

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

State of Indiana, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. : 3:04-CV-0506
	)	
Robert A. Pastrick, et al.	)	
	)	
Defendants.	)	

**PLAINTIFFS 801(d)(2)(E) PROFFER**

Plaintiffs, by and through Special Deputy Attorneys General Patrick M. Collins and Joel R. Levin and Deputy Attorney General David A. Arthur, submit the following Rule 801(d)(2)(E) "*Santiago*" proffer. The purpose of this proffer is to preview the foundation necessary to offer statements admissible pursuant to Federal Rule of Evidence 801(d)(2)(E) prior to the completion of the full evidentiary foundation for admissions. The Plaintiffs move this court to consider this information as an outline of some of the evidence that supports admission of these statements based on the existence of a racketeering conspiracy by defendants Robert A. Pastrick, James Harold Fife III, other elected and appointed officials of the City of East Chicago, their hand-picked contractors and other associates. The racketeering conspiracy involved a scheme to violate federal and state laws by illegally using public funds for sidewalk paving and tree trimming, which scheme was designed to buy votes in defendant Pastrick's hotly contested mayoral primary election in the spring of 1999 and reward contractors who were performing political work to assist Pastrick in his 1999 re-election effort.

This Proffer does not detail every statement made in furtherance of the racketeering conspiracy, nor does it list every witness to be called or exhibit to be offered as part of the trial, but rather, highlights for the Court examples of the evidence and categories of statements that will be presented so that the Court will have a sufficient foundation for making a preliminary finding as to the existence of the conspiracy to allow the introduction of co-conspirator statements.

## **I. GOVERNING LAW**

Rule 801(d)(2)(E) of the Federal Rules of Evidence provides that a “statement” is not hearsay if it is “offered against a party” and is a “statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.” Admission of such co-conspirator statements against a defendant is proper where it is established, by a preponderance of the evidence, that there was a conspiracy, that the defendants were members of the conspiracy, and that the statements were made during the course of the conspiracy and in furtherance of it. See *Bourjaily v. United States*, 483 U.S. 171, 175 (1987); see also *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978). In this circuit, the preferred way for a party to make its preliminary “coconspirator statement” factual showing is by the filing of a pretrial written proffer of the conspiracy evidence. *United States v. Boucher*, 796 F.2d 972, 974 (7th Cir. 1986). In making its preliminary factual determinations, the court must consider the statements themselves as evidence of a conspiracy and whether the statements were made in furtherance of that conspiracy. *United States v. Bodkins*, 52 F.3d 615, 623 (7th Cir. 1995).

Admissions by a defendant are admissible against him pursuant to Rule 801(d)(2)(A), without reference to the co-conspirator statement rule, see *United States v. Shoffner* 826 F.2d 619, 626-27 (7th Cir. 1987). A defendant's own admissions are obviously and powerfully relevant to establishing the factual predicates for the admission of co-conspirator statements against him. See *United States v. Potts*, 840 F.2d 368, 371-372 (7th Cir. 1987). The co-conspirator statement rule is not implicated where the relevant verbal declaration is not a "statement" within the meaning of Rule 801(a), i.e., not an assertion subject to verification; an example would be a declaration that is simply an order or a suggestion, see *United States v. Tuchow*, 768 F.2d 855, 868 n.18 (7th Cir. 1985). More importantly, the co-conspirator statement rule is not implicated if a statement is not offered in evidence to prove the truth of the matter asserted and thus does not constitute "hearsay" as defined by Rule 801(c). Accordingly, statements by alleged co-conspirators may be admitted against a defendant, without establishing the *Bourjaily* factual predicates but with corresponding limiting instructions, where such statements are offered simply to show for instance, the existence, the illegality, or the nature or scope of the charged conspiracy, *United States v. Herrera-Medina*, 853 F.2d 564, 565-566 (7th Cir. 1988); *United States v. Van Daal Wyk*, 840 F.2d 494, 497-498 (7th Cir. 1988); *United States v. Tuchow*, 768 F.2d at 867-869; *United States v. Mangus*, 743 F.2d 517, 521-523 (7th Cir. 1984).

Where Rule 801(d)(2)(E) is implicated, once the charged conspiracy is established, "only slight evidence is required to link a defendant to it." *Shoffner*, 826 F.2d 627. "Because of the secretive character of conspiracies, direct evidence is elusive, and hence the existence and the defendants' participation can usually be established only by circumstantial evidence." *United*

*States v. Redwine*, 715 F.2d 315, 319 (7th Cir. 1983). It is equally well established that “statements made during the course of and in furtherance of a conspiracy, even in its embryonic stages, are admissible against those who arrive late to join an ongoing concern”. *Potts*, 840 F.2d at 372. Moreover, “[c]onversations made by conspirators to prospective coconspirators for membership purposes are acts in furtherance of the conspiracy.” *Shoffner*, 826 F.2d at 628.

