

**FUEL PURCHASE AGREEMENT**

**Summary of Terms**

A. **PURCHASER:** County of Victoria, Texas dba Victoria Regional Airport  
Victoria Regional Airport - VCT (the "Airport")  
609 Foster Field Dr.  
Victoria, TX 77904

**SELLER:** EPIC Aviation, LLC  
P.O. Box 12249  
Salem, OR 97309

B. **TYPE OF FUEL ("Fuel"):**

- ☒ Jet A Turbine Fuel meeting ASTM D 1655 latest revision ("Jet A")  
☒ 100LL Aviation Gasoline meeting ASTM D 910 latest revision ("AvGas")

C. **PRODUCT QUANTITY:** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase exclusively from Seller, all of Purchaser's requirements for Fuel. Purchaser's projected requirements for Fuel purchases during the Initial Term are set forth on Attachment A to this Agreement. The parties acknowledge that Seller is relying on Purchaser's representation that it will purchase approximately 580,000 gallons of Fuel per year, during each year of the Initial Term.

D. **PRICE:**

1. **Jet A:** Seller's rack price to Purchaser on date of lifting, which Seller shall establish from time to time, in its discretion, based on market conditions or other information deemed pertinent by Seller, plus 10.7 cents per gallon, together with all applicable taxes, assessments, fees, duties, tariffs or other charges of whatever kind or nature, levied or imposed by any third party, whether directly or indirectly, on Fuel furnished to Purchaser. The foregoing price is inclusive of charges related to delivered fuel price and is reflective of the fuel price submitted to County of Victoria Bid for Annual Supply Aviation Fuel/Service on May 23, 2016. The price listed in the Bid response was the price applicable to that week and will fluctuate from week to week.

2. **AvGas:** Seller's rack price to Purchaser on date of lifting, which Seller, shall establish from time to time, in its discretion, based on market conditions or other information deemed pertinent by Seller, plus 18 cents per gallon, together with all applicable taxes, fees, duties, or other charges levied or imposed, whether directly or indirectly, on Fuel furnished to Purchaser. The foregoing price is inclusive of charges related to delivered fuel price and is reflective of the fuel price submitted to County of Victoria Bid for Annual Supply Aviation Fuel/Service on May 23, 2016. The price listed in the Bid response was the price applicable to that week and will fluctuate from week to week.

E. **DELIVERY:** FOB Purchaser's storage tanks at the Airport, freight prepay and add. Unless otherwise agreed in writing, the minimum delivery of Jet A fuel shall be a full standard transport tanker load equivalent to approximately 8000 gross gallons, and the minimum delivery for AvGas shall be a full standard transport tanker load equivalent to approximately 9000 gross gallons. Seller reserves the right to impose a surcharge for deliveries of less than a full tanker load.

F. **EFFECTIVE DATE:** July 10, 2016 (the "Effective Date")

G. **TERM:** Five (5) years from the Effective Date

H. **PAYMENT TERMS:** Net ten (10) days EFT, as modified from time to time by Seller in accordance with Section 4 of the Terms and Conditions.

I. NOTICES:

*If to Seller:*

Address: P.O. Box 12249  
Salem, OR 97309  
Attention: Legal  
Phone: 866-501-3742  
Fax: 503-566-2303  
E-mail: [legal@epicaviationllc.com](mailto:legal@epicaviationllc.com)

*If to Purchaser:*

Address: 609 Foster Field Dr.  
Victoria, TX 77904  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

J. **ADDITIONAL PROVISIONS:** The Terms and Conditions beginning on Page 3 of this Agreement are incorporated by reference. In the event of any conflict between any term contained in this Agreement and any attachment or amendment that has been duly executed by both of the parties to this Agreement, the attached Terms and Conditions shall control.

- Attachment A: Projected Fuel Requirements
- Attachment B: Credit Card Processing Agreement
- Attachment C: Aviation Refueler Lease Agreements

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the Effective Date.

EPIC Aviation, LLC  
("Seller")

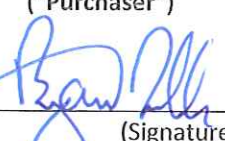
By:   
(Signature)

Name: Kevin E. Cox  
(Printed)

Its: President  
(Title)

Date: 8/31/16

County of Victoria, Texas dba Victoria Regional Airport  
("Purchaser")

By:   
(Signature)

Name: Ben Zeller  
(Printed)

Its: County Judge  
(Title)

Date: \_\_\_\_\_

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## Fuel Purchase Agreement

### TERMS AND CONDITIONS

THIS FUEL PURCHASE AGREEMENT (this "Agreement") between EPIC Aviation, LLC, an Oregon limited liability company ("Seller") and the purchaser identified on the attached Summary of Terms ("Purchaser") is made subject to the following terms and conditions, all of which are agreed to by Seller and Purchaser:

