

EPIC Aviation, LLC

FUEL PURCHASE AGREEMENT

Summary of Terms

A. PURCHASER: City of Mineral Wells  
Mineral Wells Airport (MWL)  
PO Box 460  
Mineral Wells, TX 76067

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 during the Term of this Fuel Purchase Agreement ("Agreement"). Purchaser's projected requirements for Fuel purchases during the Initial Term are set forth on Attachment A to this Agreement.

D. PRICE:

1. Jet A: Seller's delivered price on date of lifting, which Seller shall establish from time to time, in its discretion, based on market conditions and Seller's cost, plus: (a) all applicable Taxes (as defined in Section 6 of the Terms and Conditions), fees or other charges of whatever kind or nature, levied or imposed by any third party, whether directly or indirectly, on Fuel furnished to Purchaser; and (b) fuel additive charges, applicable fees, surcharges and all charges, costs or expenses related to the procurement or delivery of Fuel. If the cost of providing Fuel to Purchaser increases, Seller may adjust pricing at affected locations upon notice to Purchaser. Notwithstanding the foregoing, 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, regardless of whether notice has been provided to Purchaser.

2. AvGas: Seller's delivered price on date of lifting, which Seller shall establish from time to time, in its discretion, based on market conditions and Seller's cost, plus: (a) all applicable Taxes (as defined in Section 6 of the Terms and Conditions), fees or other charges of whatever kind or nature, levied or imposed by any third party, whether directly or indirectly, on Fuel furnished to Purchaser; required by law; and (b) fuel additive charges, applicable fees, surcharges and all charges, costs or expenses related to the procurement or delivery of Fuel. If the cost of providing Fuel to Purchaser increases, Seller may adjust pricing at affected locations upon notice to Purchaser. Notwithstanding the foregoing, 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, regardless of whether notice has been provided to Purchaser.

E. DELIVERY: Unless Purchaser or its agents obtain Fuel from the terminal, delivery shall be FCA Purchaser's facilities. Seller's liability relating to the Fuel, risk of loss and (subject to Purchaser's payment obligations and security interests held by Seller) title shall pass to Purchaser when Fuel passes the flange between the carrier's delivery line and Purchaser's tank. Unless otherwise agreed in writing, the minimum delivery of Fuel shall be a full standard transport tanker load equivalent to approximately 8,000 gross gallons (or the maximum allowed by law). Seller reserves the right to impose a surcharge for deliveries of less than a full tanker load. For example, if the cost of freight for a full tanker load of Jet-A is \$413, the cost per gallon for freight is \$.0516. If the load size ordered is 6000 gallons, the cost per gallon would be \$.0688. The additional surcharge added to the price of fuel would be the difference in the cost per gallon in this example which is \$.0172 per gallon. Delivery shall be into tanks designated by Purchaser. Purchaser covenants that designated tanks and containment areas have been inspected and approved by the appropriate regulatory agencies, in accordance with industry standards. Purchaser will be responsible for all unloading operations and shall assume responsibility of spillage or contamination of

the Fuel after it leaves the end of any properly operating hose provided by Seller's carrier. Fuel quantity shall be in U.S. gallons, measured by the same method (net or gross) utilized in Seller's acquisition of the Fuel. To be valid, any claim by Purchaser concerning the quantity of Fuel delivered during the weekday must be made within thirty-six (36) hours of delivery. Any claim by Purchaser concerning the quantity of Fuel delivered during the weekend must be made within forty-eight (48) hours of delivery. **TIME IS OF THE ESSENCE WITH RESPECT TO SUCH CLAIMS AND NO CLAIM WILL BE EFFECTIVE UNLESS DELIVERED WITHIN THE SPECIFIED PERIOD.**

**F. EFFECTIVE DATE:** October 1, 2019 (the "Effective Date")

**G. TERM:** five (5) years from the Effective Date, subject to the minimum purchase requirements of Section 10 of the Terms and Conditions.

**H. PAYMENT TERMS:** Net thirty (30) days EFT, as modified from time to time by Seller in accordance with Section 5 of the Terms and Conditions.