A defendant, even if not an “agreeing” member of the conspiracy, may also be found to be a member of a conspiracy if he knew of the conspiracy’s existence at the time of his acts, and his acts knowingly aided and abetted the business of the conspiracy. *United States v. Kasvin*, 757 F.2d 887, 890-891 (7th Cir. 1985). It is immaterial whether the defendant knows, has met with, or has agreed with every co-conspirator. *Boucher*, 796 F.2d at 975; *United States v. Balistreri*, 779 F.2d 1191, 1225 (7th cir. 1985). Further, it need not be shown that a defendant knew each and every detail of the conspiracy or played more than a minor role in the conspiracy. *United States v. Liefer*, 778 F.2d 1236, 1247 n.9 (7th Cir. 1985); *United States v. Towers*, 775 F.2d 184, 189 (7th Cir. 1985). A defendant may be found to have been a member of a conspiracy even if he joined or terminated his relationship with core conspirators at different times. *United States v. Ramirez*, 796 F.2d 1324, 1329 (7th Cir. 1985).

In determining whether a statement was made “in furtherance” of the conspiracy, courts look for a reasonable basis upon which to conclude that the statement furthered the conspiracy. *Shoffner*, 826 F.2d at 628; *United States v. Mackey*, 571 F.2d 376, 383 (7th Cir. 1978). Under the reasonable basis standard, a statement may be susceptible to alternative interpretations and still be “in furtherance” of the conspiracy; the statement need not have been exclusively, or even

primarily, made to further the conspiracy in order to be admissible under the co-conspirator exception. *Shoffner*, 826 F.2d at 628.

A variety of co-conspirator statements have been upheld as admissible. For instance, recruiting statements, statements giving updates on a conspiracy's progress, and conversations concerning planning or review of co-conspirators, or exploits, have all been approved as "in furtherance of" conspiracies, *see Potts*, 840 F.2d at 371; *United States v. Molt*, 772 F.2d 366, 368-369 (7th Cir. 1985). Therefore, statements that are part of the information flow between conspirators intended to help each perform his role are statements in furtherance of the conspiracy. *Van Daal Wyk*, 840 F.2d at 499. Similarly, assurances that a co-conspirator can be trusted or relied upon to perform his role are considered to further the conspiracy. *United States v. Buishas*, 791 F.2d 1310, 1315 (7th Cir. 1986). Statements designed to conceal a conspiracy are also deemed to be in furtherance of the conspiracy where ongoing concealment is one of its purposes. *Mackey*, 571 F.2d at 383. Furthermore, it is immaterial that statements otherwise in furtherance of the conspiracy were made to a government witness, informant or agent. *United States v. Mealy*, 851 F.2d 890, 901 (7th Cir. 1988).

## II. EXISTENCE OF THE CONSPIRACY

### 1. Overview

In the fall of 1998, then mayor Rober Pastrick, chief political aide James Fife and the rest of the Pastrick political organization, began developing plans for Pastrick's re-election effort. The election was expected to be hotly contested with a well-known Democratic party official, Robert Stiglich, challenging Pastrick in the primary. Over time, the Pastrick organization

decided to undertake a massive sidewalk replacement program with public funds to support Pastrick's political campaign.

Earlier in 1998, the City's Board of Public Works had initiated a "Sidewalk Improvement Program" in order to replace concrete public sidewalks in some portions of the City. The Board of Public Works had received bids on the program, with the low bid being \$454,155, which had been submitted by Rieth-Riley Construction Co., Inc. ("Rieth-Riley"). The City had failed to award a contract in 1998 so the Sidewalk Improvement Program had not gone forward as contemplated by the Board of Public Works.

As of the fall of 1998, the City Engineer was Serafin Fernandez. Fernandez was not a Pastrick political operative and could not be counted on to support the use of massive public funds for a political campaign. Yet, as City Engineer, Fernandez was responsible for administering an appropriate sidewalk program and was in the midst of that process in the later stages of 1998. However, at a meeting in or about November 1998, Fife directed Maldonado effectively to oust Fernandez as the chief administrator for the concrete program. Shortly thereafter, plans for a modest sidewalk improvement program, for which bidding documents had been circulated and appropriate procedures were being followed, were abruptly abandoned and the seeds of the scheme were sown.

With Fernandez out of the picture, in order to garner votes and reward contractors who were supporting Pastrick politically, defendant Pastrick, defendant Fife and various members of his political organization devised and implemented a massive concrete program and a tree-trimming and tree-removal program throughout the City. Pastrick and councilmen Frank

Kollintzas, Adrian Santos, and Joe De La Cruz ran on a unified ticket—dubbed “Team 99”—that promoted work on City sidewalks and other infrastructure during the 1999 campaign. The campaign literature featured hard hats and Pastrick made public campaign appearances in which he focused on the construction work being done in East Chicago. This construction work was so ubiquitous that a number of observers noted that the town looked like a “war zone.”

The work to be performed as part of these programs was required to be publicly bid and awarded in accordance with state procurement laws and local ordinances and regulations. Notwithstanding these requirements, the work was authorized by City officials, and performed by various contractors without proper approvals and otherwise in violation of applicable law. Generally, the contractors who were doing the work were also contributing financial and/or logistical support to the Pastrick campaign. In addition, much of the work that was done as part of the conspiracy was done on private residential property and at commercial establishments and churches. City funds were used to pay for both private and public work.

Given the magnitude of these programs, and the fact that funds had neither been appropriated nor otherwise set aside for this work, the City account used to pay the contractors was completely depleted by around the time of the May 1999 primary election and City checks from this account began to bounce. The financial problems that resulted from the concrete program were known before the election, but Fife and Maldonado took steps to mask the problem until the election was completed. After the election, the City ordered the contractors to cease their work, but only after the concrete and tree programs had helped propel Pastrick and the other Team 99 members to victories in the May 1999 primary election.

