Rev. Stat. §§ 18-17-103(4) and 106(7).

165. Each of the RICO Defendants is a “person” under Colo. Rev. Stat. §§ 18-17-103(4) and 104(3).

166. The Department of Public Works, Quality Paving, and Quality Resurfacing, as the RICO Enterprise, were a group of persons associated in fact for the common purposes of constructing, improving, and/or repairing roadways pursuant to the County Roadway Construction and Resurfacing Programs and of conducting the fraudulent scheme described in this Complaint: namely, fraudulently misbilling, overbilling, and fabricating completed work, daily logs, daily run sheets, county logs, invoices, contracts, and change orders, and then knowingly approving the invoices for payment by the County. As a result, the Department of Public Works, Quality Paving, and Quality Resurfacing constitute an association-in-fact enterprise within the meaning of Colo. Rev. Stat. §§ 18-17-103(3) and 104(3).

167. As detailed in this Complaint, all of the RICO Defendants were each employed by and/or associated with the RICO Enterprise.

168. Each of the RICO Defendants knowingly conducted and/or participated in the conduct of the Paving Enterprise’s affairs, as described in this Complaint, through a pattern of racketeering activity, as that phrase is defined in Colo. Rev. Stat. §§ 18-17-103(3) and 104(3).

The pattern of racketeering activity consisted of mail fraud (18 U.S.C. § 1341), forgery (Colo. Rev. Stat. § 18-5-102), theft (Colo. Rev. Stat. § 18-4-401), attempt to influence a public official (Colo. Rev. Stat. § 18-8-306), criminal possession of a forged instrument (Colo. Rev. Stat. § 18-5-105), and computer crime (Colo. Rev. Stat. § 18-5.5-102(1)(b)), as defined in Colo. Rev. Stat. §§ 18-17-103(5) and 104(3). Specifically, the Defendants engaged in an intentional scheme to defraud the County and to obtain money or property from the County through false or fraudulent pretenses, representations, and promises. These predicate acts are described in paragraphs 125 to 139 and 147 to 153, *supra*.

169. Each of the RICO Defendants participated in the scheme to defraud knowingly, willfully, and with specific intent to induce the County into paying fraudulent invoices.

170. Each of the hundreds of instances of mail fraud, theft, forgery, attempt to influence a public official, criminal possession of a forged instrument, and computer crime detailed in this Complaint constitutes a predicate act of racketeering activity because each act furthered and executed the scheme to defraud the County.

171. The predicate acts of mail fraud constitute a pattern of racketeering activity as defined in Colo. Rev. Stat. §§ 18-17-103(3) and -104(3). The predicate acts were not isolated events, but related acts, which took place in Colorado, aimed at the common purpose and goal of inducing the County to issue payment for misbilled, overbilled, and fabricated invoices. All of these predicate acts were related to the fraudulent scheme made pursuant to the Adams County Paving and Resurfacing Programs and each RICO Defendant was a common participant in the predicate acts, while the County and its citizens were the common victims.

172. The RICO Defendants' scheme to defraud the County and its citizens extended over a period of at least two and one-half years, from 2005 through 2008. Those fifty-two instances of fraud have been detailed in paragraphs 32 to 124, *supra*, and form the basis of hundreds of criminal charges filed against Defendants Gomez, Parkin, Rhea, Coen, Russo, and Schimpf.

173. As a direct and proximate result of the RICO Defendants' violation of Colo. Rev. Stat. § 18-17-104(4), the County has been injured in its business or property within the meaning of Colo. Rev. Stat. § 18-17-106 (7). These damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*.

174. As a result of their misconduct, the RICO Defendants are jointly and severally liable to the County for its damages, in an amount to be determined at trial.

175. In addition, pursuant to Colo. Rev. Stat. § 18-17-106(7), the County is entitled to recover threefold its damages plus costs and attorney fees from the RICO Defendants.

FOURTH CLAIM FOR RELIEF

Conspiracy to Violate COCCA under Colo. Rev. Stat. § 18-17-104(4)

(Against the RICO Defendants)

176. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

177. Each of the RICO Defendants conspired to violate Colo. Rev. Stat. § 18-17-104(3) by agreeing to conduct and participate, directly or indirectly, in the conduct of the affairs of the RICO Enterprise through a pattern of racketeering activity. This agreement was in violation of Colo. Rev. Stat. § 18-17-104(4).

178. The RICO Defendants committed and caused to be committed a series of overt predicate acts of racketeering in furtherance of the conspiracy, including but not limited to the acts described in this Complaint.