**I. NOTICES:**

<i>If to Seller:</i>	<i>If to Purchaser:</i>
Address: EPIC Aviation, LLC 222 W. Colinas Blvd. Suite 1425 N Irving, Texas 75029	Address: City of Mineral Wells P.O. Box 460 Mineral Wells, TX 76068
Attention: Chief Financial Officer	Attention: <i>City Manager</i>
Phone: 866-501-3742	Phone: <i>940-328-7700</i>
E-mail: <a href="mailto:legal@epicfuels.com">legal@epicfuels.com</a>	E-mail: <i>citymanager@mineralwells.tx.gov</i>

**J. CONCESSION:** In consideration of Purchaser's agreement to purchase the Minimum Volume of Fuel during the Initial Term, as set forth in Section 10 of the Terms and Conditions, Seller agrees to grant Purchaser a volume-based, conditional concession in the maximum amount of thirty thousand dollars and 00/100 (\$30,000.00) (the "Concession"), subject to the terms and conditions of this Section J and the Agreement.

Purchaser agrees to repay Seller a percentage of the Concession paid to it in the event it discontinues purchasing Fuel from Seller for any reason (whether involuntarily or by operation of law) prior to the end of the Initial Term, or in the event Purchaser should breach any provision of this Agreement (each a "Triggering Event"). The amount of the Concession Purchaser shall be obligated to repay shall be based on the volume of Fuel Purchaser has purchased from Seller at the time of the Triggering Event, compared to the Minimum Volume. For example, if Purchaser purchases 25% of the Minimum Volume at the time a Triggering Event occurs, Purchaser shall repay Seller 75% of the Concession paid to Purchaser. Interest on the amount of the Concession Purchaser is obligated to repay shall be at the lesser of rate of (i) 18% per annum or (ii) the maximum rate permitted by law, on the basis of a 365/366 day year, as appropriate, and shall begin to accrue only upon the occurrence of a Triggering Event. If a Triggering Event occurs, the amount of the Concession Purchaser is obligated to repay (as determined pursuant to this Section J), together with accrued interest and any other charges authorized herein, shall be due and payable within thirty (30) days of Seller's written demand.

**K. ADDITIONAL PROVISIONS:** The Terms and Conditions beginning on Page 4 of this Agreement are incorporated by reference. In the event of any conflict between any term contained in this Agreement and the Terms and Conditions, the provisions of the Terms and Conditions shall control. The following attachments are incorporated into this Agreement.

- Attachment A: Projected Fuel Requirements
- Attachment B: Credit Card Processing Agreement
- Attachment C: City of Mineral Wells, Texas RFP# 2019-03
- Attachment D: EPIC Aviation's RFP response dated April 9, 2019
- Attachment E: Common Carrier Insurance Requirements

*(Signatures on next page)*

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

EPIC Aviation, LLC  
("Seller")

By:   
(Signature)

Name: Marla Beckham  
(Printed)

Its: Chief Financial Officer  
(Title)

Date: 4/7/2020

City of Mineral Wells  
("Purchaser")

By:   
(Signature)

Name: Randy CRISWELL  
(Printed)

Its: CITY MANAGER  
(Title)

Date: 4/1/2020

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## Fuel Purchase Agreement

### TERMS AND CONDITIONS

The following Terms and Conditions constitute the general terms and conditions governing the transactions contemplated in the preceding Summary of Terms. Any conflicting term or condition on the part of Purchaser shall be deemed superseded and replaced by these Terms and Conditions as a condition of sale. Any additional or subsequent term or condition of Purchaser shall not be binding on Seller, and all such conditions are hereby expressly rejected, unless specifically agreed to in a writing signed by an officer of Seller.

**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 ("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. Outside of common usage under the Agreement, Purchaser must receive prior written approval from Seller before installing anything that includes the Brand Names at any location. Purchaser shall not sell products other than the Branded Products under the Brand Names. Any use of the Brand Names other than as expressly authorized by this Agreement is prohibited. 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. Upon change of the Brand Names by Seller, Seller shall be responsible for the cost of Purchaser obtaining all necessary permits and for installation of all signage displaying the Brand Names including (without limitation) all electrical and other connections. If any signage displaying the Brand Names is damaged, lost or destroyed while in Purchaser's use, possession or control, Purchaser agrees to repair, recover or replace such property promptly, at Purchaser's expense. Upon termination or expiration of this Agreement, unless the Agreement is breached by Seller, Purchaser shall, at its expense, de-install and return to Seller all salvageable signage and remove all other items containing the Brand Names.