Thereafter, as part of the conspiracy, defendant Fife, with the knowledge and consent of defendant Pastrick and the assistance of Raykovich, engaged in negotiations with the contractors to determine how much the City would pay them for their 1999 concrete work. The City then used the previously-expired 1998 Rieth Riley bid for a modest concrete program as the basis for payments by retroactively adopting the "unit price" quote set forth therein. During this phase of the conspiracy, defendant Fife and other City officials and agents prepared contracts, ordinances, letter agreements, and other documents intended to create the impression that the concrete work had been bid and awarded in accordance with applicable law, and that payments for this work were similarly lawful. These documents purported to justify prior and future payments to the contractors, including payments for work conducted on private property.

As a further part of the conspiracy, defendants Pastrick and Fife arranged for certain contractors, who had been the most ardent political supporters, to receive compensation above and beyond the unit-price basis that had been retroactively approved. These contractors included Rogers & Sons, JGM Enterprises and Calumet Concrete, among others. In addition, rather than taking steps to recover money owed to the City by some contractors, the defendants allowed some politically favored contractors to submit bogus invoices so that these contractors could receive additional public funds.

To address the dire financial predicament of the City as a result of the illegal concrete and tree program, the conspirators arranged for "bond anticipation notes" ("BAN's") to be issued as a vehicle to raise funds quickly. Defendants Fife and Raykovich, who were already on contract with the City for their "consulting services" took additional fees of \$75,000 each, for their role in

arranging the BAN's. In total, the City's 1999 concrete and tree programs cost the City approximately \$24 million.

## 2. The Genesis of the Conspiracy

The racketeering conspiracy began no later than the fall of 1998 as defendant Pastrick and his political organization were gearing up for the May 1999 primary election. Pastrick's leading political operative at the time was Fife, who also served as a Special Assistant to Pastrick. Fife gave regular political and governmental direction to Edward Maldonado, who also served as Comptroller for the City. Maldonado and Fife were representative of various City employees or officials who served the City in a public capacity, but also were integral members of the Pastrick political organization. With Pastrick's knowledge and consent, political meetings and strategy sessions regularly took place at City offices and attendees included governmental employees, like Maldonado, who conducted political work during the business day. The blending of political and governmental business was a key component of the Pastrick regime, in which political operatives, like Maldonado and Fife, were rewarded with various governmental contracts and financial appointments. Fife who served as one of Pastrick's key advisers, for both political and governmental functions, arranged for very lucrative governmental contracts for himself and his affiliated companies. Maldonado drew a salary as City Controller, but also received substantial compensation as the Pastrick-appointed Chief Financial Officer of the City Utilities division, a Member of the Board of Works and the Treasurer for certain City foundations.

### 3. The Primary Campaign

The abrupt cancellation of the potentially lawful 1999 sidewalk program marked the beginning of several months of illegal spending of millions of dollars in public funds to ensure the primary election victory of Pastrick. Pastrick, Fife, Maldonado and other conspirators, including Pastrick's slate of City council candidates ("the Pastrick candidates"), began to authorize various handpicked contractors, including Roger & Sons, TRI, Windstorm Enterprises, H&Y Maintenance, Calumet Concrete and Masonry, D&S, A&A Enterprises, JGM Enterprises, Ace Enterprises, and subcontractors working for many of these contractors to pour concrete throughout the City despite the failure of the Board of Works to legally bid out the work or enter into a contract. No approval for the project was ever secured from the Building Department, Planning Department, or the Board of Works. Even more troubling, and as part of the conspiracy, a substantial amount of the work was done on private residential property, for commercial businesses, and at religious institutions despite the lack of any authority under state law or City ordinance to authorize such work or pay for it with public funds. Some of the contractors also were directed by the conspirators to perform millions of dollars of tree work on private property, again although the conspirators lacked any authority to order or pay for this work.

To advance the conspiracy and conceal its illegality, the Pastrick candidates falsely represented to East Chicago residents and businessmen that the City had a program in which it could legally pay for any kind of concrete improvement made to a homeowner's or business owner's private property and offered the services of the contractors to perform work, in some cases in exchange for political support. The conspirators pressured the contractors to complete

as much work as possible before May 4. In return, the Pastrick candidates and other conspirators agreed to let the contractors charge the City excessive and non-competitive rates and authorized their receipt of payment for private work.

In furtherance of the conspiracy, Maldonado instructed campaign workers like Arturo Vazquez to supervise the work performed and to deliver bills and invoices to him at the Controller's office. Some of the contractors were reluctant to perform work without some sort of written agreement, and Maldonado or Porras ask these contractors to structure work proposals in an attempt to circumvent state laws mandating the public bidding of all projects costing more than \$75,000.

As a result of the reckless use of public funds to pay the contractors, the City bank account was overdrawn in the period leading up to the May 1999 election. Fife instructed Maldonado to do what he could to get through the election before addressing the serious deficit. Around the time of the election, the City began bouncing checks, including checks the defendants had promised to the contractors in exchange for work they had performed prior to the primary election. To cover these checks, defendant Maldonado wired money through interstate communications directly to the contractors. By the end of June 1999, Maldonado had paid out approximately \$9.1 million of public funds to contractors who had performed concrete work and \$1.5 million in public funds to contractors who trimmed trees.

