

FUEL SUPPLY AGREEMENT

THIS AGREEMENT is made this 1st day of September, 2020 between **Solano County, Nut Tree Airport** (“**Customer**”), a California municipality, and **EPIC Aviation, LLC** (“**Epic Aviation**” or “**Seller**”), a Texas corporation.

WITNESSETH:

WHEREAS, Seller markets and distributes aviation fuels, and Customer is in the business of operating an aviation facility which uses aviation fuels; and

WHEREAS, the parties have agreed that Seller will sell aviation fuels to Customer and Customer will purchase aviation fuels from Seller for Five (5) years in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the premises and mutual covenants and undertakings set forth herein, Customer and Seller hereby agree:

1. Pricing. The prices which Customer shall pay Seller for Jet A Turbine Fuel (“Jet A”) and 100 LL Aviation Gasoline (“Avgas”) petroleum products purchased hereunder shall be governed by Seller’s posted dealer tank wagon price on the date of lifting plus applicable federal, state, and local taxes, additives, all freight charges, and fees. Any requested increases shall be limited to direct costs increases to Seller. Notice with full documentation of such increases shall be provided to Customer with any request for increase in price, allowing Customer an opportunity to review the request. Pricing changes due to an increase in cost caused by official government action, including, without limitation, the action of any governmental authority, regulatory body, governmental agency or the like, whether domestic or foreign, shall be effective from the date of the increase in cost provided twenty-four (24) hours’ notice is provided to Customer.
2. Duration and Renewal. Subject to early termination as provided herein, this Agreement shall be for a term commencing on September 1, 2020 (“Commencement Date”) and continuing for a period of Five (5) consecutive years ending on August 31, 2025 (“Expiration Date”). If at the end of the initial Five (5) year term (“Term”), Customer seeks to extend the Agreement, Customer shall provide at least ninety (90) days’ written notice prior to the end of the initial term to Seller.
3. Quantity. During the Term of this Agreement, Customer does not guarantee a minimum or maximum quantity of any product to be purchased. Customer reserves the right to increase or decrease requested quantities to meet the needs of Customer during the Term of this Agreement. Seller agrees to furnish fuel on a quantity basis as required and as requested by Customer. Seller agrees to maintain an adequate stock. In the event Seller’s supply of fuel is reduced for reasons beyond the Seller’s control to a level which prevents supply of Customer’s requirements in full, Seller agrees to supply Customer no less than a proportionate share delivered to similar accounts, unless Federal regulations require otherwise.

4. Product and Product Standard. The products to be sold hereunder are Jet A Turbine Fuel (Jet A) and 100LL Aviation Gasoline (Avgas). Jet A Turbine Fuel produced by a refinery in the United States shall meet ASTM D 1655 latest revision and Jet A Turbine Fuel produced by a refinery in Canada shall meet the requirements of CAN/CGSB-3.23-97. The 100LL aviation gasoline produced by a refinery in the United States shall meet ASTM D 910, and 100LL aviation gasoline produced by a refinery in Canada shall meet CAN/CGSB-3.25-94. Seller warrants title to the products delivered hereunder and warrants that it has the right to sell such products and that they are free from liens and adverse claims of every kind. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION, SELLER MAKES NO WARRANTIES OF ANY KIND TO CUSTOMER REGARDING THE PRODUCT SOLD HEREUNDER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
5. Payment Terms. Payment by Customer shall be made by means of check or electronic funds transfer, and the terms shall be net thirty (30) days from the date of lifting, subject to credit approval by Seller. Customer shall provide such information and shall execute such authorizations as Seller may from time to time request to allow Seller to withdraw payments due hereunder directly from Customer's designated bank account.

Seller must accept credit cards via the onsite card-reader system, including, but not limited to: AMERICAN EXPRESS; VISA; MASTERCARD; DISCOVER; Seller's Air Card, etc.

6. Marketing Funds. Following Customer's execution and delivery of this Agreement and any other Agreements referred to in subsection 19(b), Seller agrees to pay eight hundred and fifty dollars (\$850) annually to Customer in marketing funds ("Marketing Funds") to be applied by Customer toward print advertisements, collateral materials, web advertisements (not website development), premium items (T-shirts, portfolios, coffee mugs), or branded uniforms that include both Customer's logo as well as the EPIC Fuels or EPIC FBO Network logo. Other co-branded items or events may be approved on an individual basis by Seller's Regional Sales Manager. Seller shall supply and maintain at its own expense, all other marketing, such as brand name and product signs, decals, windsocks, and other marketing items at no cost to Customer.

