

September 7, 2016

MEMORANDUM

TO: State Board of Regents  
FROM: David L. Buhler  
SUBJECT: Southern Utah University – Aviation Program Capital Asset Report

Issue

Southern Utah University (SUU) requests the opportunity to inform the Board of Regents on the progress of the transition of its aviation program from a private provider to the institution; including providing a report on the recent acquisition of capital assets associated with the aviation program.

Background

In July, 2014 the Board of Regents' Executive Committee approved a lease agreement between SUU and a private aviation program provider to enable SUU to continue a degree program in aerospace and aviation. In recent months, SUU has evaluated the program and associated lease agreement and has determined that termination of the agreement was in the best interest of the University and its students. In an effort to finalize the transition of the program fully to SUU, the institution agreed to acquire several capital assets from the private provider. SUU has worked with its Board of Trustees and has received approval to move forward with the purchase. Regent approval is not required.

Those assets include:

- Two hangers totaling 21,800 square feet
- Two flight simulators

In addition, SUU has agreed to purchase tools, parts, and equipment associated with the operation and maintenance of the aviation program, including short-term dry leases of 21 aircraft. Additional information about this item may be found in the attached letter from the University and representatives from SUU will be in attendance at the meeting to answer questions if needed.

Commissioner's Recommendation

This is an information item; no action is required.

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David L. Buhler  
Commissioner of Higher Education

DLB/KLH/RPA  
Attachment

September 1, 2016

David L. Buhler, Commissioner  
Utah System of Higher Education  
Board of Regents Building  
The Gateway, 60 South 400 West  
Salt Lake City, UT 84101-1284

Dear Commissioner Buhler,

As an information item for the September 16, 2016, Board of Regents meeting, this letter is provided as an update on recent changes to SUU's Aviation Program, including the cancellation of its contract with Upper Limit Aviation (ULA). In 2013, SUU engaged ULA as a contract provider under FAA Part 141 certification for flight instruction, aircraft, and ground support necessary for a new aviation program primarily focused on rotor wing (helicopter) aircraft. This program has been successful for SUU but has not been without challenges.

In late summer 2014, SUU received notice from the U.S. Department of Veteran's Affairs (VA) that ULA was not authorized to receive VA funding for students in Cedar City, even though they had been doing so for the previous year. At that time SUU engaged its Board of Trustees and the Board of Regents in seeking approval to bring all flight instruction in-house and to enter into a damp lease agreement with ULA. This damp lease, which was approved, engaged ULA to provide aircraft, maintenance, fuel, insurance, and ground support for SUU's aviation program. All flight instructors were hired by SUU, which then began providing all flight instruction under rules approved by the VA as part of a degree seeking program within an "institution of higher learning."

Earlier this year, SUU conducted a comprehensive review of its contract with ULA and the services they were providing under the damp lease arrangement. As a result of this review, SUU determined it could run the aviation program more efficiently and effectively by bringing the entire program in-house. Potential cost savings tied to SUU directly leasing aircraft from vendors, other than ULA, appeared sufficient enough to warrant cancellation of ULA's damp lease. As a result, a 60-day termination notice was formally provided by SUU to ULA on June 22, 2016, as allowed under the terms of the contract.

In the weeks since termination notice was provided, SUU has engaged its own legal counsel, as well as other legal consultants headed by former Regent David Jordan, to negotiate an amicable exit strategy free from further legal action.

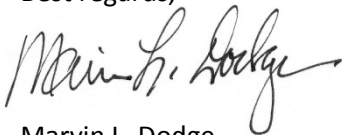
As of the writing of this letter a negotiated settlement agreement, and associated agreements, have been signed by both parties and implementation is underway. Included within the terms of the agreement, SUU has acquired a number of ULA assets deemed necessary to continue the aviation program uninterrupted. These items include the following:

1. Purchase of two (2) hangars at the Cedar City Municipal Airport including a total of 21,800 square feet of space, to be financed with a 10 year term note. These hangars are improvements to real property but do not include ownership of the real property under them.
2. Transfer of long-term leases on the real property under the hangars (.89 acres). Based on FAA regulations, airports retain ownership of all land within their boundaries.
3. Assumption of a ULA purchase agreement for two (2) flight simulators (one fixed wing and one rotor wing) to be delivered to Cedar City upon payment by SUU. These will be financed through a lease-purchase agreement.
4. Purchase of specialty and general tools, aircraft parts inventory, office equipment/supplies, and miscellaneous items within the hangars.
5. Dry leases of nine (9) rotor and fixed wing aircraft owned by ULA through December 31, 2016, or until ULA secures other leases for the same.
6. Twelve (12) direct dry lease agreements for aircraft from two additional vendors in order for ULA to cancel their leases on aircraft currently used by the SUU program. These lease agreements are at a savings over what ULA has historically billed the program.
7. And finally, SUU has hired approximately forty (40) full and part-time Cedar City based ULA employees to ensure maintenance, ground support, and office operations continue.

SUU and its staff are working diligently to fully integrate all aspects of the Aviation program into ongoing university operations. Insurance coverage for all aviation related equipment and operations has been secured. Duplicate responsibilities and functions will be assessed for further consolidation; and contracts for parts, services, fuel, and other aviation related functions are being arranged for by the SUU purchasing office.

We express confidence this transition will ensure continuation of SUU's aviation program in the most efficient and cost effective manner. President Wyatt and I are available to answer any questions regarding this transition and will be prepared to respond to questions at the September 16<sup>th</sup> meeting, should there be any.

Best regards,



Marvin L. Dodge

cc: President Scott Wyatt  
Provost Brad Cook  
Ann Marie Allen, in-house Legal Counsel  
Michael Carter, Assistant Attorney General  
Michael Mower, Executive Director, SUU Aviation