#### 4. Post-Election Concealment and Fraud

Shortly after his election, Pastrick designated defendants Fife and Raykovich as the point people to address the huge budget deficit generated by the sidewalk and tree program.

Raykovich and Fife directed Maldonado to order the contractors to halt all work—public and private—in late May. Many concrete contractors walked away from job sites leaving dangerous and hazardous conditions for City residents as a result of the unfinished sidewalks, driveways, patios, and porches. The City Council then called a special meeting on June 15, 1999, and passed an ordinance appropriating (after the fact) \$14 million “for the purpose of defraying certain expenses,” most of them listed as “contractual services.” All of these actions occurred despite the fact that the Board of Works never signed a contract with any of the contractors authorizing any of the public and private work and legally the City could not have entered any contracts authorizing the expenditure of public funds on private property or purposes. The Councilmen also voted in favor of the City borrowing \$15 million through a Bond Anticipation Note and using the funds thereby obtained to replenish the City’s completely depleted bank account and to pay even more money to the contractors, although they again had no authority to do so. The Ordinance misrepresented that the budgeted money was to come solely from wagering and admissions tax distributions received from the gaming industry during Fiscal 1999, ignoring the fact that Maldonado had already made payments to the contractors from other City funds.

In July 1999, Maldonado, Raykovich, Fife, and John Garcia of GLE then met with the contractors who had already performed the work and presented them with contracts. These contracts purported to represent that all of the concrete work had been legally and properly bid out by the City. Most were backdated, giving the impression that they have been signed in July 1998. Maldonado and Fife signed each of these contracts. After the signing of these contracts, which set a unit pricing rate for concrete services (\$5.08/square foot of concrete), three of the

contractors, Calumet, H&Y, and Roger & Sons, complained about the set rates and were then paid an additional \$2.3 million for their work, above and beyond the agreed-upon rate. Roger Zepeda, the president of Roger & Sons, also requested additional payments of \$298,000 in union benefits to be mailed to various post office boxes to cover the health, welfare, and pension benefits required to be paid for work done during the concrete campaign. Based on the rates set in the contracts, two of the contractors, JGM and Windstorm had been overpaid for the work they had performed. However, the conspirators never took any collection action against these contractors. JGM, Roger & Sons, Calumet Concrete, and Ace Enterprises had performed extensive political work during the primary campaign, including donations free of charge of workers and materials to build and place campaign signs in support of City officials running for reelection. Raykovich encouraged JGM, through its principal, Joel Markovich, to submit bogus invoices which allowed JGM to get substantial reimbursement to which it was not entitled under the agreement that had been reached with other contractors.<sup>1</sup>

#### **A. The Defendant Conspirators**

Defendants Pastrick, Fife and Raykovich were all integrally involved in the conspiracy.

A summary of their roles is as follows:

##### **1. Robert Pastrick**

Pastrick had over forty years of experience as an official in East Chicago at the time of the May 1999 primary election. Pastrick had served as mayor since 1971 and immediately prior to his election as mayor, had served as City Controller for approximately seven and a half years.

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<sup>1</sup> Markovich was charged and convicted of a federal offense relating to these activities. No charges were brought

By virtue of his service as both mayor and Controller, Pastrick was intimately familiar with the budget processes in the City and was well aware that there were not sufficient funds legally available to pay for the massive concrete and tree program that was undertaken to boost his 1999 campaign. Moreover, by virtue of his lengthy service as both mayor and Controller, Pastrick was well aware that under no circumstances was it permissible to use public funds to pay for work on private property in order to buy votes and reward contractors in an election as occurred during his 1999 campaign.

By the late 1990s, Pastrick's two closest advisors were defendants Raykovich and Fife. Pastrick's political organization served as the principal vehicle for recruiting conspirators, and planning and coordinating actions taken in furtherance of the conspiracy. Contractors who donated financially to the campaign or who provided other logistical support for campaign rallies and other functions were rewarded with concrete and tree work. The ultimate goal of the conspiracy was to secure Pastrick's election by illegally using millions of dollars in public money for the concrete and tree program. While Pastrick delegated to Maldonado and others the more mundane tasks in the conspiracy, like paying the contractors and authorizing most of the work, Pastrick embraced the construction theme in his campaign appearances and facilitated the expenditure of public money for the concrete and tree program on behalf of residents whom he encountered on the campaign trail. For example, during his campaign, Pastrick was approached by the Catholic priest at Our Lady of Guadalupe Church and was asked if the City would pave the church's private parking lot. Pastrick advised the priest that he would look into the matter. Shortly thereafter, Pastrick called controller Ed Maldonado and told Maldonado to contact City

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against Raykovich or others.

Engineer Pedro Porras to arrange for the church parking lot to get paved. Porras then tasked one of the favored contractors, Roger Zepeda, with excavating and paving the church parking lot. During the campaign, Pastrick was also instrumental in arranging for Zepeda to get paid on a more timely basis for his work, after Zepeda had complained to Pastrick about the delay in getting paid for his work. After the election, Pastrick met with Zepeda where Zepeda asked for, and later received, additional funds over and above the negotiated rate.