Additionally, Seller shall replace at its own expense, two (2) lighted sign panels that include both Customer's logo as well as the EPIC Fuels or EPIC FBO Network logo.

7. Credits. Seller agrees to pay twelve thousand three hundred dollars (\$12,300) in a lease subsidy towards a new 100LL Aviation Gasoline (Avgas) truck and pay one thousand dollars (\$1,000) annually towards M4000 maintenance support. Customer agrees that credits will not count as offsets or deductions from other amounts owed to Seller.
8. Force Majeure. Whenever a period of time is prescribed for the taking of any action by either party, that party shall not be deemed in breach of this Agreement if the same shall arise because of any cause beyond the control of Seller or Customer, as the case may be,

including acts of God, acts of federal, state or local government, compliance with requests, regulations or orders of any governmental authority, fire, storm, flood, earthquake, explosion, accidents, acts of the public enemy, terrorism, war, riot, strike, lockout, or unavailability of or delays in delivery of any product which is the subject of this Agreement. If any such force majeure interruption occurs with respect to Seller's supply, Seller may substitute another fuel of the same brand, a different brand, or no brand so long as such aviation fuel meets the standards set forth in Section 4 above, and/or the quantities of aviation fuel required to be supplied under this Agreement shall be ratably reduced for the period during which such force majeure interruption may exist.

9. Title and Risk of Loss. Liability of Seller relating to the aviation fuel sold hereunder shall cease and title and risk of loss shall pass to Customer when said product passes the flange between Seller's delivery line and Customer's connection or vehicle. Notwithstanding the foregoing, nothing contained herein shall impair the parties' coverage under any applicable policy of insurance.
10. Inspection and Measurement. Customer's inspection and measurement shall be based on meters or on certified tank truck capacities according to terminal practice. All quantities shall be adjusted to 60 degrees Fahrenheit (unless otherwise specified by State Regulations) in accordance with latest revised applicable parts of ASTM Designation D: 1250, IP Designation: 200 Petroleum Tables. The term "barrel" shall mean 42 U.S. gallons. The term "gallon" shall mean a U.S. gallon of 231 cubic inches. The term "tank truck" shall mean a transport truck with a tank storage capacity of not less than 3,000 gallons.
11. Deliveries. All deliveries to Customer will be made within two (2) calendar days following a verbal or written request from Customer. Seller shall prepare and furnish the receiving party with copies of bills of lading and packing slips at the time of delivery with a signature from Seller employee and/or agent to ensure fuel quantity and specifications have been met. The packing slip shall reflect the date, time, and temperature adjustments made to the quantity of fuel being delivered. Deliveries shall be temperature corrected as applicable. Deliveries shall be made at such times within the usual business hours of Seller, as may be required by Customer. Seller shall not be required to make deliveries into vehicles supplied by Customer unless the vehicles are clean and empty immediately prior to delivery and shall not be required to load or deliver quantities less than the full capacity of the vehicle, except as otherwise authorized by Seller from time to time. If deliveries are to be made into Customer's storage facilities, Customer shall provide storage facilities sufficient to enable it to receive such deliveries and shall provide Seller with unimpeded and adequate ingress and egress Monday through Friday during airport business hours excluding County observed holidays or with prior agreement. Customer shall reimburse Seller, on demand, for any demurrage or other charges incurred by Seller by reason of Customer's failure to unload any delivery vehicle or release the same within the time allowed therefor without demurrage or other charge even though such failure may have arisen from causes beyond the control of Customer, except in the case of a rejected fuel delivery due to fuel quality control standards. All deliveries of aviation fuels shall be in

full bulk transport quantities. To be valid, any claim by Seller concerning the quantity of fuel delivered must be made within twenty-four (24) hours of delivery.

Delivery of fuel shall be in one (1) Jet A truck, 3,000-gallon capacity (minimum) and one (1) Avgas truck, 1,000-gallon capacity (minimum) either new or late models, no less than seven (7) years old. All refueler vehicles, leased by Customer, will meet state, federal, and local regulatory requirements, including, but not limited to California Air Resources Board (CARB) compliant, the Air Transportation Association (ATA) Specification 103 regulations, and the National Fire Prevention Association (NFPA) 407 regulations.

