

**Memorandum 09-65**

**TO:** Mayor and City Commissioners  
**FROM:** Doug Russell, City Manager *DR*  
**RE:** Lease Agreement with University of South Dakota  
**DATE:** April 8, 2009

Darby Ganschow, Director of Auxiliary Services for the University of South Dakota has been in communications with Carlson Aviation regarding a short-term lease of space at the corporate hanger while the airport in Vermillion is under construction.

During these discussions, a \$70.00 per week lease has been negotiated and the term will be approximately two months long, depending upon when the Vermillion airport is returned to operation.

The corporate hanger is currently occupied by one business on a long-term status and has occasional overnight rental use as scheduled by Carlson Aviation. As this is a longer term lease, Commission approval is requested and recommended.

A copy of the agreement with the University of South Dakota is attached.

**Recommendation: It is recommended that the City Commission authorize the City Manager to enter into a lease agreement with the University of South Dakota for hangar space at Chan Gurney Airport.**

## HANGAR SPACE LEASE AGREEMENT

This Hangar Space Lease Agreement (the "**Agreement**") entered into as of the day of April 1, 2009 by and between the City of Yankton, SD. ("**Landlord**") and The University of South Dakota, 414 East Clark St., Vermillion SD 57069 ("**Tenant**").

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

1. **Premises.** Landlord leases to Tenant and Tenant leases from Landlord, space in metal hangar (the "**Hangar**") located at Yankton Airport, Yankton, SD (the "**Hangar Space**") to be used and occupied by Tenant solely for the storage of the following aircraft:  
  
Make: Piper  
Model: Navajo  
Registration: N116GW
2. **Term.** This Agreement shall commence on approximately April 15, 2009 and shall continue for a term of two months ending approximately June 15, 2009 unless earlier terminated as provided in this agreement. The agreement shall become effective upon the closure of the Vermillion Airport (for construction purposes) and shall continue until the Vermillion Airport is once again open for business. Estimated construction time is six weeks. Tenant may terminate this agreement at any time with or without cause upon five days notice.
3. **Rent.** As rent for use of the Hangar Space, Tenant shall pay Landlord \$70.00 per week, payable monthly upon receipt of invoice from Landlord.
4. **Utilities.** Landlord shall furnish all utilities.
5. **Services Provided.** Carlson Aviation 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 Tenants operation or control shall be accomplished only by Carlson Aviation employees with Carlson Aviation or Landlord towing equipment.
6. **Use of Hangar Space.** The Hangar Space shall be used for the storage of the Aircraft with limited minor maintenance allowed. 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 there from, leaving the Hangar Space in the same condition as received, ordinary wear and tear excepted.
8. **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. The parking of aircraft not owned or leased by Tenant in the Hangar Space shall constitute a sublease.
9. **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.
10. **Liability.** As permitted in accordance with applicable state law, and with respect to any claim or action arising out of the activities described or performed under this Agreement, the parties mutually agree that each will remain responsible for any and all liabilities, claims, damages, charges and expenses (collectively referred to as "liability") incurred by reason of the negligence or willful misconduct of its employees, governing board members, students, faculty, agents or assigns arising from the activities under this Agreement; and that neither party shall by this Agreement transfer such liability to the other.

11. **Force Majeure:** Landlord shall not be liable for Landlord's failure to perform under this Agreement nor 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.** The University of South Dakota does not insure with commercial liability insurance providers, but as an entity of the State of South Dakota, participates in the Public Entity Pool for Liability, a self-insured liability program established by law. This is a tort liability coverage program for employees of the State and provides for payment of valid tort claims against employees.

The coverage amount is \$1,000,000 per accident, act, error, omission or event, which results in damages and arises within the scope of the employees' duties, and for which the employee is legally obligated to pay.

USD shall maintain liability insurance on the airplane during the term of this lease.

Landlord shall maintain liability and property insurance throughout the term of this lease.

13. **Default.** This Agreement shall be breached if: (a) Tenant shall default in the payment of any rental payment thereunder; (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 insure to the benefit of the parties and their successors and assigns.

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

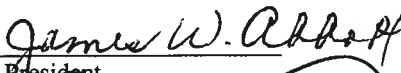
LANDLORD

City of Yankton

By: \_\_\_\_\_

TENANT

The University of South Dakota

By:   
President

By:   
Director Auxiliary Services