## **2. James Fife, III**

James Fife, III began his career with the City in 1981 as an accounts manager for the East Chicago Sanitary District. In 1988, Mr. Fife became the attorney for the East Chicago Water Department. From the late 1990s through 2003, Fife served as a consultant to the City and legal counsel to the Mayor, as well as a consultant to Mayor Pastrick's re-election campaign. Fife was a key political operative in the Pastrick organization and was also intimately involved in the governmental operations of the City. Fife served as the de facto governmental supervisor of Ed Maldonado and also served as Maldonado's political sponsor. Fife was a very "hands on" manager in the campaign, and was the principal political strategist for Pastrick.

By virtue of his pivotal role in the campaign and direction given to Maldonado and contractors, Fife was well aware of the massive amount of public funds being used for the concrete and tree program. As was the case with Pastrick, Fife delegated to Maldonado the actual processing of invoices and checks, but took an active role in plotting the overall strategy of the conspiracy and intervening or managing larger issues as they arose. For instance, when Pastrick political insiders were discussing whether public funds should be used to pave the parking lot of a privately owned supermarket, the Supermercado, Fife was involved in the

discussions and the decision to go forward with paving the lot at public expense. Subsequent to the paving of that lot, Pastrick held an election rally in the parking lot of the supermarket. When the City had basically depleted its bank account prior to the May 1999 primary election, Fife directed Maldonado to do what he could to get through the election before any public efforts were undertaken to address the problem.

Fife and Raykovich were the principal strategists for the concealment and fraud that occurred in the post-election period. Notably, Fife signed the backdated contracts with the contractors so that it would appear that contracts were legitimately awarded following the 1998 bidding process. Fife also approved preferential treatment for contractors, like JGM, that had provided substantial financial and logistical support for the Pastrick campaign.

## **B. Others**

**1. Edwardo Maldonado:** Maldonado was the East Chicago City Controller and was also a member of the Board of Works in 1998-1999. In his political role, Maldonado served as treasurer for the Campaign to Re-Elect Mayor Robert Pastrick in 1999. Maldonado's primary responsibility in the conspiracy was to ensure prompt payment to each of the co-conspirator contractors to encourage the proliferation of as much concrete and tree work as possible in the months prior to the primary election. Maldonado took direction from Fife and other co-conspirators.

**2. Timothy Raykovich:** Beginning in the 1980s, Timothy Raykovich, who was a doctor by profession, became involved in other aspects of City government, such as financial and budgetary decisions and capital project planning. At that time, Raykovich held an independent contractor consulting agreement with the City, and people often referred to him as the "Special

Assistant to the Mayor. From at least 1997 to 2003, Raykovich had the authority to speak on the Mayor's behalf. Raykovich was an ardent and longtime supporter of Pastrick, who had rewarded Raykovich and Raykovich-related entities with very lucrative contracts over the years. After the election, and working with Fife and Maldonado, Raykovich arranged meetings with the contractors who had done the concrete and tree work so that their payment claims could be resolved. While most of the contractors were paid \$5.08 per square foot for their work; certain contractors who were connected to the Pastrick political organization of City government received additional payments above \$5.08 per square foot. These preferential payments to a handful of contractors were made a substantial period of time after the work had been completed. The firms that received these payments included Rogers & Sons Construction, H&Y Maintenance, Calumet Concrete Construction and JGM Enterprises. Raykovich and Fife wrongfully permitted these excessive payments to be made because of their association with Pastrick's political organization.

**3. Frank Kollintzas** was a City councilman for the Fourth District who solicited numerous contractors with ties to East Chicago to perform work excavating and pouring concrete and cutting and trimming trees, primarily in the Fourth District but also in other districts throughout the City. Kollintzas directed a substantial portion of the illegal activity and ensured prompt payment for the politically-active contractors.

**4. Joe De la Cruz** was another City councilman as of 1999. Like Kollintzas, De la Cruz worked with many of the contractors in deciding where to pour concrete throughout the City.

5. **Adrian Santos** was another City Councilman, who like Kollintzas and De la Cruz, directed contractors to perform private work and guaranteed payment to those contractors as part of the illegal Sidewalk Program. Santos had one or more conversations with Pastrick about the sidewalk program.

6. **Jose Valdez** was the General Foreman of the Parks Department in 1999. He was also a Precinct Committeeman in the Fourth District. Valdez assisted Kollintzas in directing much of the tree and sidewalk work being performed in East Chicago in 1999, including directly supervising the work in Sunnyside, the East Chicago neighborhood which received the most concrete, which Valdez jokingly referred to as "Cementside."

7. **Pedro Porrás** was the East Chicago City Engineer in 1999. As City Engineer, he was responsible for directing, coordinating, and controlling all engineering activities carried on within the City and also approving all permits regarding the repair or replacement of public sidewalks. On February 17, 1999, Porrás spoke at a regular meeting of the Board of Works and requested that the Board authorize public bids for the replacement of sidewalks. The Board of Works approved this request, with Maldonado specifically noting the need to properly bid out all work, and hired John Garcia to prepare specifications and advertise the program. The bids were opened March 31, 1999. On March 23, 1999, Porrás told Garcia to cancel the bidding process, which Garcia did. Around this same time, Porrás was meeting with contractors and assisting in approving concrete work throughout the City. For example, Arturo Vazquez, a City firefighter and Pastrick political operative, submitted notebooks and contractor proposals to Porrás in April and May 1999 keeping him advised of work that was occurring in the First District.