Seller shall perform all deliveries to Customer in a safe and professional manner. Seller's equipment shall be in good and safe working order. Seller shall have adequate and appropriate equipment for this Agreement. Seller shall comply with all state and federal laws to ensure the safety of all deliveries under this Agreement.

12. Invoices. Seller shall supply an original hard copy invoice to Customer. If online access to invoice documentation is available, Seller will extend said service to Customer. Additionally, Seller to supply same invoice in electronic format as soon as it is available. Said invoice shall reflect the following details:
- a. Sales by credit card type, as summarized by transaction date;
 - b. Sales by delivery batch;
 - c. Summarization of fees by category (i.e. qualified, partially qualified, non-qualified, commercial non-qualified, and per transaction fees);
 - d. All other applicable charges.

Customer shall give Seller written notice via United States Mail or email of any error or discrepancy appearing on any invoice before payment is due to Seller. Any disputes will be resolved within a reasonable timeframe. Offsets or adjustments against payments already made may be applied to future payments.

13. Taxes. It is agreed that when permitted Customer shall assume and be responsible to the proper governmental units for any and all federal, state and municipal taxes, excises, charges and fees now or hereafter imposed by any governmental agency or authority that may be applicable to the products purchased by Customer. In those cases in which the laws, regulations or ordinances impose upon Seller the obligation to collect or pay such amounts, Customer shall pay to Seller amounts equal to such governmental exactions for which Seller may be liable. If Customer is entitled to purchase products free of any tax, fee, or charge, Customer shall furnish Seller proper exemption certificates.
14. Conduct of Customer's Business. In the performance of this Agreement, Customer is engaged as an independent contractor. Customer shall conduct all operations hereunder in strict compliance with all applicable laws, ordinances, and regulations of all governmental authorities, including but not limited to all rules and regulations of the Department of Transportation and all applicable laws and regulations. Customer shall conduct the

operation of Customer's business in such a manner as to promote goodwill toward Seller and its products.

15. Oil Spills. If a petroleum product spill occurs anywhere in connection with Customer's performance of this Agreement, Customer shall promptly notify Seller and the appropriate governmental authorities and shall take immediate action to clean up the spill and prevent further damage. Upon receipt of such notification, Seller shall have the right to provide to Customer such additional manpower, equipment, and material as in Seller's reasonable discretion are deemed reasonable to complete the clean-up in a satisfactory manner. Customer shall pay and be responsible for all costs, expenses, charges and judgments incurred or imposed in connection with the clean-up operations, including reimbursement to Seller for all of its costs, expenses, fines and judgments.

16. Insurance.
 - (a) Customer shall maintain at Customer's own expense during the term of this Agreement: (i) Workers' Compensation and Employment Liability Insurance as prescribed by applicable law; (ii) Aviation General Liability (bodily injury and property damage) Insurance of not less than \$1,000,000 combined single limit per occurrence, but in the aggregate with respect to Products and Completed Operations Liability and any one offense/aggregate with respect to Personal Injury, and including but not limited to, personal injury, premises-operations, products and completed operations, and contractual Liability; (iii) Business Automobile Liability (bodily injury and property damage) Insurance of not less than \$1,000,000.00 combined single limit per occurrence, on all owned, non- owned and hired vehicles which are used by Customer; and (iv) any other insurance or surety bonding that may be required under the laws, ordinances and regulations of any governmental authority.

 - (b) The insurance specified in subsection (a) of this section shall require the insurer to provide Seller with thirty (30) days' prior, written notice of any cancellation or material change in the insurance and shall name Seller as additional insured. The insurance required under subsection (a) above shall contain a waiver of subrogation against Seller and an assignment of statutory lien, if applicable.

 - (c) The insurance required under subsection (a) above shall provide that it is primary coverage to insurance carried by Seller. The insurance required above shall be issued by insurance companies which are reasonably acceptable to Seller. The insurance companies shall have no recourse against Seller, or any other additional insured, for payment of any premiums or assessments under any policy issued by a mutual insurance

company. Customer shall be responsible for all deductibles in all of Customer's insurance policies. Customer shall furnish Seller with certificates for all insurance coverage upon signing of this Agreement, and any renewals, thereafter. These certificates shall be sent to Seller's address, noted in section 20 below, with Attn: Insurance Coordinator.

