



MEMO

To: Senator Jerry Klein, Chair, Legislative Audit and Fiscal Review Committee, and The Honorable Drew Wrigley, North Dakota Attorney General

From: Monte L. Rogneby, Attorney for Stealth Properties, LLC and D & S LLC.

Date: October 28, 2022

Re: RESPONSE OF STEALTH PROPERTIES LLC TO THE INVESTIGATIVE REPORT OF THE OFFICE OF THE ATTORNEY GENERAL DATED SEPTEMBER 27, 2022.

INTRODUCTION

On or about April 24, 2020, Stealth Properties, LLC, ("Stealth") entered into a Lease with the North Dakota Office of Attorney General ("Attorney General") for commercial office space located at 1720 Burlington Drive, Bismarck, North Dakota ("Property").

The Legislative Audit and Fiscal Review Committee of the North Dakota Legislative Assembly ("Committee") requested Stealth, and its property manager, D & S LLC, doing business as Parkway Property Management ("Parkway") provide to the Committee additional information concerning the Lease. Both Stealth and Parkway cooperated by providing documents and by having their representatives answer questions.

On June 29, 2022, the Committee adopted the following resolution: "It was moved by Representative Nathe, seconded by Representative Magrum, and carried on a voice vote that the State Auditor work with the Attorney General to gather and review documentation and other information related to the lease agreement and

the remodeling and construction of facilities leased by the Attorney General located at 1720 Burlington Drive, Bismarck, and to report the findings to the Legislative Audit and Fiscal Review Committee at its next meeting.”

Stealth and Parkway fully cooperated with the North Dakota Office of State Auditor (“Auditor”) by: 1) providing to the Auditor documents, including email correspondence between Stealth and Parkway and the Attorney General and other requested documents related to the Lease and remodeling of the Property; 2) answering the Auditor’s written questions; and 3) by providing information via interviews with the Auditor.

On September 27, 2022, the Auditor presented to the Committee his Investigative Report of the Office of Attorney General – Investigative report as requested by the Legislative Audit and Fiscal Review Committee (“Report”). Neither Stealth nor Parkway was provided a draft of the Report prior to it being presented to the Committee, and neither Stealth nor Parkway was allowed to provide a response or clarification to the information in the Report. This is Stealth’s response to the Report.

FACTS

Stealth believes the following are facts relevant to the Committee’s inquiry:

1. Jason Dockter is a member of the North Dakota House of Representatives, representing District 7 in Bismarck, North Dakota. He assumed office on December 1, 2012. His current term ends on December 1, 2022.
2. D & S LLC is a North Dakota Limited Liability Company whose members are Dockter and CJ Schorsch. D & S conducts business in North Dakota under the tradenames Parkway Property Management and Frontier Contracting. Parkway is in the business of residential and commercial property management. Frontier Contracting completes construction and repairs for Parkway clients.
3. D & S LLC holds a Class A Contractor License issued by the State of North Dakota. (Exhibit 1.) D & S is fully insured to act as a contractor in North Dakota. (Id.) It employed some of the workers who performed work at the Property, paid their salaries, and it paid all WSI premiums and Job Service taxes. The work completed by D & S is billed as Frontier Contracting to keep separate the accounting for Parkway and the accounting for Frontier.
4. During the 2019 Legislative Session, Dockter had an informal conversation with Lonnie Grabowska, Division Director, Bureau of Criminal Investigation, North Dakota Office of Attorney General, at the North Dakota State Capital. Mr. Grabowska indicated the Attorney General had been searching for a building in Bismarck to lease for BCI.