**2. Conduct of Business.** The parties recognize that it is in the interest of both parties to this Agreement for the parties to conduct their respective businesses 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 its premises in a safe manner; (b) keep all equipment clean and in good repair; (c) properly identify equipment used to dispense the Branded Products in accordance with applicable laws, rules, and regulations; and (d) ensure that all employees observe safe working habits, and courteous treatment to customers.

**3. Seller Cards, Programs and Contract Fuel.** Purchaser shall accept and promote all of Seller's issued or supported credit or payment cards and shall participate in and promote all of Seller's incentive, rewards or marketing programs, as reasonably requested by Seller and in a manner that does not interfere with Purchaser's operations.

**4. Compliance with Laws and Operating Guidelines.** The parties shall comply with industry standards and 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 purchase, loading, storage, transportation, handling, dispensing and sale of petroleum products. The parties 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 regular inspection of all storage and dispensing equipment to prevent or eliminate contamination in any form, in accordance with applicable law. Purchaser shall ensure personnel involved in the handling of fuels and fueling of aircraft are properly trained in all aspects of aviation fuel handling, including misfueling prevention, in accordance with applicable law. 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, unless Seller was onsite during said misfueling. In the event of a fuel spill, Purchaser shall take immediate action to clean up the spill and prevent further damage. Adulteration, commingling, mislabeling or misbranding of aviation fuel is absolutely prohibited. Purchaser represents and warrants that all Fuel and services purchased hereunder will be for the purpose of conducting its business and that no aviation gasoline purchased hereunder shall be used or sold for non-aviation use.

**5. 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, of which shall be mutually agreed upon by Purchaser, 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. The payment terms set forth in Section H of the Summary of Terms may be modified by Seller if Purchaser fails to make payment when due. Purchaser and Seller shall be responsible for their respective banking charges. Other than a good faith dispute regarding quality, quantity or other matter, Purchaser waives any right of set-off or adjustment against payments due to Seller under this Agreement. In no event shall Purchaser have the right to withhold payment of any undisputed amounts or fees. If Purchaser fails to pay any amounts payable hereunder when due, then Seller shall have the right in its sole discretion to charge interest on the unpaid balance at the lesser of (i) eighteen percent (18%) or (ii) the maximum rate permitted by law, prorated daily based on a 365-day year. Any waiver by Seller of late penalties or interest charges on a particular invoice shall not be construed as a waiver by Seller of its right to impose such charges in connection with other or subsequent invoices.

**6. Taxes and Other Charges.** Purchaser shall pay all domestic and foreign taxes, assessments, fees, duties, tariffs, 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 or airport 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 production, manufacture, delivery, sale, importation, inspection, storage, handling, use, consumption, resale, exportation or importation of the Fuel or any component thereof, or any feature of service related thereto, 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 involved to Purchaser in accordance with this Agreement. Purchaser's 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, 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. In the event Taxes are not included in an initial fuel invoice, Seller shall issue a separate invoice to Purchaser for such Taxes.

## 7. Insurance.

**(a)** Purchaser shall maintain at its sole cost, at all times during the term of this Agreement, the insurance coverage and minimum policy limits set forth below, with insurance carriers reasonably satisfactory to Seller:

- 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.

**(b)** Seller shall maintain at his sole cost, at all times while performing work hereunder, the insurance and bond coverage set forth below with companies satisfactory to the Purchaser with full policy limits applying, but not less than stated. A certificate of insurance evidencing the required insurance and specifically citing the indemnification provision set forth in the Agreement shall be delivered to the Purchaser prior to the start of work.

- Worker's Compensation Insurance as required by laws and regulations applicable to and covering employees of Seller engaged in the performance of the work under this Agreement with a limit of not less than \$1,000,000.00;
- Employers Liability Insurance protecting Seller against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$1,000,000.00;
- Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury \$1,000,000.00 per each person, \$1,000,000.00 per each

- occurrence/\$2,000,000.00 aggregate; Property Damage \$1,000,000.00 per each occurrence;
- Excess Liability Insurance Comprehensive general Liability, Comprehensive Automobile Liability and coverage's afforded by the policies above, with the minimum limits of \$2,000,000.00 excess of specified limits;
- Environmental Impairment Liability (EIL) and/or Pollution Liability with limits of liability of not less than: \$2,000,000 to \$5,000,000 per occurrence/\$5,000,000 to \$10,000,000 aggregate. EIL coverage(s) must be included in policies covered listed above; or, such insurance shall be provided under separate policy(ies).