179. As a direct and proximate result of the overt predicate acts of racketeering and of the RICO Defendants' violation of Colo. Rev. Stat. § 18-17-104(4), the County has been injured within the meaning of Colo. Rev. Stat. § 18-17-106(7).

180. As a result of their conspiracy in violation of Colo. Rev. Stat. § 18-17-104(4), the RICO Defendants are liable to the County for its losses, in an amount to be determined at trial. These damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*.

181. In addition, pursuant to Colo. Rev. Stat. § 18-17-106(7), the County is entitled to recover threefold its damages plus costs and attorney fees from the RICO Defendants.

FIFTH CLAIM FOR RELIEF

Actual Fraud

(Against all Defendants)

182. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

183. The Defendants defrauded and deceived the County through a series of false representations related to misbilling, overbilling, and fabricating completed work, daily logs, daily run sheets, invoices, contracts, and change orders, and then knowingly approving the invoices for payment by the County. These fifty-two frauds, as investigated by Detectives Miles and Whytock and Huitt-Zollars Engineering, are detailed in paragraphs 32 to 124, *supra*.

184. At the time the Defendants made the false representations to the County, specifically to County officials who were not involved in the fraudulent scheme, the County did not know that these representations were false and fraudulent.

185. These false representations were material to the County's decision to contract with the Quality companies to complete the County's paving and resurfacing projects, approve change orders, pay the companies for misbilled, overbilled, and fraudulent invoices, and retain the services of the corrupt Public Works Defendants. Had the County known that these representations were not true, it would not have awarded the Quality companies paving and resurfacing contracts, approved change orders, paid fraudulent invoices, and continued to employ the corrupt Public Works Defendants.

186. The Defendants made the false representations knowing them to be false or being aware that they did not know whether the representations were true or false. Defendants knew that the amounts invoiced and the change orders requesting additional funds were fraudulent.

187. The Defendants willfully and consciously disregarded the truth of these false representations.

188. The Defendants made the false representations with the intent that the County would rely on the false representations. For example, Asay and Gomez recommended change orders be approved for fraudulent work, Parkin used Schimpf's fraudulent daily reports figures in her county logs, and Gomez approved payment of fraudulent invoices submitted by the Quality companies' Rhea, Coen, and Russo. At all times, the Defendants knew that their actions would be relied upon by the Board of County Commissioners and other County officials.

189. The County relied on the Defendants' false representations by, *inter alia*, awarding the Quality companies \$25 million in paving and resurfacing contracts and change orders, paying fraudulent invoices, and employing the Public Works Defendants. The County would not have paid for these services and retained the Public Works Defendants had the County known the truth about the Defendants' fraudulent scheme.

190. The County's reliance was reasonable and justified, and it had a right to rely on the false representations.

191. As a direct and proximate result of the Defendants' false representations, and the County's reliance on those false representations, the County suffered damages in an amount to be determined at trial. Those damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*, as well as the amount of salary paid to the Public Work Defendants which would not have been paid had the County known of their corruption. The Defendants are jointly and severally liable for the County's losses.

SIXTH CLAIM FOR RELIEF

Constructive Fraud

(Against the Public Works Defendants)

192. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

193. In the alternative, if the Public Works Defendants did not actively defraud the County, their breaches of fiduciary duty to the County and their preference for their own interests over the County's interests constitute constructive fraud. Specifically, as described in the Breach of Fiduciary Duty claim which follows, Defendants Asay, Gomez, and Parkin owed fiduciary duties to the County, were responsible for ensuring that the work billed, supplies used, and

change orders requested were accurate and truthful, breached their fiduciary duties of care and loyalty to the County, and thereby injured the County.

194. As a direct and proximate result of the Public Works Defendants' constructive fraud, the County suffered damages in an amount to be determined at trial. Those damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*, as well as the amount of salary paid to the Public Works Defendants which would not have been paid had the County known of their corruption. The Public Works Defendants are jointly and severally liable for the County's losses.

SEVENTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

(Against the Public Works Defendants)

195. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

196. At all times relevant to the events detailed in this Complaint, Defendants Asay, Gomez, and Parkin were employees of the Public Works Department of the County.

197. As employees of Public Works, Defendants Asay, Gomez, and Parkin were fiduciaries of the County and had duties of care and loyalty to the County.