1. **Use of Brand Names.** Purchaser shall sell the Fuel and any other products purchased hereunder ("Branded Products") only under the brand names and/or trademarks owned or licensed from time to time by Seller (the "Brand Names") and shall have the right to display the Brand Names, but only for the purpose of properly identifying and advertising Branded Products handled by Purchaser and in a manner and in forms satisfactory to Seller in Seller's sole judgment. Purchaser must receive prior written approval from Seller before installing identification including the Brand Names at any location. Purchaser shall not sell products other than the Branded Products under the Brand Names. Seller has the right to change the Brand Names under which it sells Branded Products. In the event Seller no longer has the right to sell or to authorize Purchaser to sell Branded Products under its current Brand Names, or Seller elects to change the Brand Names under which it sells Branded Products, this Agreement shall continue and Purchaser shall, upon instruction from Seller, remove or replace any such display or identification and shall use only such Brand Names as may then be authorized by Seller.

2. **Conduct of Business.** Purchaser recognizes that it is in the interest of the parties to this Agreement for Purchaser to conduct its business to reflect favorably on the parties and to promote public acceptance of the Brand Names, Branded Products, and related services. In recognition of such objectives, Purchaser agrees to: (a) maintain all premises, including building, rest rooms, driveways, grass or planting areas, and storage areas, in good, clean, neat, safe, and healthful condition, with all necessary painting and repairs being made thereto; (b) equip aviation retail outlets to provide services comparable with competitive outlets; (c) keep all equipment neat, clean, and in good repair; (d) properly identify equipment used to dispense the Branded Products with decals that may be required by applicable laws, rules, and regulations; (e) where required according to Seller's specifications, keep any signs, logos, and other identification using the Brand Names clean, in good repair, and painted; (f) ensure that all employees at Purchaser's aviation retail outlets at all times present a good personal appearance; observe clean, neat, and safe working habits; and render prompt, courteous, and honest treatment to customers; and (g) comply with other directives from Seller that are reasonably necessary to promote the Brand, including acceptance and promotion of Seller's credit card program.

3. **Compliance with Laws and Operating Guidelines.** Purchaser shall comply with all applicable laws, ordinances, regulations, judicial and administrative orders, and other legal requirements of all government authorities (whether federal, state, municipal, or other) pertaining to this Agreement, and the loading, storage, transportation, handling, dispensing and sale of petroleum products. Purchaser shall maintain the quality of the Branded Products and strictly comply with all guidelines pertaining to the receipt, storage, handling and dispensing of aviation fuel set forth in Seller's "Manual of Operational Guidelines and Best Practices," as updated from time to time by Seller, a copy of which Purchaser acknowledges having received. Purchaser shall exercise extreme caution in the receipt, storing, handling, and dispensing of aviation fuels, including daily inspection of all storage and dispensing equipment to prevent or eliminate contamination in any form. Purchaser shall ensure and provide documentation that all personnel involved in the handling of fuels and fueling of aircraft are properly trained in all aspects of aviation fuel handling including misfueling prevention. Seller may audit Purchaser's fuel quality control documentation and the training records of line service personnel from time to time in its reasonable discretion. Purchaser shall notify Seller in writing within twenty four (24) hours of any misfueling event occurring at Purchaser's business location, regardless whether Purchaser or its agents caused such event. Adulteration, commingling, mislabeling or misbranding of aviation fuel is absolutely prohibited.

4. **Invoices; Modification of Payment Terms; Late Payments.** Seller shall deliver an invoice to Purchaser, by electronic mail or such other means as Seller may adopt or approve from time to time, for each Fuel load purchased under this Agreement. Purchaser shall give Seller written notice of any error or discrepancy appearing on any invoice before payment is due to Seller. Purchaser shall pay all invoiced amounts to Seller via electronic funds transfer initiated by Seller. The payment terms set forth in Section H of the Summary of Terms may be modified by Seller from time to time in Seller's reasonable discretion based on Purchaser's payment history, credit rating, market conditions or other pertinent information.

If Purchaser fails to pay any amounts payable hereunder when due, then Seller shall have the right in its sole discretion to



- (a) impose a late payment penalty of up to eight percent (8%) on the entire amount of the unpaid balance; and/or  
(b) charge interest on the unpaid balance at the lesser of (i) eight percent (8%) or (ii) the maximum rate permitted by law, prorated daily based on a 360-day year.