All policies must contain a waiver of subrogation against Purchaser. Comprehensive General Liability and Commercial Automobile Liability policies must name Purchaser as Additional Insured. Seller shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by Purchaser. Seller shall provide Purchaser Certificates of Insurance evidencing these insurance requirements prior to the start of work.

#### 8. Indemnity and Limitation of Liability.

(a) **Purchaser's Indemnity.** To the extent allowed by law, Purchaser shall Indemnify, defend, and hold harmless Seller, any entity controlled by or under common control with Seller, and their respective directors, officers, agents, and employees, from and against all expense (including attorneys' fees), liability, 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 have resulted, 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 Fuel or other Branded Products or the maintenance, upkeep, repair, replacement, operation, or use of any premises or equipment owned and/or operated by Purchaser, or anything located thereon.

(b) **Seller's Indemnity.** Seller, its officers, directors, partners, employees and authorized representatives (collectively for purposes of this Section 8(b) "Seller's Representatives") agree to release, defend and hold harmless Purchaser and its officers, council members, representatives, agents and employees (collectively for purposes of this Section 8(b) "Purchaser Indemnified Parties") from any and all claims, demands damages, injuries (including death), liabilities and expenses (including attorneys' fees and cost of defense) to the extent arising directly or indirectly out of the negligence or intentional misconduct of Seller's Representatives. Purchaser will not accept liability for injuries that are the result of the negligence, malfeasance, action or omission of Seller. Seller agrees to accept liability to itself or others caused by its own negligence or malfeasance. This indemnification provision is also specifically intended to apply to any and all claims, whether civil or criminal, brought against Purchaser by any government authority or agency related to any person providing services under this Agreement that are based on any federal immigration law and any and all claims, demands, damages, actions and causes of action of every kind or nature, known or unknown, existing or claimed to exist, relating to or arising out any employment relationship between Seller and its employees or subcontractors as a result of that subcontractor's or employee's employment and/or separation from employment with Seller, including but not limited to any discrimination claim based on sex, sexual orientation or preference, race, religion, color, national origin, age or disability under federal, state or local law, rule or regulation, and/or any claim for wrongful termination, back pay, future wage loss, overtime pay, employee benefits, injury subject to relief under the Worker's Compensation Act or would be subject to relief under any policy for worker's compensation insurance, and any other claim, whether in tort, contract or otherwise. Seller represents that it has all intellectual property rights necessary to enter into and perform its obligations under the Agreement and shall indemnify, defend and hold harmless the State of Texas and Purchaser against any action, claim, liability, loss or expense related to such intellectual property rights and representations and will pay any damages attributable to such claim that are awarded against the State of Texas and/or Purchaser in a judgment or settlement. Purchaser reserves the right to provide a portion or all of its own defense; however, Purchaser is under no obligation to do so. Any such action by Purchaser is not to be construed as a waiver of Seller's obligation to defend Purchaser or as a waiver of Seller's obligation to indemnify Purchaser pursuant to this Agreement.

(c) **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND, HOWEVER CAUSED, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

9. **Limited Warranty, Inspection and Disclaimer.** Seller warrants that Fuel sold under this Agreement will meet the specification set forth in Section B of the Summary of Terms. Purchaser shall have the right and obligation, pursuant to industry standards and at its own expense, to inspect or test, at the time of Fuel delivery, any Fuel purchased pursuant this Agreement prior to accepting delivery of such Fuel. If any Fuel does not conform to the specifications set forth

in the attached Summary of Terms, Purchaser shall have the right, by written notice to Seller, to either reject such Fuel or require its correction. Fuel that does not conform to applicable specifications shall be corrected or removed at the expense of Seller after receiving written notice of non-conformity; provided that Seller is first given the opportunity to inspect the Fuel and investigate the non-conformity. If Purchaser restricts Seller from conducting an inspection and investigation, or if after investigation it is determined that such Fuel has been altered, combined with other products, stored or used in violation of applicable industry standards, or otherwise made non-conforming by Purchaser or its agents, removal and replacement of Fuel shall be at Purchaser's sole expense. **CLAIMS OF NON-CONFORMITY FOR QUALITY OR OTHERWISE MUST BE MADE WITHIN FORTY-EIGHT (48) HOURS AFTER DELIVERY. TIME IS OF THE ESSENCE WITH RESPECT TO SUCH CLAIMS AND NO CLAIM WILL BE EFFECTIVE UNLESS DELIVERED WITHIN THE SPECIFIED PERIOD.**