17. Quality Control. Customer shall maintain the quality of Seller's aviation products and shall comply with any quality control procedures prescribed by Seller and its supplier from time to time. In no event shall Customer permit automotive engine fuels or kerosene to be sold as Seller aviation fuels or dispensed through equipment bearing Seller's or its suppliers' insignia. Customer shall immediately report to Seller any accident or incident involving a fueled aircraft.
18. Confidential Information. Customer shall hold in confidence all manuals, guides, forms, instructions, software programs and other proprietary materials provided by Seller for Customer's use in promoting and selling Seller products, and all technical information, trade secrets and other confidential business information that is disclosed to Customer by Seller (collectively "Confidential Information"). Customer shall not use Confidential Information for any purpose other than developing business for Seller's products and services, and shall not disclose Confidential Information to anyone other than Customer's employees or agents who have a need to know Confidential Information. Customer's obligations under this section 17 shall survive termination of this Agreement.
19. Default.
 - (a) In the event of a default hereunder by a party, the other party shall have all rights and remedies provided at law or in equity. No termination of this Agreement, even if on account of Seller's default, shall excuse Customer from paying any unpaid amounts owing for aviation fuel previously delivered hereunder or from paying other outstanding amounts due Seller under this Agreement. The remedies provided in this Agreement are cumulative and not exclusive of any other remedies provided by law. However, in no event shall either party be liable to the other party for special, incidental, consequential, punitive, or exemplary damages.
 - (b) Each party acknowledges and agrees that the other party would be irreparably damaged in the event that any of the provisions of this Agreement are not performed by the other party in accordance with their specific terms. Accordingly, it is agreed that each party shall be entitled to an injunction or any other equitable remedy to prevent or terminate breaches of this Agreement by the other party and shall have the right to specifically enforce this Agreement and the terms and provisions hereof against the breaching party in addition to any other remedy to which the non-breaching party may be entitled at law or equity.

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20. Termination.

- (a) Seller may, in addition to its other remedies, terminate this Agreement upon giving Customer thirty (30) days' prior, written notice (or such lesser period as is reasonable in the circumstances) if any one or more of the following occurs:
 - (i) Customer breaches or defaults on any covenant, condition or other provision of this Agreement or fails to pay to Seller in a timely manner when due all sums to which Seller is legally entitled; or
 - (ii) Customer knowingly fails to comply with federal, state, or local laws and regulations (including regulations of applicable airport authorities) relevant to Customer's performance of this Agreement; or
 - (iii) Willful adulteration, commingling, mislabeling or misbranding of aviation fuels or other violations by Customer of trademarks utilized by Seller occur or unlawful, fraudulent or deceptive acts or practices or criminal misconduct by Customer relevant to Customer's performance of this Agreement occur; or
 - (iv) Customer knowingly induces the breach by a third party of a contract between Seller and the third party; or
 - (v) Customer's insolvency or bankruptcy occurs.
- (b) If Seller continues to accept orders from Customer following the expiration of the term of this Agreement, such sales shall be upon all of the terms and conditions hereof except that the relationship of the parties may be terminated at will.
- (c) In the event this Agreement is terminated, all other Agreements and instruments between the parties shall also terminate, and all amounts owing under any note or other document shall become due and payable. In addition, upon termination of this Agreement indemnity obligations, parties' rights upon breach, all collateral and security interests in favor of Seller, obligations arising upon termination (such as discontinuing the use of the trademarks and tradenames of Seller's supplier), confidentiality provisions, and any other terms of this Agreement which by their nature should survive termination shall all survive.

21. Miscellaneous.

- (a) Notices. All notices to be given hereunder by either party shall be in writing and sent by first class United States mail and email to the other, delivered and addressed to the parties as follows:

- (i) In the case of Customer to: Attn: Airport Manager
Solano County, Nut Tree Airport
301 County Airport Road, Suite 205
Vacaville, CA 95688
Phone: (707) 469-4600
Email: airport@solanocounty.com

- (ii) In the case of Seller to: Attn: Chief Financial Officer
EPIC Aviation, LLC
222 W. Colinas Blvd.
Irving, TX 75029
Phone: (866) 501-3742
Email: legal@epicfuels.com

or at such other address or facsimile number as either party may designate to the other by written notice in the manner provided above.