**5. Taxes.** Purchaser shall pay all domestic and foreign taxes, assessments, fees, duties, impositions and/or other charges, of whatever kind or nature, whether known or unknown, now or hereafter existing or imposed by any governmental or quasi-governmental authority or any public or private party, directly or indirectly, on the goods and services sold pursuant to this Agreement, including but not limited to taxes, assessments, fees, duties, impositions and/or other charges, of whatever kind or nature, imposed based upon the delivery, sale, importation, inspection, storage, handling, use, consumption or resale of the Fuel, and excepting only taxes imposed upon Seller based upon its net income or revenues (collectively, "Taxes"). Seller shall collect and remit all applicable federal and states Taxes as required by law. Purchaser shall collect and pay all local, municipal, or county Taxes, and/or flowage fees, if any, and Seller shall have no responsibility for the collection and remittance of such Taxes or fees. If Purchaser is entitled to purchase products free of any Tax, Purchaser shall furnish to Seller valid exemption certificates relating to those Taxes. Purchaser acknowledges and agrees that it remains solely and exclusively responsible for all Taxes and will indemnify Seller against any liability for such Taxes, regardless of whether such Taxes are included in Seller's invoice to Purchaser. Purchaser's indemnity obligation shall extend to Taxes that are imposed or assessable due to any change or reinterpretation of the laws, rules or policies relating to such Taxes or any exemptions from such Taxes, and to any Taxes for which an exemption had been claimed but which are subsequently imposed or deemed applicable based upon the rejection of the claimed exemption by any federal, state or local governmental agency or airport authority.

**6. Insurance.** Purchaser shall maintain, at its sole cost, at all times during the term of this Agreement, the insurance coverage set forth below with insurance carriers reasonably satisfactory to Seller with policy limits not less than as stated and providing for a thirty (30) day notice of cancellation:

- A commercial liability policy with products liability, bodily injury and property damage liability of not less than \$1,000,000 per occurrence.
- Automobile liability for owned, hired, and non-owned automotive equipment with a limit of liability of not less than \$1,000,000 per occurrence.

Purchaser shall name Seller as an additional insured on such policies, which shall also provide Seller with at least thirty (30) days' notice prior to any cancellation. Purchaser shall provide Seller with a certificate of insurance at the time of the signing of this Agreement and ensure an updated copy is sent to Seller upon renewal. These certificates shall be sent to the Seller's address with Attn: Insurance Coordinator.

**7.1 PURCHASER'S INDEMNITY.** Purchaser shall, to the extent allowed by law, indemnify, defend, and hold harmless Seller, any subsidiary and affiliated companies (collectively "Seller and its affiliates"), and their respective directors, officers, agents, and employees, from and against all expense (including attorneys' fees), liabilities, and claims of whatsoever kind and nature, including but not limited to, those for damage to property (including Purchaser's property) or injury to or death of persons (including Purchaser), directly or indirectly resulting, or alleged to result, from anything occurring from any cause on or about Purchaser's business operation or location, or in conjunction with the receipt, sale, transfer, storage, handling, dispensing or use of the Branded Products or the maintenance, upkeep, repair, replacement, operation, or use of any premises owned and/or operated by the Purchaser, or anything located thereon, or otherwise resulting from or in conjunction with the operations of Purchaser or the negligence of Purchaser. However the amount of purchasers indemnity here under is capped at the dollar amounts contained in the Texas Tort Claims Act for personal injury/death and property damage applicable to Counties

**7.2 SELLER'S INDEMNITY.** Seller shall indemnify, defend, and hold harmless Purchaser, any subsidiary and affiliated companies (collectively, "Purchaser and its affiliates"), and their respective directors, officers, agents and employees, from and against all expenses (including attorneys' fees), liabilities, and claims of whatsoever kind and nature including, but not limited to, those for damage to property (including Seller's property) or injury to or death of persons (including Seller), directly or indirectly resulting, or alleged to result, from anything occurring from any cause in conjunction with the operations of Seller or the negligence of Seller.

**8. DISCLAIMER OF WARRANTIES.** OTHER THAN THE FUEL SPECIFICATION SET FORTH IN SECTION B OF THE SUMMARY OF TERMS, SELLER MAKES NO EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES OF MERCHANTABILITY OR



OF FITNESS FOR THE PARTICULAR PURPOSE AND SELLER MAKES NO OTHER IMPLIED WARRANTIES OF ANY NATURE WHATSOEVER.

**9. Term and Renewal.** This Agreement shall commence on the Effective Date and shall continue for the term set forth in Section G of the Summary of Terms (the "Initial Term"). Thereafter this Agreement shall be automatically renewed for subsequent one (1) year periods unless either party gives written notice to the other of its intent to terminate at the end of the then-current term at least ninety (90) days and no more than one hundred twenty (120) days prior to the end of the then-current term.

**10. Breach and Termination.** In the event Purchaser breaches its payment obligations under this Agreement or commits a breach of its duties or obligations under this Agreement in a manner that impacts, or threatens to impact, human health, safety, the environment, Seller's reputation, or Seller's long-term business interests, Seller may immediately take one or more of the actions set forth below in subsections (a) through (d) below; namely:

(a) Seller may declare all amounts owed to it by Purchaser, or that will be owed to it by Purchaser after or by virtue of the termination of this Agreement, immediately due and payable and, in addition to the exercise of any of its other rights available under this Agreement or otherwise, may suspend its performance under or terminate this Agreement immediately, without giving Purchaser notice or an opportunity to cure.