**EXCEPT AS EXPRESSLY STATED IN THIS SECTION 9, SELLER MAKES NO EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR THE PARTICULAR PURPOSE OR OTHER IMPLIED WARRANTIES OF ANY NATURE WHATSOEVER.**

**10. 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 ("Initial Term"). Purchaser estimates its total requirements for Fuel during the Initial Term will be 950,000 gallons ("Minimum Volume"). If Purchaser fails to purchase the Minimum Volume prior to the expiration of the Initial Term, the Initial Term shall be automatically extended for additional one-year periods until such time as Purchaser has purchased the Minimum Volume from Seller. After the expiration of the Initial Term, this Agreement shall be automatically renewed for a subsequent one-year period unless either party gives written notice to the other party of its intent to terminate the Agreement at the end of the then-current term at least ninety (90) days prior to the end of the then-current term (each, a "Renewal Term"). The Initial Term and any subsequent Renewal Terms shall be collectively referred to as the "Term."

**11. Liquidated Damages.** Purchaser has received discounted pricing based on its agreement to purchase the Minimum Volume. The parties acknowledge that if Purchaser discontinues purchasing Fuel from Seller under this Agreement for any reason (whether voluntarily, involuntarily or by operation of law), other than as a result of Seller's material breach of this Agreement ("Discontinuance"), Seller will incur substantial economic damages and losses of the type and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by Seller of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such Discontinuance, Purchaser agrees that liquidated damages may be assessed and recovered by Seller against Purchaser upon the occurrence of a Discontinuance, without the Seller being required to present any evidence of the amount or character of actual damages sustained by reason thereof. To that end, Seller and Purchaser agree that Purchaser shall pay Seller liquidated damages, as calculated below, if Purchaser fails to purchase at least the Minimum Volume as a result of a Discontinuance. Liquidated damages shall be equal to \$.174 per gallon, multiplied by the difference between the Minimum Volume and the number of gallons of Fuel actually purchased by Purchaser at the time of the Discontinuance. Such liquidated damages are intended to represent estimated actual damages, including the recovery of discounts provided, lost earnings and administrative costs and are not intended as a penalty, and Purchaser shall pay them to Seller without limiting Seller's right to terminate this Agreement for default as provided elsewhere herein. Liquidated damages shall be due and payable within thirty (30) days of Seller's written demand.

**12. Reimbursement of Costs Upon Discontinuance.** 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 of a Discontinuance (as defined in Section 11) before the expiration of its then current term (the "Current Term"), Purchaser shall, within ten (10) days of Seller's written demand, 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 Discontinuance. For example, if Seller's Costs during a Current Term were \$10,000.00, the Current Term was for five years, and Purchaser discontinued purchasing Fuel on the last day of the third year, Purchaser would be obligated to repay Seller \$4,000.00.

**13. Breach and Termination.** Purchaser may at any time upon thirty (30) days written notice to the Seller, terminate this Agreement for cause or for convenience (that is, for any reason or no reason whatsoever). "Cause" shall be the Seller's refusal or failure to satisfactorily perform or complete the work within the time specified, or failure to meet the specifications, quantities, quality and/or other requirements specified in this Agreement. In such case the Seller shall be liable for any damages suffered by Purchaser. If the Agreement is terminated for convenience, the Seller has no further obligation under the Agreement. Payment shall be made to cover the cost of material and work in process or "consigned"

to the Purchaser as of the effective date of the termination. In the event this Agreement is terminated by Purchaser for cause, the notice and cure provisions of this Section 13 shall apply. Purchaser may terminate this Agreement without notice and without penalty or liability in the event that: (a) Purchaser lacks sufficient funds for this Agreement; (2) funds for this Agreement are not appropriated by the City Council of the Purchaser; and (3) funds for this Agreement that are or were to be provided by grant or through an outside service are withheld, denied or are otherwise not available to Purchaser. 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); 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, upon advance written notice to Purchaser.

