

Memorandum #08-72

To: *City Commission*
From: *Finance Officer*
Date: *5/9/2008*
Subject: *Memorandum Supporting KPI Hanger Lease Agreement*

Attached to this Memorandum is the proposed Hanger Lease Agreement with Kolberg-Pioneer Inc. (KPI) for a portion of the new Jet Hanger Maintenance Facility (approximately 35%) recently completed at the Chan Gurney Airport. This contract was reviewed by Jim Goetz, City Attorney. The agreement reflects a monthly payment of \$950.00. While this is slightly below what was discussed previously, it is slightly higher than the industry averages of \$700.00-\$850.00. KPI recognizes that this is a “new” facility and that a share of the utilities is reflected in this higher amount. The economic benefit to our community of having this facility is a marketing goal of the Airport Board, the City, and of Carlson Aviation. We borrowed money internally to pay for this facility, and the repayment to ourselves is the challenge that we all have together. We are experiencing some initial overnight rentals that will help the City generate revenues to pay back the construction costs and the operating expenses of this facility. The ultimate goal is to rent out the whole facility to either permanent and/or transient lessees. As we progress throughout the first year; we will be further analyzing this facility to come up with a longer-range plan that includes revenue projections, operating expenses and repayment of initial construction expenses, and the corresponding responsibilities of Carlson Aviation as it pertains to this facility.

We welcome our corporate partner (KPI) and their jet to this facility and look forward to a long-term relationship that is beneficial to both the City and to KPI.

It is recommended that the City Commission approve this Lease Agreement and authorize the City Manager to sign the agreement.

Thank you,

Al Viereck
Finance Officer

City of Yankton
Hangar Space Lease Agreement

This Hangar Space Lease Agreement (the "Agreement") entered into as of the day of _____ 2008 by and between the City of Yankton ("Landlord"), and Kolberg-Pioneer, Inc. ("Tenant").

For good and valuable consideration, the parties agree as follows:

- 1.) **Premises.** Landlord leases to Tenant and Tenant leases from Landlord, space in the Hangar located at the Yankton Airport, Yankton, SD, 57078. The Hangar Space, which will occupy approximately 35% of the new Hangar building, is to be used and occupied by Tenant solely for the storage for the following aircraft:

 Make: Cessna
 Model: Conquest
 Registration: N543GC
- 2.) **Term.** This agreement shall commence on _____, 2008 for a term of one year. Thereafter, this agreement shall continue in effect from year to year unless terminated by either party with a 60-day written notice given to the other party.
- 3.) **Rent.** As rent for use of the Hangar Space, Tenant shall pay Landlord \$950.00 per month, payable in advance on the first day of each month. Landlord shall have the right to adjust the amount of the hangar fee due hereunder at the beginning of each new term, but a 90-day notice of the intent to raise the amount of the fee shall be provided.
- 4.) **Utilities.** Landlord shall furnish all utilities. The hangar must be heated so that a temperature range of 45-50° F is maintained during cold weather conditions.
- 5.) **Services Provided.** Landlord shall provide the service of moving the Aircraft from the Hangar Space onto the ramp area, and from the ramp area into the Hangar Space. Tenant shall not move the Aircraft into, out of, or within the Hangar. All movement of the Aircraft and/or any other aircraft under Tenant's operation or control shall be accomplished only by Landlord employees with Landlord's towing equipment or its' Fixed Based Operator (FBO) and his towing equipment. Since the effective operation of the aircraft is dependent upon movements in and out of the Hangar at early morning and late evening hours, when Landlord, or its Fixed Based Operator (FBO) may not be open for normal business, Landlord, and its FBO, agree to furnish 6 storage exits and 6 storage entrances per month outside of normal business hours at Tenant's request. If these non-business hour movements exceed 6 exits or 6 entrances, KPI will pay Landlord, or its' FBO a fixed amount for each movement to be reasonably negotiated by the Parties.
- 6.) **Use of Hangar Space.** The Hangar shall be used for the storage and operation of the Aircraft and any accessory equipment or items necessary for Tenant's use of its Aircraft. On the expiration or termination of this Agreement, Tenant shall immediately surrender possession of the Hangar Space and shall remove, at its

sole expense, its Aircraft and all other property therein, leaving the Hangar Space in the same condition as received, ordinary wear and tear excepted.