(b) Seller or its agents may enter into any of Purchaser's facilities without prior notice or legal process and repossess any personal property of whatever type or description: (i) owned by Seller; or (ii) leased by Seller to Purchaser, regardless of whether such property is subject to a separate lease agreement between Seller and Purchaser. In the event a lease agreement pertaining to such property is executed subsequent to the Effective Date of this Agreement, the parties do not intend the terms of such lease agreement to supersede the terms of this Section 10 and any such agreement shall automatically terminate upon the repossession of the subject property by Seller. Any Fuel on board repossessed property shall become the property of Seller, but will be credited against any amounts owed to Seller by Purchaser at the market price on the day of repossession, provided, and only to the extent, that such Fuel meets the specifications set forth on page one of this Agreement. Purchaser shall use its best efforts to assist Seller in completing the foregoing repossession. Seller's actions in aid of repossession shall not preclude Seller from pursuing any other remedies provided by law or this Agreement and shall not operate as a waiver of any amounts due or owing from Purchaser to Seller or any damages to which Seller may be entitled under this Agreement or otherwise.

(c) Seller may apply, as an offset against amounts owed to it by Purchaser, any amount Seller either then or thereafter may owe to: (i) Purchaser; (ii) any affiliate or other entity that owns, is owned by, or is under common ownership with Purchaser; or (iii) any guarantor of Purchaser's payment obligations under this Agreement. Purchaser represents and warrants that it is authorized to make the commitment set forth in this Section 10(c).

(d) Seller may pursue any other available form of legal recourse, or pursue any other remedy allowed by law, this Agreement, or any other agreement between Purchaser and Seller or any subsidiary or affiliate of Seller, including but not limited to applying the proceeds of Purchaser's credit card vouchers as a set off against Purchaser's account in the form of a credit memo, reducing the amount owed by Purchaser to Seller, as authorized by that certain Card Processing Agreement between Purchaser and EPIC Card Services, LLC of an even date herewith.

Except as set forth above, upon the occurrence of a breach of this Agreement the non-breaching party shall give written notice to the breaching party describing the breach. Upon receipt of such notice the breaching party shall have thirty (30) days to cure such breach. If such breach is not cured within this thirty (30) day period the non-breaching party may terminate this Agreement. The exercise of a party's right to terminate this Agreement pursuant to this Section 10, or to seek any other remedy provided by law or this Agreement, shall not be deemed an election of remedies and shall be without prejudice to any right to seek any other remedy provided by this Agreement or afforded by law.

**11. Reimbursement of Costs Upon Early Termination.** Purchaser acknowledges and agrees that Seller may incur expenses or make investments for the benefit of Purchaser during the term (or upon the termination) of this Agreement, including without limitation, expenses or investments relating to: the installation or removal of signage or credit card equipment; the provision of general or specialized training; the provision of marketing credits or assistance; or the provision of managerial or operational assistance (collectively "Seller's Costs"). In the event this Agreement is terminated before the expiration of its then current term (the "Current Term"), whether by Seller as provided in Section 10 above due to Purchaser's breach or by Purchaser for any reason, voluntarily or involuntarily, other than as provided in Section 10 due to Seller's breach, Purchaser shall, within ten (10) days of the date of such termination, repay Seller a proportional share of



any and all of Seller's Costs incurred or expended during the Current Term, based on the time remaining in the Current Term at the time of termination. For example, if Seller's Costs during a Current Term were \$10,000.00, the Current Term was for five years, and Purchaser terminated this Agreement on the last day of the third year, Purchaser would be obligated to repay Seller \$4,000.00.

**12. Damages and Remedies Due to Lack of Volume or Early Termination.** The parties acknowledge that Seller is waiving regular lease fees for the three aviation refueling vehicles (the "Refuelers") described in the Aviation Refueler Lease Agreements attached as Attachment C (the "Leases"), based on Purchaser's representation that it will purchase approximately 580,000 gallons of Fuel per year, for each of the 5 years of the Initial Term. If at the end of the Initial Term Purchaser has not purchased at least two million nine hundred thousand (2,900,000) gallons of Fuel, then Purchaser shall be liable to the Seller payment of damages in an amount equal to \$0.12 per gallon, calculated on the difference between two million nine hundred thousand (2,900,000) gallons and the Fuel volume actually purchased by Purchaser prior to termination of this Agreement. Such payment shall be made by Purchaser to Seller within 10 days of Seller's written notice.

In addition, if Purchaser fails to purchase at least four hundred ninety-three thousand (493,000) gallons of Fuel in any single year during the Initial Term (85% of 580,000), then Seller may terminate this Agreement and the Leases upon written notice and Purchaser without penalty and Purchaser shall be responsible for the cost of shipping the Refuelers to a destination of Seller's choice within the continental United States of America. Finally, in the event this Agreement is terminated prior to the expiration of the Initial Term for any reason other than Seller's breach, then the Leases shall terminate and Purchaser shall be responsible for the cost of shipping the Refuelers to a destination of Seller's choice within the continental United States of America.