(b) Seller or its agents may enter into any of Purchaser's facilities with prior written notice and repossess any personal property of whatever type or description: (i) owned by Seller or in which Seller maintains a security interest; or (ii) leased by Seller or its agents to Purchaser, regardless of whether such property is subject to a separate lease agreement. In the event a lease agreement pertaining to such property, whether executed previously or 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 13 and any such agreement shall automatically terminate upon termination of this Agreement or the repossession of the subject property by Seller as allowed by this Section 13. 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; or (ii) any affiliate or other entity that owns, is owned by, or is under common ownership with Purchaser. Purchaser represents and warrants that it is authorized to make the commitment set forth in this Section 13(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.

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. Except as otherwise expressly provided in this Agreement, no remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative. The exercise of a party's right to terminate this Agreement pursuant to this Section 13, 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.

The parties agree that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the parties will first attempt to resolve the Claim by taking the following steps: (i) a written notice substantially describing the factual and legal basis of the Claim shall be delivered by the claimant to the other party within ninety (90) days after the date of the event giving rise to the Claim, which notice shall request a written response to be delivered to the claimant not less than fourteen (14) business days after receipt of the notice of Claim; (ii) if the response does not resolve the Claim, in the opinion of the claimant, the claimant shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the Claim; and (iii) if those persons cannot or do not resolve the Claim, any party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation and/or mediation shall be the responsibility of the party bearing such cost.

**14. Security Interest.** These terms and conditions, in particular, the terms and conditions as set forth in this Section 14, 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 enforce its security against the Collateral.

In the event an owner or operator of an aircraft purchases Fuel from Purchaser with an EPIC or Signature payment card and fails to remit payment to EPIC or Signature as required by the terms of the applicable payment card agreement, Purchaser hereby assigns to Seller and its affiliates any and all rights Purchaser may have regarding its ability to file a lien against an aircraft benefitting from the sale of such fuel by Purchaser to that aircraft's owner or operator, 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. To the extent Purchaser fails to pay for fuel uploaded to Purchaser's own aircraft, 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 (i) the Purchaser resides or does business, (ii) the aircraft owner resides or does business, (iii) the aircraft was at the time such charges were incurred, (iv) the aircraft is registered, or (v) 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. If the debt thereafter remains unpaid, Seller may exercise any and all rights assigned to it by Purchaser, and institute an action against the Purchaser (and/or the aircraft owner) to foreclose the lien and to collect the debt. Notwithstanding Section 21.1 below, Purchaser acknowledges that venue for enforcement 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.

**15. 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. Subject to the Texas Public Information Act, 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. Receiving Party will take reasonable security precautions to keep Confidential Information confidential, including precautions 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. This confidentiality obligation shall not apply to: (1) information demonstrably in the public domain at the time of the disclosure without violation of any confidentiality obligation; (2) information demonstrably disclosed to a party by a third party without violation of any confidentiality obligation; or (3) information required to be disclosed pursuant to the Texas Public Information Act when adjudicated to be subject to such Act by the Texas Attorney General (when appropriate to refer to the Texas Attorney General for such determination), governmental or judicial process, provided that written notice of such process is promptly provided to the non-disclosing party in order that it may have every opportunity to seek a protective order or other appropriate remedy to protect its interests in the Confidential Information.

**16. Intentionally Omitted.**

**17. Force Majeure.** Failure of either party to perform as required under this Agreement, directly or indirectly caused by casualty, acts of God, strikes or labor disturbances, lack of supply, act of government authority (local, state, federal or foreign), compliance with requests, regulations or orders of any government authority, shortage of product, commercially unreasonable supply terms, transportation delays, acts of public enemies, insurrection, war, sabotage, acts of third parties, defaults, negligence of others or any other event, act 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. If, due to the occurrence of any Force Majeure event, Seller is unable to supply the total demands for Fuel or services, Seller shall have the right, in its sole discretion, to allocate its available supply among its customers, departments and divisions in a fair and equitable manner. Nothing contained herein shall excuse the obligation to make payments due for goods delivered.