198. Defendants Asay, Gomez, and Parkin breached their fiduciary duties of care and loyalty to the County by, among other acts:

a. actively participating in the fraudulent scheme described in this Complaint;

b. securing the County's funding of contracts and change orders for the Quality companies while participating in the fraudulent scheme to embezzle money from those County contracts;

c. creating county logs and approving invoices despite knowing they were fraudulently misbilled, overbilled, and fabricated;

d. approving substandard work and conspiring to embezzle money from the County while leaving needy County roadways unpaved and unsealed; and

e. committing or conspiring to commit the hundreds of instances of mail fraud, forgery, theft, embezzlement, attempt to influence a public official, criminal possession of a forged instrument, and computer crime, which are described in the Complaint and the basis for numerous criminal charges against Gomez and Parkin.

199. As a direct and proximate result of the Public Works Defendants' breaches of their fiduciary duties of care and loyalty, the County has suffered damages in an amount to be determined at trial. Those damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*, as well as the amount of salary paid to the Public Works Defendants which would not have been paid had the County known of their corruption. The Public Works Defendants are jointly and severally liable for the County's losses.

EIGHTH CLAIM FOR RELIEF

Aiding and Abetting Breach of Fiduciary Duty

(Against the Quality Defendants)

200. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

201. As set forth in the preceding Breach of Fiduciary Claim, the Public Works Defendants owed fiduciary duties of care and loyalty to the County, breached those fiduciary duties to the County in directing and participating in the fraudulent scheme described in this Complaint, and thereby injured the County.

202. The Quality Defendants knew of the Public Works Defendants' actions and conduct and knew that it constituted a breach of the Public Works Defendants' fiduciary duties.

203. The Quality Defendants substantially assisted and encouraged the Public Works Defendants in the conduct that constituted a breach of their fiduciary duties to the County, as evidenced by the following, non-exhaustive, list:

- a. conspiring with the Public Works Defendants in securing contracts and change orders from which to embezzle funds based on false claims;
- b. conspiring with the Public Works Defendants to create fraudulent daily logs, daily run sheets, and invoices; and
- c. conspiring with the Public Works Defendants to determine which projects would not be completed but nevertheless invoiced.

204. As a direct and proximate result of the breach of fiduciary duties and the Quality Defendants' participation in the breach, the County suffered damages in an amount to be determined at trial. Those damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*. The Quality Defendants are jointly and severally liable for the County's losses.

NINTH CLAIM FOR RELIEF

Fraudulent Concealment

(Against all Defendants)

205. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

206. The Defendants knowingly and intentionally concealed and failed to disclose material facts relating to the scheme to misbill, overbill, and fabricate completed work, daily logs, daily run sheets, county logs, invoices, contracts, and change order requests, and then knowingly approving the invoices for payment by the County, although they knew the County was relying upon the Defendants for the true facts about these documents related to the Quality companies' work for the County. Specifically, the Defendants concealed and failed to disclose the fifty-two frauds detailed in paragraphs 32 to 124, *supra*.

207. The Defendants concealed and failed to disclose material facts relating to their fraudulent scheme with the intent of creating a false impression of the actual facts in the mind of the County, namely, creating the false impression that the County was receiving the work for which it contracted and paid the Quality companies millions of dollars a year.

208. The Defendants concealed and failed to disclose the material facts related to their fraudulent scheme with the intent that the County would take a course of action it would not have taken if it had known the actual facts, namely, to continue to employ the Public Works Defendants, award paving and resurfacing contracts to the Quality companies, and pay invoices submitted by the two companies and approved by the Public Works Defendants.

209. The County took such action of continuing to employ the Public Works Defendants, award paving and resurfacing contracts to the Quality companies, and pay invoices

submitted by the two companies and approved by the Public Works Defendants because the County relied on the assumption that the concealed and undisclosed facts of the Defendants' fraudulent scheme did not exist or were different from what they actually were.

210. The County acted and reasonably relied upon the concealment of those material facts to its detriment.

211. As a direct and proximate result of the Defendants' fraudulent concealments and nondisclosures, the County suffered damages in an amount to be determined at trial. Those damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*. The Defendants are jointly and severally liable for the County's losses.

TENTH CLAIM FOR RELIEF

Civil Conspiracy

(Against all Defendants)

212. The County incorporates all allegations contained in this Complaint as fully set forth herein.

213. The Defendants each knowingly and willfully conspired and agreed to engage in the scheme to defraud described in this Complaint.