**13. Security Interest.** These terms and conditions, in particular, the terms and conditions as set forth in this Section 12, constitute a security agreement under the Uniform Commercial Code or similar code of a foreign country. Purchaser, in order to secure payment for amounts due from Purchaser to Seller and in consideration of any credit terms extended to Purchaser (including, without limitation, any future advances by Seller to Purchaser), hereby grants Seller a first-priority security interest in all product and services until such time as all amounts due from Purchaser to Seller are paid in full ("Collateral"). Purchaser agrees that from time to time, at the expense of Purchaser, Purchaser will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Seller may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Seller to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Moreover, Purchaser hereby authorizes Seller to file one or more financing or continuation or similar statements, and amendments thereto, relative to all or any part of the Collateral without the further signature or consent of Purchaser to perfect Seller's security interest provided herein, where permitted by law. This security agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until payment in full of all amounts due under from Purchaser to Seller, (b) be binding upon Purchaser, its successors and assigns, and (c) inure to the benefit of Seller and its successors, transferees and assigns. In the event Purchaser fails to make full payment when due, Purchaser acknowledges and agrees that Seller (or any affiliated company) may, in addition to all other rights and remedies, invoke any and all statutory or equitable lien rights or those of any participating aviation merchants in connection with the enforcement of Seller's right to payment under this Agreement, and hereby authorizes Seller to file a lien for the unpaid charges, plus late fees at 12% APR, aircraft title search fees, filing fees, collection costs and attorney fees, against any aircraft for which charges were incurred and made to Purchaser's Seller account. Purchaser represents and warrants that Purchaser either owns the aircraft for which goods and services are purchased, or is lawfully possessed of the aircraft with the owner's express consent to purchase goods and services for the aircraft from or on credit provided by Seller. Purchaser agrees to indemnify and hold Seller harmless from and against any and all claims arising out of Seller's filing or enforcement of a UCC financing or continuation or similar statement and/or a lien against the aircraft.

In recognition of the international and mobile nature of aviation and aircraft, and the necessity for legal certainty, predictability and convenience, and to avoid filing liens in multiple jurisdictions, any lien filed by Seller shall be based, at Seller's sole discretion, either upon the aircraft lien statute of the State of Texas (Texas Property Code § 70.301 et al), or the applicable aircraft lien statute of the foreign country in which the aircraft is registered, regardless of where (a) the Purchaser resides or does business, (b) the aircraft owner resides or does business, (c) the aircraft was at the time such charges were incurred, (d) the aircraft is registered, or (e) jurisdiction may otherwise be proper. Any aircraft lien may also be filed at the International Registry, pursuant to the Convention on International Interests in Mobile Equipment, if applicable. The Purchaser will be liable to Seller for all costs and expenses of lien preparation and filing, collection and litigation including, but not limited to, late charges, attorney fees, court and discovery costs and/or other costs incurred by



Seller in enforcing or defending its rights hereunder. If the debt thereafter remains unpaid, Seller may institute an action against the Purchaser (and/or the aircraft owner) to foreclose the lien and to collect the debt. Purchaser agrees that venue for enforcement of this Agreement, or any lien or action predicated upon such lien or financing statement, shall be in the state courts of Harris County, Texas, USA, regardless of the amount in controversy and excluding any conflict-of-laws rule or principle that might refer the governance or the construction of these terms to the law of another jurisdiction. Purchaser's use of its Seller credit account indicates Purchaser's acceptance of these terms and conditions (as may be modified from time-to-time), and waiver of all objections to the foregoing choice of law or forum. Service of process by certified mail, return receipt requested, postage prepaid and mailed to Purchaser at the address on the application shall be sufficient to confer jurisdiction regardless of where Purchaser is geographically located or do business.

**14. Confidentiality. Confidential Information** means all written or oral information that either party to this Agreement (each a "Disclosing Party") designates as confidential to the party that receives such information (each a "Receiving Party") or that, based on the nature of the information or circumstances surrounding its disclosure by or on behalf of Disclosing Party, Receiving Party should in good faith treat as confidential. Confidential Information includes but is not limited to pricing, proposals, and the terms of this Agreement. Receiving Party will not use any Confidential Information except in furtherance of the parties' agreed business relationship. Receiving Party will not disclose, give access to, or distribute any Confidential Information to any third party, except upon Disclosing Party's prior written authorization. Notwithstanding the foregoing, Seller may disclose Confidential Information of Purchaser to the extent permitted under Seller's Privacy Policy, as posted on the epic-aviation.com website, as part of the Terms of Use. Seller's Privacy Policy is incorporated herein by reference, and made a part of this Agreement. Receiving Party will take security precautions to keep Confidential Information confidential that are at least as protective as the precautions Receiving Party takes to preserve its own Confidential Information of a similar nature. In the event any Confidential Information becomes relevant or discoverable in any lawsuit to which Purchaser or Seller is a party, the Receiving Party shall use its best efforts to ensure that such Confidential Information is protected by the terms of a court authorized protective order prohibiting disclosure to third parties to the fullest extent possible.