**8. Gus Kouros** was the Second District City Councilman in 1999. Kouros hired Javier Almandarez to pour concrete in the Second District. Later, Kouros asked Joel Markovich of JGM Enterprises to take over for Almandarez. Markovich poured public and private concrete in the Second District with Kouros' authorization in 1999 and also trimmed trees in the Second District. Kouros repeatedly instructed Markovich to begin "breaking up" the concrete before the election to assist Kouros in getting elected.

**9. Roger & Sons** was a construction company based in East Chicago. Roger Zepeda was the president of Roger & Sons. Zepeda performed work at the behest of Kollintzas, Valdez, De la Cruz, Santos and Pastrick. Zepeda was paid from City funds by Maldonado for his work. Zepeda also instructed his foremen and other employees to perform the pouring of concrete and trimming of trees on private property. Roger & Sons would receive tree lists from various City officials, including Kollintzas, De la Cruz, and Valdez, directing them where to trim or cut trees on private property. Zepeda also had conversations with Fife, Raykovich and Pastrick about his company being paid for their work, and provided financial and logistical support for the Pastrick re-election campaign.

**10. H&Y Maintenance** was a construction company formed in 1999 by Greg Gill, a friend of Frank Kollintzas. Gill received orders to perform work as part of the sidewalk program from Kollintzas, Valdez, Maldonado, Kurmis, and De la Cruz. Gill himself also went door-to-door approving concrete work on behalf of Kollintzas. Gill instructed his employees to take orders from these individuals and also relayed instructions from them to his employees to pour concrete and trim trees. Gill, who did not perform tree work, hired Affordable Trees, headed by

Donald DeYoung, as a subcontractor to perform all tree work and promised DeYoung that the City would pay for all private work performed.

**11. Residential Construction** was a construction company headed by Javier Almandarez. Almandarez was initially hired by Gus Kouros to perform public concrete work in the Second District. Later, Kouros told Almandarez to cease working because he had selected Joel Markovich to do this work. After this, Kollintzas contacted Almandarez and requested that Residential pour concrete in other parts of the City, where Almandarez was supervised by Porras. Almandarez was paid from City funds by Maldonado for his work. Almandarez instructed his foremen and other employees to perform the pouring of concrete and trimming of trees on private property.

**12. TRI, Inc.** was a construction company headed by Tony Roland. Roland worked with Vasquez to obtain concrete work. Later, Roland met with Vazquez, Maldonado, and Porras at City Hall. These men assigned Roland to perform work in the First District and in the Harbor section of the City along Fir Street. Roland initially did only public work but was later directed by Santos, De la Cruz, and Porras to pour concrete on private property. After the work was completed, the City eventually stopped payments until the settlement conferences. Roland refused to sign the backdated agreements until Fife and Maldonado agreed to raise the amount of money he would be paid. Roland was paid from City funds by Maldonado for his work. Roland instructed his foremen and other employees to perform the pouring of concrete and trimming of trees on private property when it was requested by the Councilmen.

**13. Calumet Concrete and Masonry** was a construction company formed by Bobby Velligan, a close personal friend of Kollintzas and De la Cruz. Velligan was paid vast sums of money by Maldonado in the Controller's Office for concrete and tree work in the City in 1999, despite never having submitted a bid or signed a contract for the work and despite himself having no experience with tree work. Velligan hired subcontractors John Burt, Jovan Tica, and Ron Markowski (who in turn hired Dave Johnson) to perform all of his services and simply marked up the prices they charged when he charged the City in order to profit from the illegal program. Burt, Tica, Velligan, and Markowski poured concrete and trimmed trees at the direction of Kollintzas, Valdez, Santos, Morris, and Vazquez. Velligan instructed his subcontractors to perform the pouring of concrete and trimming of trees on private property when it was requested by the Councilmen.

**14. Windstorm** was a construction company run by Richard Grant which was initially directed to perform work in the First District by Maldonado. At Maldonado's direction, Grant submitted concrete proposals broken up into amounts less than \$75,000 even though the total work performed by Windstorm exceeded \$75,000. Maldonado and Vazquez approved and directed all of Grant's work. Grant instructed his foremen and other employees to perform the trimming of trees on private property when it was requested by Maldonado or Vazquez. Windstorm was overpaid for its work, but Maldonado and the City never have sought the return of any monies from either Grant or Windstorm.

**15. A&A Enterprises** is a property management company run by Terry Artis, and was hired by Artis' brother, Randy Artis, to perform concrete work in the Third District. Terry Artis

instructed his foremen and other employees to perform the pouring of concrete on private property when it was requested by Randy.

**16. B&S Construction** was a construction company run by Clay Brooks. Brooks was hired by Randy Artis to trim and cut trees on private property located in the Third District. Randy Artis provided lists to Brooks, who hired a subcontractor to trim and cut the trees. Brooks instructed his foremen and other employees to trim trees on private property when it was requested by Randy Artis. Brooks submitted proposals to Maldonado broken up into amounts of \$75,000 or less at Maldonado's request in April 1999.