5. Dockter indicated to Director Grabowska that Parkway could assist the Attorney General. Dockter asked whether Director Grabowska wanted assistance looking for a building. Director Grabowska indicated that was acceptable.
6. Parkway contacted a Bismarck realtor and requested the realtor's assistance locating a suitable space for the Attorney General.
7. In a June 6, 2019, email to Dockter, Director Grabowska indicated that he discussed with North Dakota Chief Deputy Attorney General Troy Seibel the possibility of Parkway working with the Attorney General on a "public/private partnership for a possible headquarters building for NDBCI, AGIT/CJIS and the Fire Marshall". Director Grabowska indicated that the Attorney General wanted to set up a meeting with Parkway along with NDOAG AGIT/CJIS Director Heidi Smith and NDOAG State Fire Marshal Doug Nelson to discuss working with Parkway. (Exhibit 2 at 001.) Director Grabowska had previously informed Parkway in a May 26, 2019, email the Attorney General was looking for around 40,000 square feet for the three divisions so they would have room to expand over the next 10-15 years. (Exhibit 2 at 003.)
8. Shortly thereafter, Schorsch met with Chief Deputy Seibel, Director Heidi Smith, State Fire Marshal Doug Nelson and Director Grabowska at Chief Deputy Seibel's office to discuss this project.
9. After the meeting, on June 25, 2019, Chief Deputy Seibel emailed to Parkway preliminary drawings the Attorney General had prepared in 2016 when the Attorney General was exploring purchasing Saxvig elementary school in Bismarck. (Exhibit 2 at 003.)
10. The parties then discussed options for moving forward including new construction and remodeling an existing building. Based on the Attorney General's budget, the parties concluded the only option was a remodel of an existing building. Thereafter the parties focused on the building on Burlington Drive, which Parkway's realtor identified as an option. (Exhibit 2 at 019-028.)
11. The Burlington Drive building was then owned by Bismarck Industries, Inc., and was subject to two existing lease agreements one with the North Dakota Department of Health (Exhibit 3) and one with the North Dakota Information Technology Department (Exhibit 4).
12. The Department of Health's Lease required the Department to make rental payments of \$12.50 per square foot through June 2021 and \$13.00 per square foot thereafter. The Department of Health is still a tenant at the Property paying \$13.00 per square foot.
13. NDITD's Lease required NDITD to make rental payments of \$14.75 per square foot. NDITD vacated the property on or about June 30, 2020.
14. Starting in July 2019, the parties exchanged information concerning the Attorney General's needs and whether the Burlington Drive property would be suitable. (Exhibit 2 at 019-028.) Bartlett and West created preliminary drawings based on information supplied by the Attorney General. (Exhibit 2 at 033.)
15. In addition to working with the Attorney General to determine whether the Burlington Drive property would be suitable, Parkway also started discussions with a group of investors to explore the purchase of the Property.
16. In November 2019 Parkway through its realtor made an offer to purchase the Property. (Exhibit 2 at 035.)

17. On December 5, 2019, Parkway entered into a Purchase Agreement for the Property and paid the seller \$30,000 in earnest money, which would be forfeited if the sale did not proceed. (Exhibit 5.) The Purchase Agreement does not contain any contingencies related to the Attorney General lease.
18. Stealth Properties, LLC, is a North Dakota Limited Liability Company which was formed on December 10, 2019. It has the following Members, with the following interests: Southpaw Properties, LLC (Dockter and Schorsch) 25%; EMC Real Estate LLC 20%; Susan K. Aurit Living Trust 20%; Craig and Christine Dockter 10%; Mike Gietzen 10%; Stacie Luther 10% and Alex Schmidt 5%.
19. The Purchase Agreement was assigned by Parkway to Stealth Properties, which needed to secure financing to purchase the building. Stealth would also need to secure financing to pay for the new construction additions to the building anticipated by the Attorney General. If the Attorney General was not going to be involved, Stealth's financing would be based on the value of the building and its current rental tenants. If the Attorney General was going to be involved, then Stealth's financing would require a different analysis because financing would be necessary to purchase the building and to complete the new construction. As to this second contingency, the bank requested Stealth obtain an executed lease with the Attorney General, as a condition to financing the new construction.
20. Stealth circulated a draft lease, based on the terms of the existing lease with NDITD and the preliminary drawings to the Attorney General and Office of Management and Budget Facilities Director John Boyle on or around March 4, 2020. (Exhibit 2 at 064-072.) Parkway then negotiated terms of the Lease with Director Boyle and the Attorney General. The Lease is premised on \$9.50 per square foot plus CAM charges. The Lease was executed on April 24, 2020. The Lease was reviewed and approved by the North Dakota Office of Management and Budget as required by N.D.C.C. § 54-21-24.1. (Exhibit 6.)
21. The Lease requires Stealth to make improvements to the property and add an addition to accommodate the Attorney General. The costs of the improvements were to be divided between Stealth and the Attorney General. The Lease provides: "STATE responsible for the additional costs above \$220.00 per square foot on the new construction. . . . State is responsible for the additional costs above \$50.00 per square foot for the remodel of the current structure." (Exhibit 6.)
22. The Lease also obligates the Attorney General to pay additional rent for operating expenses of the building and grounds:

State shall be responsible for additional rent associated with operating expense of the building and grounds commonly known as CAM expenses, which will be prorated based on tenant's main floor occupied space estimated at 33,000 sf to the building main floor space estimated at 33,000 sf. Additional rent shall be paid monthly based on estimated annual CAM costs. The estimated CAM rate will be \$5.70 per foot. The STATE will contract out the janitorial services internally. The rate will be adjusted annually by one percent. Due to unforeseen circumstances it could be adjusted up to four percent annually. (Exhibit 6.)
23. Stealth Properties secured financing and purchased the building from Bismarck Industries, Inc. on May 29, 2020.
24. Thereafter, Parkway assumed the role of property manager for the building, working with the Attorney General to finalize the design and complete construction. Schorsch managed the construction.

25. After the Lease was executed, the various divisions of the Attorney General who would become tenants communicated to Parkway and Stealth their needs/wants for the Property. Some of the requests increased the remodel costs above normal construction. (Exhibit 2 at 105-155; 163; 227-239; 293; 319; 334; 342-344; 356-366; 368-374; 387-388; 436-439.)
26. At the start of the remodeling/construction, the parties contemplated total improvements of approximately \$3.7 million. (Exhibit 11.)
27. Construction commenced on or about July 1, 2020, during COVID restrictions and material shortages, which caused delays and increased material costs.
28. Parkway and Stealth had numerous in person meetings with representatives of the Attorney General, as well as phone calls and email correspondence with representatives of the Attorney General concerning the improvements and plan changes requested by the Attorney General. Representatives of the Attorney General worked closely with Parkway, Stealth and Bartlett and West to oversee the construction to the Attorney General's specifications. As is reflected in the email correspondence between the parties, the Attorney General requested multiple changes to the original construction plans, which were accommodated by Stealth. (Exhibit 2.)
29. The Attorney General stressed to Stealth and Parkway that it wanted the Property available for move in by July 1, 2021, because the Attorney General's lease on its existing space was being terminated.
30. Although the Lease requires the Attorney General to pay a proportion of the improvement costs, the Attorney General did not require competitive bidding for Stealth's and Parkway's selection of sub-contractors to complete the work. Rather, the Attorney General stressed the need to complete the project on time. Selection of sub-contractors was left to the discretion of Stealth and Parkway to find suitable contractors who had the ability and capacity to complete the necessary work on schedule.
31. Stealth and Parkway used competitive bidding to select most of the contractors who worked on the Property, but also selected some contractors without bids based on ability and construction management needs - the ability to complete the necessary work on schedule.
32. The Report raises issues with two contractors: Northern Plains Heating and Air and Frontier Contracting.
33. Northern Plains Heating and Air is owned by Mike Gietzen and Keith Benz. As noted above, Gietzen owns 10% of Stealth. Northern Plains was hired to perform all the mechanical work on the Property. It was hired because of the quality of its work and because of its ability to complete the work in the time allowed. Its billings, which were paid by both Stealth and the Attorney General, are objectively reasonable and appropriate.
34. Frontier is a division of D & S LLC, along with Parkway. It provides contracting services exclusively to Parkway's property management clients. Materials and services for the building were purchased through Frontier Contracting, in which case the actual cost of the materials and services were passed to Stealth and the Attorney General. D & S employees, invoiced by Frontier, were used to complete necessary services to move the construction project forward, including demolition, clean up, floor installation, dumpster disposal and landscaping. Frontier can efficiently provide labor for necessary tasks because Parkway is able to schedule the work when needed to eliminate delay. Frontier's charges were paid by

both Stealth and the Attorney General and are objectively reasonable, and consistent with or lower than other comparable contractors who worked on this project.