**15. Dispute Resolution.** With the exception of Purchaser's breach of its payment obligations under this Agreement or Purchaser's breach of its duties or obligations under this Agreement in a manner that impacts, or threatens to impact, human health, safety, the environment, Seller's reputation, or Seller's long-term business interests, any dispute that arises under this Agreement shall be submitted to a senior officer of each party (or his or her designee) having the authority to negotiate the resolution of such dispute. Such persons shall attempt in good faith to resolve the dispute in good faith before either party may initiate legal action concerning the subject matter of the dispute.

**16. Force Majeure.** Failure of either party to perform as required under this Agreement, directly or indirectly caused by casualty, acts of God, strikes or any labor disturbances, lack of supply, any act of government authority (local, state, or federal), shortage of product, transportation delays, acts of public enemies, insurrection, sabotage, acts of third parties, defaults, or negligence of others, termination, suspension, or any other event, act, or any event or occurrence not the fault of the parties, shall be excused and the parties shall not be liable for damages or otherwise held to account therefore. Nothing contained herein shall excuse the obligation to make payments due for goods delivered.

**17. Purchase of Additional FBO; Exclusive Fuel at Airport.** If Purchaser, or any entity controlled by or in common control with Purchaser, operates any other facility at the Airport that sells Fuel (an "Additional FBO") during the term of this Agreement, Purchaser shall (or shall cause such other entity to) enter into a new Fuel Purchase Agreement with Seller on the same terms and for the same duration as this Agreement, pursuant to which the Additional FBO agrees to purchase all of its requirements for Fuel exclusively from Seller. During the Term of this Agreement, neither Purchaser, nor any entity controlled by or in common control with Purchaser, shall perform or contract to perform fueling services (or any activities relating thereto) at the Airport using aviation fuel other than Fuel purchased under this Agreement from Seller. Purchaser represents and warrants that it is authorized to make the commitments set forth in this Section 16.

**18. General Provisions.**

**18.1 Governing Law; Jurisdiction and Venue; Attorneys' Fees.** This Agreement shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the local law of the State of Texas, excluding any conflicts of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction. Any suit or action in regard to or arising out of the terms or conditions of this Agreement shall be litigated in the state or federal courts serving Victoria County, Texas. The parties hereby submit to the jurisdiction of such courts, expressly waive any objection or challenge to such jurisdiction, and agree not to claim that the



state or federal courts serving Victoria County, Texas are inconvenient forums. Upon demand, Purchaser shall immediately reimburse Seller for all amounts (including reasonable attorneys' fees and legal expenses) expended by Seller, to the extent permitted by applicable law, in the enforcement or defense of any obligation or the exercise of any right or remedy described in this Agreement. Reimbursement shall include costs incurred in any legal action, arbitration, mediation, or other proceeding, both at trial and on any appeal therefrom or petition for review thereof. If a court construes this provision to award attorneys' fees and costs to the prevailing party then the term "prevailing party" shall mean the party prevailing on issues related to this Agreement only.

**18.2 Waiver of Jury Trial.** EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SELLER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF.

**18.3 Relationship of Parties.** This Agreement is a sales contract. Neither Purchaser nor Purchaser's employees are joint venturers, partners, agents, or employees of Seller. Neither Seller nor Purchaser is authorized to represent, obligate, or bind the other. Nothing in this Agreement shall be construed as giving Seller any right to exercise any control over Purchaser's operations or over the manner and method by which Purchaser conducts its operations. Neither party shall have the authority to and shall not purport to make any commitments or representations on behalf of the other party or otherwise to take any actions on behalf of the other party.

**18.4 Assignment; Transfer of Assets.** Purchaser shall not sell or assign any right, interest, or obligations under this Agreement without prior written consent of Seller. In the event credit terms are extended to Purchaser by Seller, Purchaser shall not sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets (collectively a "Transfer") without first: (i) providing Seller written notice identifying the prospective transferee and describing the terms of the contemplated Transfer at least 120 days in advance of the closing of the Transfer; and (ii) performing all of its obligations under this Agreement or any other agreement between the parties, including but not limited to the payment of any and all amounts owed by Purchaser to Seller or any and all amounts that will become owed by Purchaser to Seller after or by virtue of the termination of this Agreement or any other agreement between the parties, whether such amounts are then due and payable or will become due and payable at some future date. At Seller's option, Seller shall be paid any and all amounts owed by Purchaser to Seller, or any and all amounts that will become owed by Purchaser to Seller after or by virtue of the termination of this Agreement or any other agreement between the parties, directly from the transferee at or before at the closing of any Transfer.

**18.5 Waiver.** The waiver by either party of the breach of any provision hereof by the other party shall not be deemed to be a waiver of the breach of any other provision or provisions hereof or of any subsequent or continuing breach of such provision or provisions.

**18.6 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications with respect to that subject matter. This Agreement may only be amended by a written instrument signed by both parties.

**18.7 Severability.** The provisions of the Agreement are severable and the invalidity of any provision in the Agreement shall not affect all other provisions, which will remain valid and binding. In the event any provision of this Agreement is or becomes invalid, the invalid provision shall be replaced by a provision which best corresponds to the intention and economic purpose of the invalid provision.