**17. Ace Enterprises** was a construction company owned by Ashley Dunlap and Alfred Rogers. Ace was hired and authorized by Pedro Porras to pour concrete on public and private property located in the Sixth District. Dunlap and Brooks instructed foremen and other employees to perform the pouring of concrete when it was requested by Porras.

**18. D&S Equipment** was a construction company owned by Demetrio Sazalis. D&S was hired by Kollintzas to pour concrete in the Fifth District and guaranteed payment for the work. D&S poured on property at the behest of Kollintzas and Santos. Sazalis instructed his foreman Ennis Dunning and other employees to perform the pouring of concrete on private property when it was requested by Kollintzas and Santos.

**19. JGM** was a property management and construction company owned by Joel Markovich, a member of the Lake County Council and close political ally of Gus Kouros, Kollintzas, other City Council members, and Mayor Robert Pastrick. Markovich was hired by

Kouros to pour concrete in the Second District and was also authorized to trim trees throughout the city by Kouros, Kollintzas, De la Cruz, Santos, and Valdez. Markovich instructed his foremen and other employees to perform the pouring of concrete and trimming of trees on private property when it was requested by the Councilmen or Valdez. During the 1999 campaign, Markovich had provided free workers and materials to place hundreds of campaign signs in support of Mayor Pastrick, Kouros, Kollintzas, and other City officials throughout East Chicago.

### **III. Statements Sought To Be Admitted**

Many witnesses will testify to the statements described above and other statements by the defendants and other conspirators during the course of and in furtherance of the conspiracy. Those statements are admissible as admissions against interest as to the out-of-court declarant/defendants. Those statements are admissible against the other defendants under the co-conspirator exception because those statements were made in furtherance of the conspiracy.

Further, statements made by the contractors and by other city officials to residents about the validity of the program and to workers authorizing them or ordering them to perform illegal work or submit invoices are also admissible as statements that are in furtherance of the conspiracy. Statements soliciting and authorizing work that were done at the behest of the conspirators also are statements that furthered the conspiracy.

Statements made between the contractors, the defendants and other conspirators after the project was halted are also admissible because they reflect statements designed to cover up the conspiracy and make the work appear legitimate.

Broadly speaking, the statements sought to be admitted by the plaintiffs against the defendants, which are also described above fall into the following distinct categories.

1. Statements by defendant Pastrick requesting, approving or authorizing the use of public funds for the concrete and tree program without first requiring contractors to provide bids or quotes under Indiana law, including statements made by Pastrick to Roger Zepeda and Joel Markovich.
2. Statements by defendant Pastrick requesting, approving or authorizing the use of public funds for construction on private property, including various churches (including, without limitation, Our Lady of Guadalupe) and homeowners (including, without limitation, Renete Cerven).
3. Statements by defendant Pastrick requesting, approving or authorizing the expedited or greater payments to Roger and Sons, JGM and other vendors for construction that was done as part of the illegal concrete and tree program.
4. Statements by defendant Pastrick during campaign rallies and events touting his administration's success in repairing the City's infrastructure through the repair and replacement of sidewalks.

5. The creation and distribution of campaign literature in the May 1999 primary election by defendants Pastrick, Fife and others touting the construction work being done in the City in an effort to promote the re-election of defendant Pastrick.
6. Statements by defendant Fife to Ed Maldonado prior to the May 1999 primary election advising Maldonado to do what he could to deal with the dire financial situation facing the City until the election. More generally, statements Fife made to Maldonado regarding making payments to contractors.
7. Statements made by defendants Fife and Raykovich during settlement negotiations with contractors to facilitate the illegal concrete project.
8. Statements by defendants Fife and Raykovich in the post-election period authorizing preferential treatment to contractors who had provided financial or logistical support to the Pastrick political organization.
9. Statements by defendant Fife to John Garcia ordering him to change the certifications of settlement contracts and awarding certain favored contractors with extra money in compensation.
10. Statements by defendant Fife regarding the political work performed by the contractors to assist the 1999 re-election.
11. Statements by defendant Raykovich to contractor Joel Markovich authorizing and approving the submission of bogus invoices or billings to allow payments to be made to Markovich's company, JGM, in the post-election period.
12. Statements made by Ed Maldonado to co-conspirators directing them to break up proposals for any work they performed into amounts less than \$75,000.

13. Statements made by Ed Maldonado assigning contractors who lacked contracts and had failed to bid for work to perform concrete and tree work and/or approving their work at specific locations throughout the City of East Chicago.
14. Statements made by Ed Maldonado guaranteeing contractors prompt or accelerated payments in contravention of Controller's Office policy and practice.
15. Settlement agreements and backdated contracts entered into by Maldonado and Fife to cover up their illegal actions.
16. Statements made by Frank Kollintzas and other City councilmen to contractors, subcontractors, and foremen authorizing them to pour concrete and trim trees on private property or on public property without first requiring them to provide bids or quotes under Indiana law.
17. All contractor invoices and claims submitted to the East Chicago Controller's Office for payment in connection with the defendants' fraudulent scheme for which the contractors were eventually paid by defendant Maldonado and the City of East Chicago.
18. All proposals submitted to the East Chicago Controller's Office in amounts less than \$75,000 for work to be performed by contractors between February and May 1999.
19. All requisition forms completed by secretaries to Mayor Robert Pastrick in the course of their job duties from citizens requesting that trees be cut down on private property that were turned over to contractors or other co-conspirators for completion.
20. Statements made by Jose Valdez to contractors, subcontractors, and foremen directing them to perform private concrete and tree work, sometimes while campaigning for votes, and statements guaranteeing those individuals that the City would pay for the work.