- 7.) **Sublease/Assignment.** Tenant shall not sublease the Hangar Space or assign this Agreement without prior written consent of Landlord which may be withheld at Landlord's sole discretion. Astec sister divisions will be allowed use of Hangar Space in the absence of the KPI plane. Also, if space is available, the hangar can be used for other Astec Industries' planes at acceptable daily rates, reasonably negotiated by the Parties.
- 8.) **Condition of Premises.** Tenant shall accept the Hangar Space in its present condition. Tenant shall not make any alterations, additions or improvements to the Hangar Space without the prior written consent of Landlord. All alterations, additions and improvements made to the Hangar Space shall become Landlord's property at the termination of this Agreement.
- 9.) **Indemnification.** Except to the extent caused by the negligence or willful misconduct of Landlord or its FBO, Tenant shall defend, indemnify and hold Landlord harmless from and against any demands, claims, actions or causes of action, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, asserted against, imposed upon or paid by Landlord arising from or in connection with any injury or damage to any person or property on the premises or incident to Tenant's use or occupancy of such premises, or any negligent act or omission of Tenant or its employees or agents. Upon notice from Landlord, Tenant agrees to defend any such claims at its expense, and Landlord shall cooperate with Tenant in such defense.
- 10.) **Nonliability of Landlord.** Landlord shall not be liable for any damages or any claims or suits for damages for any injury or damage to any person or property from any cause whatsoever occurring upon the premises or any part thereof or occasioned by any occupancy or use of the premises by Tenant, unless the same arises from the negligent act or omission of Landlord, Landlord's employees or agents, or its FBO.
- 11.) **Force Majeure.** Landlord shall not be liable for any loss, injury, or damage of any nature whatsoever, direct or indirect, caused by or resulting from any act of God, fire, flood, accident, strike, riot, insurance, war, vandalism or any other cause beyond Landlord's control.
- 12.) **Insurance.** Tenant shall maintain comprehensive general liability (or commercial liability on an occurrence form) insurance (including broad form contractual liability coverage) with combined single limits of not less than \$2,000,000.00 for each occurrence (bodily injury and property damage). The policy shall provide coverage for premises, products/completed operations (aggregate \$4,000,000.00) acts of independent contractors and personal injury coverage, and severability of interest. Tenant shall furnish Landlord with certificates of insurance described which shall provide that no cancellation or lapse thereof or change therein shall be effective until thirty (30) days written notice to Landlord.

- 13.) **Default.** This Agreement shall be breached if: (a) Tenant shall default in the payment of any rental payment there under; (b) Tenant shall default in the performance of any other covenant herein, and such default shall continue for five (5) days after receipt by Tenant of notice thereof from Landlord; (c) Tenant shall cease to do business as a going concern; (d) a petition is filed by or against Tenant under the Bankruptcy Act or any amendment thereto (including a petition for reorganization or an arrangement); or (e) Tenant assigns any interest in its property for the benefit of creditors.
- 14.) **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of South Dakota.
- 15.) **Remedies Cumulative.** The rights and remedies with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive, and shall be in addition to all other rights and remedies available to either party in law or equity.
- 16.) **Integration.** This Agreement constitutes the entire agreement between the parties. Any change or modification hereof must be in writing signed by both parties.
- 17.) **Successors Bound.** This Agreement shall be binding and shall inure to the benefit of the parties and their successors and assigns.

The parties have signed this Agreement as of the day and year first written above.

LANDLORD

TENANT

City of Yankton

Kolberg-Pioneer, Inc.

By:_____

By:_____

FBO

Gary Carlson

By:_____