**18.8 Counterparts and Facsimile.** This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument. Fax or emailed executed copies of this Agreement shall be fully binding and effective for all purposes and treated the same as original copies and signatures.



# Attachment A

## PROJECTED FUEL REQUIREMENTS

Purchaser estimates that its requirements for Fuel during the Initial Term are as follows (all quantities in thousands of gallons):

### JET FUEL

	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Total</u>
2016							41.7	41.7	41.7	41.7	41.7	41.7	250
2017	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	500
2018	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	500
2019	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	500
2020	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	41.7	500
2021	41.7	41.7	41.7	41.7	41.7	41.7							250

### AVGAS

	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Total</u>
2016							6.7	6.7	6.7	6.7	6.7	6.7	40
2017	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	80
2018	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	80
2019	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	80
2020	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	80
2021	6.7	6.7	6.7	6.7	6.7	6.7							40

Purchaser represents and warrants that the quantities listed above are its best estimates of its requirements for Fuel during the Initial Term, and that Seller will rely on such projections to plan for adequate supply of Fuel for Purchaser and Seller's other customers. Purchaser and Seller may mutually agree to increase volumes for any year in the term. If, at any time during the term of this Agreement, Purchaser expects its Fuel requirements to be greater than the estimates set forth above, Purchaser shall give Seller thirty (30) days advance written notice of its request to increase the quantities listed above to reflect its revised projected annual requirements. Seller shall attempt to accommodate any request by Purchaser to increase the volume of its Fuel purchases; provided, however, that Seller cannot guaranty to accommodate any request by Purchaser to increase its fuel quantity by more than 20% in any given month.

If, during any twelve month period in the Term (or any extended Term) of this Agreement Purchaser fails to purchase estimated requirements of Fuel set forth above, Seller may reduce the quantity estimate for the following year by an amount equal to the difference between Purchaser's actual Fuel purchases and the estimates set forth herein. If, during any twelve-month period in the Term (or any extended Term) of this Agreement Purchaser fails to purchase at least eighty percent (85%) of its estimated requirements of Fuel set forth above, Seller may, at its option, terminate this Agreement upon thirty (30) days written notice to Purchaser.

EPIC Aviation, LLC ("Seller")

KEC (Initial)

County of Victoria ("Purchaser")

B. J. (Initial)



## Attachment B

### CARD PROCESSING AGREEMENT

This Card Processing Agreement ("Agreement") is made as of the 10th day of July, 2016, by and among *EPIC Card Services, LLC*, ("ECS") with an office at 3841 Fairview Industrial Drive SE, Suite 150, Salem, Oregon, 97302, and *County of Victoria, Texas* dba Victoria Regional Airport whose principal place of business is at 609 Foster Field Drive, Victoria, TX 77904 ("Merchant").

WHEREAS, Merchant is the owner and operator of certain facilities, known as Victoria Regional Airport ("the Airport"); and

WHEREAS, Merchant wishes to use ECS's payment card processing system and services (the "ECS Processing System") to facilitate its acceptance of EPIC payment cards (the "Cards") and operate ECS's payment card point of sale equipment described below ("PoS Equipment") in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, ECS has an agreement with an acquiring bank ("Acquiring Bank") that provides settlement services with respect to certain payment card transactions processed by ECS.

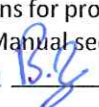
NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other consideration, the receipt and adequacy of which are hereby acknowledged, Merchant and ECS agree as follows:

**Term and Termination.** This Agreement shall be effective and binding on the parties hereto as of the day and year first written above and shall continue for so long as the Fuel Purchase Agreement dated July 10, 2016 by and between Merchant and EPIC Aviation, LLC (the "Fuel Purchase Agreement") remains in effect. This Agreement shall expire upon expiration or termination of the Fuel Purchase Agreement unless this Agreement is earlier terminated in accordance with the terms hereof or the parties hereto agree otherwise in writing.

**Authorization to Honor Cards.** ECS grants to Merchant the privilege of accessing the ECS Processing System for the acceptance of Cards. Merchant represents, warrants and covenants to ECS that (a) all Card transactions processed by Merchant shall have been originated by Merchant from a bona fide transaction for the sale of goods or services by Merchant to the customers properly presenting Cards for use in payment therefore, (b) the indebtedness represented by the information has not been pledged as collateral by or on behalf of Merchant, and (c) Merchant has no knowledge or notice of information that would lead it to believe that the enforceability or collectability of the subject indebtedness is impaired in any way.

**Applicable Requirements.** In transactions involving Cards, Merchant agrees to comply with (the following referred to collectively as the "Requirements"): (a) all card acceptance policies, procedures, and operating instructions established by applicable card issuers; (b) the policies, procedures, and operating rules, regulations and instructions established by applicable payment card networks for Cards accepted by Merchant under this Agreement, as updated, modified, or amended from time to time (the "Payment Network Rules"); (c) applicable legal or regulatory requirements established by local, state, or federal law or agency; and (d) the policies, procedures, operating instructions, and any special instructions relative to Card transactions as ECS or Acquiring Bank may establish from time to time, including but not limited to the general policies, procedures, and operating instructions set forth in the Credit Card Manual section of [epiccardservices.com](http://epiccardservices.com) (the "Credit Card Manual").