35. A summary of project expenses initially paid by Frontier is attached as Exhibit 7. In total, Frontier paid \$574,892.31 in project expenses. These expenses were passed to Stealth and the Attorney General for reimbursement without any mark-up or adjustments.
36. Frontier also initially paid for sub-contract labor in the amount of \$64,855.45. A summary of these payments is attached as Exhibit 8. These expenses were passed to Stealth and the Attorney General for reimbursement without any mark-up or adjustments.
37. Frontier, as sub-contractor, completed tasks on the project and has billed or will bill Stealth and the Attorney General for these items. A summary of these charges is attached as Exhibit 9. The total amount of sub-contractor work is \$72,087.08. The rates charged are at or below similar rates charged by other sub-contractors on this project.
38. The Attorney General was kept fully informed and approved all changes to the project. Almost all changes were specifically requested by the Attorney General. The Attorney General has paid all progress invoices presented to date. As to the work that has been billed and paid, Stealth is unaware of any disagreement or concerns from the Attorney General. The progress invoices are attached as Exhibit 10.
39. By June of 2021, the Attorney General was aware that the costs of this project exceeded original estimates, due to changes requested by the Attorney General and increased costs caused by material shortages. The Attorney General indicated it wanted to pay a portion of the costs prior to the end of the biennium which ended on June 30, 2021, and it requested Stealth absorb some of the costs and increase the Attorney General's rent.
40. Although the construction was not yet completed and the final accounting and reconciliation of costs was not done, the Attorney General requested Stealth provide to the Attorney General estimates of the final costs. The Attorney General then paid a portion of the final estimated costs and, based on estimates, the parties agreed to a new rental rate going forward. The parties agreed that after the project was finished, the costs would be reconciled, a final new rental rate would be established, and the parties would execute an addendum to the Lease with the new rental rate. (Exhibit 2 at 418-432 and Exhibit 11.)
41. It is still necessary for the parties to complete a final reconciliation of the building construction costs.
42. Attached as Exhibit 12 is a summary of all construction and remodel costs by vendor which are related to the Attorney General's financial responsibilities to Stealth. Attached as Exhibit 13 are all the invoices for the construction/remodel for hard costs shared under the Lease between Stealth and the Attorney General.
43. As constructed the Attorney General's lease comprises a total of 33,000 square feet, roughly as follows: BCI 22,284 with shop space, IT 2100, CGIS 1850, Fire Marshal 1825, with shop space, Consumer Protection 2100, and Lottery 2841. In addition, the Attorney General shares approximately 1180 square feet of common space with the Department of Health.
44. Almost all the work is now completed on the Property. An overview of the accounting between Stealth and the Attorney General, subject to final approval of the parties, is attached as Exhibit 12. Stealth and

the Attorney General still need to finalize the project. The project cost less than the estimates previously provided to the Attorney General. (Exhibit 11.)

45. As noted in Exhibit 12, the remodel and new construction cost a total of \$4,993,184.77. This includes \$82,122.45 in project expenses which have not yet been billed to the Attorney General. (Exhibit 12.)
46. As of July 29, 2021, the Attorney General has paid to Stealth \$1,342,209.70 toward remodel and new construction costs. Additionally, as of October 2022 the Attorney General paid to Stealth an additional \$87,230.00 in increased rent. (Exhibit 12.)
47. Based on the total project cost of \$4,993,184.77, Stealth is responsible for project costs of \$3,788,600.00 and the Attorney General is responsible for project costs of \$1,204,584.77. (Exhibit 12.)
48. The total project costs are lower than previously estimated. As a result, the Attorney General has overpaid its share of construction expenses by \$224,854.93.
49. As part of the final reconciliation, Stealth will either pay to the Attorney General or credit against future rent payments the \$224,854.93.
50. Although the parties anticipated an addendum to the Lease to adjust the Attorney General's rent obligation to Stealth, for project costs, no addendum is necessary.
51. In addition to reconciling project construction costs, Stealth and the Attorney General also need to meet and reconcile CAM charges under the Lease.