**18. Exclusive Fuel at Airport.** 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 18.

**19. Carriers and Third-Party Vendors.** Fuel provided under this Agreement shall be delivered by independent common carriers and certain services performed in connection with this agreement may be provided by independent third-party vendors. Such carriers and third-party vendors are independent contractors. Seller shall coordinate and make any arrangement for Fuel or services with such independent contractors, but Seller does not undertake any obligation to supervise such independent contractors' operations or investigate such independent contractors. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY ACT OF COMMON CARRIERS TRANSPORTING OR DELIVERING FUEL AT THE AIRPORT. EPIC REQUIRES COMMON CARRIERS TO MAINTAIN THE INSURANCE COVERAGE SET FORTH IN ATTACHMENT E AND WILL REQUIRE SUCH COMMON CARRIERS TO NAME PURCHASER AS AN ADDITIONAL INSURED.**

**20. Limitation on Claims.** No action shall be brought against Seller by Purchaser arising out of any purchase of Fuel or services under this Agreement more than two (2) years from the date of delivery of such Fuel or services.

**21. General Provisions.**

**21.1 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 arising out of or relating to this Agreement shall be litigated in the state or federal courts serving Palo Pinto County, Texas. The parties hereby submit to the jurisdiction of such courts, expressly waive any objection or challenge to such jurisdiction. In the event suit or action is instituted to interpret or enforce the terms of this Agreement the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, on any petition for review, and in any other proceeding, including any bankruptcy or arbitration proceeding, and including, but not limited to, any issues peculiar to bankruptcy, in addition to all other sums provided by law.

**21.2 Intentionally Omitted.**

**21.3 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. Seller and Purchaser each recognize and acknowledge that: (a) it is acting as a principal; (b) the other party is not acting as a fiduciary or financial or investment advisor for it; (c) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth herein; (d) it has not been given by the other party (directly or indirectly through any other person) any advice, counsel, assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) any transaction between the parties; (e) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own business decisions based upon its own judgment and upon any advice from advisors as it has deemed necessary, and not upon any view expressed by the other party; (f) its decisions have been the result of arm's length negotiations between the parties; and (g) each have a full understanding of all of the risks associated with the transactions entered into between the parties (economic and otherwise), and it is capable of assuming and willing to assume those risks.

**21.4 Assignment; Transfer of Assets.** Purchaser shall not sell or assign any right, interest, or obligation under this Agreement without prior written consent of Seller. A change of ownership or control of Purchaser shall be construed as an assignment. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party and its permitted successors, assigns, and delegates. Purchaser shall not sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets (collectively a "Transfer") without first providing the other party 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. Purchaser shall fulfill all obligations under this Agreement, including the payment of any amounts owed, prior to the closing of any Transfer.

**21.5 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.

**21.6 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.

**21.7 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.

**21.8 Copyrights and Trademarks.** Purchaser shall not, without the prior written consent of Seller, use the name or any trade name or registered trademark of Seller or any of its affiliates in any format except as necessary to perform its obligations hereunder. Seller may identify Purchaser as a branded dealer on its website and other materials identifying Seller's network of branded dealers.

**21.9 Survival.** To the extent allowed by law, each party's indemnity obligations and each other provision of this Agreement that expressly or by its nature, provides for rights, obligations or remedies that extend beyond the termination or expiration of this Agreement, will survive and continue in full force and effect after this Agreement is terminated or expires.

**21.10 Interpretation.** Section and paragraph headings are for convenience only and do not affect the meaning or interpretation of this Agreement. All exhibits attached to or referenced in this Agreement are a part of and are incorporated in this Agreement. Both parties have had the opportunity to have this Agreement reviewed by their attorneys, therefore, no rule of construction or interpretation that disfavors the Party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. The words "includes" and "including" are not limited in any way and mean "includes or including without limitation." The term "and/or" means each and all of the persons, entities, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The word "will" is a synonym for the word "shall."

**21.11 Counterparts and Electronic Signatures.** 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. 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.

**21.12 Sovereign Immunity.** Nothing in this Agreement is intended to or shall have the effect of waiving any privileges or immunities afforded Purchaser under Texas State Law including, but not limited to, sovereign immunity or official immunity, and it is expressly agreed that the City retains such privileges.

**21.13 Equal Opportunity Obligations.** Seller agrees to abide by regulations pertaining to Equal Employment set forth in all applicable local, state and federal regulations, to include not discriminating because of race, color, religion, sex, age, disability, or national origin.