The terms and provisions detailed in the Payment Network Rules and Credit Card Manual are hereby incorporated herein by reference and made a part of this Agreement. ECS may amend, add to, or delete portions of the Credit Card Manual from time to time, and unless made impractical by security or other concerns, ECS shall provide prior notice to Merchant of changes in the Credit Card Manual by e-mail, posting on ECS's website, or at ECS's option, by written notice mailed to Merchant.

Merchant understands that its failure to comply with the Credit Card Manual or Payment Network Rules may result in the applicable payment card networks imposing fees, fines and/or penalties for such noncompliance on Merchant, ECS or ECS's processor or Acquiring Bank, and Merchant agrees that it will be liable for all such fees, fines and/or penalties. Merchant agrees to review the Credit Card Manual section and the Payment Network Rules before submitting any Card transactions for processing under this Agreement. Merchant's submission of Card Transactions for processing through ECS shall evidence and ratify Merchant's agreement to be bound by the terms of the Credit Card Manual section on [epiccardservices.com](http://epiccardservices.com) and the other Requirements at <https://epiccardservices.com/merchantTerms.action>  (initial here that you have read and accept the EPIC Card Agreement Terms).



Notices. Any notices given hereunder by either party to the other shall, unless otherwise provided herein, be sufficiently made if sent by United States certified mail, return receipt requested, postage paid, or by email or facsimile, to the address and/or number set forth below, and shall be deemed to be effective upon its receipt. Unless otherwise specified by not less than fifteen (15) days' prior written notice being given by either party to the other, all communications and notices hereunder shall be sent as follows:

To ECS -

By Mail: EPIC Card Services, LLC  
PO Box 12249  
Salem, OR 97309

To Merchant -

By Mail: 609 Foster Field Dr.  
Victoria, TX 77904

Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Entire Agreement. The parties agree that this Agreement, including all attachments hereto, the Requirements, and all other items incorporated by reference herein, constitutes the entire understanding between the parties with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into the day and year first above written.

EPIC Card Services, LLC

County of Victoria, Texas dba Victoria Regional Airport

By: Kevin E. Cox  
(Signature)

By: Ben Zeller  
(Signature)

Name: Kevin E. Cox  
(Printed)

Name: Ben Zeller  
(Printed)

Its: Manager  
(Title)

Its: County Judge  
(Title)

Date: 8/31/16

Date: \_\_\_\_\_

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## Attachment 1

### PROCESSING RATES

Current processing charges for all Card Transactions processed through the Epic Processing System and/or the PoS Equipment are according to the following schedule:

#### Cards Accepted to Process and Processing Charges (check all that apply):

Card Type	Rate	Reimbursement Time*
<input checked="" type="checkbox"/> EPIC Card	0% - Contract (for Jet Fuel + Ancillary Services & 1.75% for Ancillary Services and Avgas) <u>or</u> 1.75% - Retail	2 Business Days
<input checked="" type="checkbox"/> UVair	0% - Contract <u>or</u> 2.95% - Retail	Based on Your Contract <u>or</u> 2 Business Days for Non Contract
<input checked="" type="checkbox"/> American Express	2.85%	2 Business Days
<input checked="" type="checkbox"/> AVCard	2.50%	2 Business Days
<input checked="" type="checkbox"/> Discover	2.15%	2 Business Days
<input checked="" type="checkbox"/> Government Air Card	0% - Contract <u>or</u> 4.50% - Non Contract	Based on Your Contract <u>or</u> 2 Business Days for Non Contract
<input checked="" type="checkbox"/> MultiService	3.25%	2 Business Days
<input checked="" type="checkbox"/> MasterCard	1.90% - Qualified <u>or</u> 2.85% - Unqualified	2 Business Days
<input checked="" type="checkbox"/> Visa	1.90% - Qualified <u>or</u> 2.85% - Unqualified	2 Business Days

\* Per the terms of the Agreement, payment is subject to acceptance and remittance of settlement funds by the Card issuer.

**ePOS Fee:** The parties agree that each merchant location that accesses the ECS payment gateway for processing Card transactions will pay ECS a monthly electronic point of sale processing fee of **\$40.00 USD** per merchant location, regardless of the type of point of sale device used to conduct the Card Transaction. The monthly ePOS Fee will be deducted from settlement funds owed to Merchant under this Agreement or the Merchant's Settlement Account, and Merchant hereby authorizes ECS to make such deductions. In the event that the settlement funds or Settlement Account balance is insufficient to cover any ePOS Fee, Merchant shall send payment of such ePOS Fee to ECS via U.S. Mail so that ECS receives the payment no later than the 10<sup>th</sup> of the month for which the ePOS Fee is due.