COMMENTS ON REPORT'S FINDINGS:

Based on the facts outlined above, Stealth offers the following comments on the Report:

52. As noted above, Schorsch and Dockter are the owners of D & S LLC, which conducts business as Parkway Property Management and as Frontier Contracting. Dockter and Schorsch are not conducting any business using Frontier Contracting, LLC. Frontier Contracting, LLC has no employees. It is a holding company for vehicles and equipment. The invoices issued by D & S LLC, as part of this project should not have been issued in the name of Frontier Contracting, LLC, but instead in the name of D & S LLC, doing business as Frontier Contracting. D & S is changing its forms to clarify that D & S is the entity providing contractor services using D & S's contractor's license and the trade name Frontier Contracting.
53. Parkway and Stealth cooperated fully with the Auditor's investigation by agreeing both to be interviewed, answering questions via email, and by providing copies of relevant email communications and other documents. Parkway and Stealth have attached to this Response relevant information some of which was provided to the Auditor and other items which would have been provided if requested. The information is critical to a full understanding of this project and its accounting.
54. The Report is incorrect that there were no written change orders. The email correspondence between the Attorney General, Bartlett and West, and Stealth/Parkway establish that the Attorney General requested multiple changes to the original plans and that those requests were accommodated by Stealth/Parkway.

55. The Report incorrectly questions how Dockter became involved in this project. As noted above, the genesis was an informal conversation between Dockter and Director Grabowska which resulted in further communications between Parkway and the Attorney General and the Office of Management and Budget.
56. The Report fails to note the written communications between Parkway, Chief Deputy Seibel and Director Grabowska in June 2019, in which Director Grabowska indicated that he met with Chief Deputy Seibel, that the Attorney General desired a meeting between Parkway and certain Attorney General Division Directors, and that the Attorney General was looking to Parkway to assist with a public/private partnership for a possible headquarters building for NDBCI, AGIT/CJIS and the Fire Marshal.
57. The Report stresses that Stealth did not purchase the building before securing a lease with the Attorney General. This finding is incomplete. Parkway executed a Purchase Agreement and paid \$30,000 in earnest money on the building which was not contingent on any agreement with the Attorney General. Completion of a lease with the Attorney General was requested by Stealth's bank as part of the financing package necessary to fund the new-construction additions to the property requested by the Attorney General.
58. The Report speculates that the Attorney General was charged change-order-fees by project contractors above the actual costs of requested changes. This speculation is false. The Attorney General was not charged a fee for changes to the plans, except for the actual costs of the changes.
59. The Report indicates that Stealth does not have all invoices to support the work on the project. This is not accurate. All of the invoices are attached as Exhibit 13. The Report is based on the Auditor not recognizing that the Attorney General requested Stealth provide an estimate of future costs, that not all invoices had been completed and/or provided to the Attorney General at the time of the estimate, and that the parties agreed that they would confer when all of the construction was completed to finalize the costs. The final reconciliation has not yet been completed between Stealth and the Attorney General.
60. The Report does not accurately reflect the invoices and charges by Frontier Contracting. Some of the Property's maintenance expense is to be paid by Stealth, unrelated to the costs of remodeling. These costs are distinct from costs for work completed by Frontier which are chargeable to Stealth and the Attorney General. Stealth reimburses some of Frontier's expenses through rental payment adjustments flowing from Parkway, as property manager, and Stealth as owner. The Frontier invoices included in the Report are Stealth expenses. The Report mistakenly lists these as construction costs. They are not included in the summary of project expenses contained in Exhibit 12.
61. The Report fails to properly note the difference between payments made to Frontier, because Frontier paid an expense and sought reimbursement, and charges for work completed by Frontier as a subcontractor. (See Exhibits 7, 8, and 9.) The Report creates a false impression that Frontier completed more contracting work on the project than it actually completed.
62. All of Northern Plains Heating and Air's invoices are included in Exhibit 13 and are summarized as part of Exhibit 12. The charges are appropriate and reasonable.
63. All of Frontier's invoices for work completed as a contractor on the project are included in Exhibit 13 and are summarized as part of Exhibit 12. The charges are appropriate and reasonable.

64. The final construction costs are less than what the parties estimated. Stealth and the Attorney General need to meet and confer and finalize the project. Stealth's reconciliation is attached as Exhibit 12.

CONCLUSION

Stealth and Parkway believe this Response and attached exhibits address all the issues raised in the Report related to Stealth's and Parkway's involvement on this project and show that at all times Stealth, Parkway and their Members acted honestly and consistent with their legal and contractual duties.

Stealth and Parkway are willing to provide additional information and answer any additional questions concerning this project.