21. Statements made by Pedro Porras to John Garcia cancelling the bid process for replacement of public sidewalks on or about March 23, 1999.
22. Statements made by Pedro Porras hiring contractors and approving the pouring of private and public contract for which the contractors and their workers lacked valid bid-out contracts.
23. Statements made by Pedro Porras directing contractors to prepare proposals for work done in amounts less than \$75,000.
24. Statements made by Pedro Porras approving increases in the prices charged to the City by co-conspirator contractors.
25. Statements made by Pedro Porras in connection with the excavation and pouring of a parking lot owned by Our Lady of Guadalupe Church.
26. Statements made by all of the defendants at public meetings of the Board of Works and City Council explaining or concealing the nature of the sidewalk and tree scheme.
27. Notebooks and lists of tree and/or concrete addresses kept by co-conspirators during the course of the conspiracy to account for the work they were directing contractors to perform.
28. Lists of trees to be cut down and billed to city, which were made by co-conspirators and given to employees of contractors to assist in performing their work.
29. Statements made by Randall Artis hiring contractors to pour concrete and trim trees on private property in the Third District, at times while campaigning.
30. Statements made by Gus Kouros hiring Javier Almandarez and Joel Markovich to perform work on public sidewalks in the Second District despite lacking valid contracts.

31. Statements made by Andy Callas directing Arturo Vazquez to coordinate sidewalk and tree efforts in the First District and to work with Maldonado on the effort.
32. Statements made by Arturo Vazquez in hiring contractors who lacked public contracts to perform concrete and tree work in East Chicago.
33. Statements made by the owners of the co-conspirator contractors to subcontractors to draw them into the fraudulent scheme by guaranteeing that they would be paid by the City for their work.
34. Statements made by contractors and subcontractors to foremen and laborers directing them to perform private concrete and tree work.
35. Statements made by contractors instructing their subordinates to perform campaign work, such as the building and placing of signs, on behalf of the defendants and their co-conspirators.
36. Statements made by precinct committeemen (including John Budny, Byron Florence, Monique Kurmis, Drake Morris) to residents indicating that the City would pay to add concrete improvements to or remove trees from their private property and to contractors and Councilmen indicating what work was desired.
37. Any other statements similar to the above statements which were made by the above described co-conspirators in furtherance of the conspiracy that come to light during the course of the trial.

#### **IV. CO-CONSPIRATOR STATEMENTS SHOULD BE ADMITTED PURSUANT TO RULE 801(d)(2)(E)**

Rule 801(d)(2)(E) of the Federal Rules of Evidence provides that statements by a co-conspirator during and in furtherance of the conspiracy are not hearsay. “To satisfy Rule 801(d)(2)(E), the government must show (1) that a conspiracy existed; (2) that a defendant and declarant were members of the conspiracy; and (3) that the offered statement was made during the course of and in furtherance of the conspiracy.” *United States v. Hogan*, 896 F.2d 1497, 1504 (7th Cir. 1989). Whether or not the government has met its burden is for the Court to decide. See *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978); Fed. Rule Evid. 104(a).

In deciding whether a particular statement is made in furtherance of a conspiracy a court must look to see if the statement is part of “the information flow between conspirators” and if the statement is “intended to help each (conspirator) perform his role.” *United States v. Van Daal Wyk*, 840 F.2d 494, 499 (7th Cir. 1988). As another court noted: “[S]tatements ‘in furtherance’ of a conspiracy can take many forms, including statements seeking to recruit potential coconspirators, statements seeking to control damage to an ongoing conspiracy, statements made to keep coconspirators advised as to the progress of the conspiracy, and statements made in an attempt to conceal the criminal objectives of the conspiracy.” *United States v. Doerr*, 886 F.2d 944, 951 (7th Cir. 1989). Similarly, “[t]he statement need not have been made exclusively, or even primarily, to further the conspiracy.” *United States v. Singleton*, 125 F.3d 1097, 1107 (7th Cir. 1997). “Conversations made by conspirators to prospective coconspirators for membership purposes are acts in furtherance of the conspiracy.” *United States v. Shoffner*, 826 F.2d 619, 628

(7th Cir. 1987) Assurances that a co-conspirator can be trusted or relied upon to perform his role are considered to further the conspiracy. *United States v. Buishas*, 791 F.2d 1310, 1315 (7th Cir. 1986) Statements designed to conceal a conspiracy are also deemed to be in furtherance of the conspiracy where ongoing concealment is one of its purposes. *United States v. Mackey*, 571 F.2d 376, 383 (7th Cir. 1978)

### CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully submit that the above outlined evidence clearly establishes the existence of a conspiracy involving the defendants and others, and that the statements referred to herein were made in furtherance of the conspiracy and therefore, respectfully requests that this Court allow the admission of co-conspirator statements as they are elicited during the trial.

## CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2009, a copy of the foregoing Plaintiffs' 801 (d)(2)(E) Proffer was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I further certify that I have caused the foregoing to be served by United States First Class Mail, postage prepaid, upon the following CM/ECF non-participants:

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