214. The Defendants committed and caused to be committed one or more overt and unlawful acts in furtherance of the conspiracy, including but not limited to the 52 frauds described in paragraphs 32 to 124, *supra*, as well as the hundreds of predicate acts described in paragraphs 125 to 139, *supra*.

215. As a direct and proximate result of the Defendants' conspiracy to commit fraud, the County suffered damages in an amount to be determined at trial. Those damages, totaling

\$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in 32 to 124, *supra*. The Defendants are jointly and severally liable for the County's losses.

ELEVENTH CLAIM FOR RELIEF

Aiding and Abetting Fraud

(Against all Defendants)

216. The County incorporates all allegations contained in this Complaint as if fully set forth herein.

217. Each Defendant knew about the scheme used to defraud the County that is described in this Complaint.

218. Each Defendant actively participated in the scheme to defraud by knowingly providing encouragement and substantial assistance in perpetration of the fraud, as described in this Complaint.

219. As a direct and proximate result of the Defendants' encouragement and substantial assistance in perpetration of the fraud, the County suffered damages in an amount to be determined at trial. Those damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*. The Defendants are jointly and severally liable for the County's losses.

TWELFTH CLAIM FOR RELIEF

Breach of Contract

(Against the Public Works Defendants)

220. At all times relevant to this Complaint, a valid contract existed between the County and each of the Public Works Defendants.

221. The County performed under the contracts by paying Defendants Asay, Gomez, and Parkin according to the terms of these contracts.

222. Defendants Asay, Gomez, and Parkin each breached their contract with the County by not performing or carrying out their duties according to the terms of the contracts. Specifically, Defendants Asay, Gomez, and Parkin directed and participated in the fraudulent scheme described in this Complaint.

223. As a result of Public Works Defendants' breaches, the County suffered damages in an amount to be determined at trial. These damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*.

THIRTEENTH CLAIM FOR RELIEF

Breach of Contract

(Against Quality Paving and Quality Resurfacing)

224. At all times relevant to this Complaint, valid contracts existed between the County and each of the Defendants Quality Paving and Quality Resurfacing.

225. The County performed under the contracts by paying Quality Paving and Quality Resurfacing according to the terms of the contracts.

226. Defendant Quality Paving breached its contracts with the County by not performing or carrying out its duties according to the terms of the contracts. By overbilling, misbilling, and fabricating invoices for payment by the County as part of a fraudulent scheme perpetrated by the Defendants, Quality Paving breached the terms of its contracts with the County for Washington Street Phase II, York Street, 64th Avenue, 120th Avenue, the 2006 Paving Program, and the 2007 Paving Program.

227. Defendant Quality Resurfacing breached its contracts with the County by not performing or carrying out its duties according to the terms of the contracts. By overbilling, misbilling, and fabricating invoices for payment by the County as part of a fraudulent scheme

perpetrated by the Defendants, Quality Resurfacing breached the terms of its contracts with the County for the 2006 and 2007 resurfacing programs.

228. As a result of the Quality companies' breaches, the County suffered injuries, damages or losses in an amount to be determined at trial. These damages, totaling \$8,629,255.47 known at this time, are detailed in Frauds 1 through 52 in paragraphs 32 to 124, *supra*.

PRAYER FOR RELIEF

WHEREFORE, Adams County seeks the following remedies:

- 1) Damages in an amount to be proven at trial, including but not limited to compensatory and consequential damages;
- 2) Treble damages under RICO, 18 U.S.C. § 1964(c) and COCCA, Colo. Rev. Stat. § 18-17-106(7);
- 3) Restitution;
- 4) The imposition of a constructive trust on all monies provided by the County to the Defendants and all assets acquired with such funds;
- 5) For the first eleven claims for relief, joint and several liability imposed for the damages caused by their actions;
- 6) Attorney fees and costs incurred in prosecuting this action;
- 7) Pre-judgment and post-judgment interest as provided by statute;
- 8) Additional and/or alternative relief as the Court may deem to be just, equitable and appropriate.

Plaintiff hereby demands a Trial by Jury on all claims as allowed by law.

DATED: August 25, 2011

REILLY POZNER LLP

By: s/ Larry S. Pozner
Larry S. Pozner
lpozner@rplaw.com

s/ Caleb Durling
Caleb Durling
cdurling@rplaw.com
REILLY POZNER LLP
1900 16th Street, Suite 1700
Denver, Colorado 80202
Tel.: (303) 893-6100
Fax: (303) 893-6110

*Counsel for the Board of County
Commissioners of the County of Adams
County*