- (b) Entire Agreement. This Agreement embodies the entire agreement between Customer and Seller with relation to the contemplated transaction, and there have been and are no covenants, agreements, representations, warranties, or restrictions between Customer and Seller with regard to this Agreement other than those specifically set forth in this Agreement.

- (c) Assignment; Waiver. This Agreement may not be assigned by Customer, either voluntarily, involuntarily, or by operation of law, without the prior, written consent of Seller, which consent shall not be unreasonably withheld. Fuel and/or services may be provided by an Affiliate of EPIC Aviation, LLC. As used herein, an "Affiliate" of EPIC Aviation, LLC is any corporation, partnership, joint venture or other entity in which EPIC Aviation, LLC, a Texas corporation, owns, directly or indirectly, an equity interest of fifty percent (50%) or more. In any transaction hereunder, the Affiliate issuing the invoice to Customer shall be deemed the seller ("Seller") of the fuel and/or services. The waiver by either party of the breach of any provision hereof shall not constitute a waiver of any subsequent or continuing breach of such provision or provisions

- (d) Governing Law, Disputes.
 - (i) This agreement shall be construed in accordance with the laws of the State of California without regard to conflict of laws provisions.

 - (ii) In the event of any lawsuit between Seller and Customer arising out of or relating to the transactions or relationship contemplated by this agreement, the substantially prevailing party shall be entitled to recover its reasonable costs including its reasonable attorneys' fees.

- (iii) Seller hereby consents to the jurisdiction of any state or federal court situated in Solano County, California and waives any objections based on forum non conveniens with regard to any actions, claims, disputes or proceedings relating to this agreement, any related document, or any transactions arising therefrom, or enforcement and/or interpretation of any of the foregoing; provided, nothing herein shall affect a party's right to bring proceedings against the other party in the competent courts of any other jurisdiction or jurisdictions.
- (iv) Customer and Seller hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to this Agreement and all documents relating to this Agreement, or any transaction arising herefrom or connected hereto. Customer and Seller each represents to the other that this waiver is knowingly, willingly, and voluntarily given.
22. Indemnification. Each party shall indemnify, defend and hold the other party and its directors, officers, employees and agents harmless from and against any and all expenses (including attorneys' fees) liabilities and claims of whatsoever kind and nature, including but not limited to those for damage to property (including property of the parties) or for injury to or death of any person (including a party), directly or indirectly arising or alleged to arise out of or in any way connected with the willful misconduct, negligence, violation of law, or breach of this Agreement by the indemnifying party. The foregoing indemnity shall not apply to the extent such expense, liability or claims result from the other party's negligence, gross negligence or willful misconduct.
23. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between Customer and Seller and or any other relationship other than as Customer and Seller; nor shall either party act in any manner or indicate to any third party that it is acting as agent of either party.
24. Calendar Days. All time periods and days referred to in this Agreement shall mean calendar days and not business days, unless specifically written as business days.
25. Time of Performance. Except as expressly otherwise provided, with respect to all required acts of the parties, time is of the essence of this Agreement.
26. Recordation. Customer and Seller agree not to record this Agreement or any memorandum thereof, unless required by governmental action or franchise agreement.
27. Successors Applicable Law. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. The laws of the State of California shall govern this Agreement.
28. Amendment. The terms of this Agreement may be amended only in a writing signed by Customer and Seller.

29. Severability/Waiver. If any provision of this Agreement shall be determined to be invalid by any court of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect. Waiver by either party of any of its rights under this Agreement must be in writing and shall not constitute a waiver of any other rights such party may have.
30. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts taken together shall be deemed to constitute one and the same instrument. Electronic signatures or emailed versions of executed copies of this Agreement, whether in pdf format or otherwise, shall be fully binding and effective for all purposes and treated the same as original copies and signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement which is made effective as of the date first above written.


Seller:
EPIC Aviation, LLC

Purchaser:
Solano County, Nut Tree Airport
a municipality

By: 
Name: Marla Beckham
Title: Chief Financial Officer

By: _____
Name: Birgitta E. Corsello
Title: County Administrator

APPROVED AS TO FORM:


County Counsel