**21.14 Other Actions and Services.** Seller will conduct such other actions and perform such other services as set forth in Seller's Fuels Proposal for The City of Mineral Wells, Texas (Aviation Fuel Supplier RFP# 2019-03) submitted on April 9th, 2019.

**21.15 No Boycott of Israel.** If Seller meets the criteria set forth in Section 2271.002 of the Government Code, Seller represents and warrants that it does not and will not boycott Israel during the term of this Agreement.

**21.16 No Business with Prohibited Parties.** Seller represents and warrants that it does not and will not do business with Iran, Sudan, or foreign terrorist organizations during the term of this Agreement.

**21.17 Conflict of Interest.** Seller assures that to the best of its knowledge there exists no conflict of interest or appearance of a conflict between Seller's business or financial interest and the services provided under this Agreement. Should this situation change during the term of this Agreement, Seller will advise City of such change.

**21.18 No Benefit to Officials.** No Mayor, Council-person, officer, director, employee, administrator and/or representative of Purchaser shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

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 and are an average and may vary from month to month):

JET FUEL

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
2019										10.8	10.8	10.8	32.4
2020	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	130
2021	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	130
2022	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	130
2023	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	130
2024	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8	10.8				97.2

AVGAS

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
2019										5	5	5	15
2020	5	5	5	5	5	5	5	5	5	5	5	5	60
2021	5	5	5	5	5	5	5	5	5	5	5	5	60
2022	5	5	5	5	5	5	5	5	5	5	5	5	60
2023	5	5	5	5	5	5	5	5	5	5	5	5	60
2024	5	5	5	5	5	5	5	5	5				45

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. 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.

EPIC Aviation, LLC ("Seller")

City of Mineral Wells ("Purchaser")

MMD (Initial)

EC (Initial)

Attachment E

**COMMON CARRIER INSURANCE REQUIREMENTS**

Carrier agrees to maintain, at Carrier's sole cost and expense, insurance meeting the following criteria:

**1. Type of Insurance.**

- a. Commercial General Liability Insurance ("CGL"). Carrier's CGL shall provide coverage for the provision of Services under this Agreement, including bodily injury and property damage liability, in an amount not less than \$1 million combined single limits each occurrence, \$2 million aggregate. Carrier's CGL shall include all necessary endorsements for coverage of products and completed operations, underground damage (where applicable), and contractual liability, including Carrier's duties of indemnification pursuant to this Agreement.
- b. Commercial Automotive Liability Insurance ("AL"). Carrier's AL shall provide coverage for bodily injury (including death) and property damage liability, as well as environmental damage due to the release - for any reason - of a hazardous material or waste, arising out of the ownership, maintenance, use or operation, including loading and unloading, of the Equipment operated by Carrier, in an amount not less than \$1 million combined single limit each occurrence (\$5 million combined single limit each occurrence, if required by Applicable Law based on Carrier's Services pursuant to the Agreement). Carrier's AL shall cover all owned, non-owned and hired vehicles (including any trailing equipment used by Carrier pursuant to this Agreement), as well as include an MCS-90 endorsement.
- c. Cargo Liability Insurance. Carrier's Cargo Liability Insurance shall provide coverage for any Cargo in Carrier's possession and/or control, including for any theft of, loss of, or damage to Cargo, pursuant to this Agreement, in an amount not less than \$50,000 each vehicle/trailer. Carrier's Cargo Liability Insurance shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to Cargo claims including, but not limited to, exclusions for unattended or unattached trailers, theft, or commodities transported under this Agreement.
- d. Statutory Workers' Compensation Insurance in such amounts and in such form as required by applicable state law, including Employer's Liability Insurance with limits of at least \$1 million per occurrence for bodily injury; \$1 million per employee per disease; \$1 million policy limit per disease.
- e. Excess Liability Insurance. Carrier's Excess Liability Insurance shall provide excess coverage over Carrier's underlying CGL, AL, and Employer's Liability Insurance, in an amount not less than \$4 million each occurrence.

**2.** All insurance policies required by this Agreement shall be issued by an insurer having a current A.M. Best Rating of A or better, be primary shall waive subrogation and contribution against EPIC. Carrier shall furnish to EPIC written certificates obtained from the insurance carrier showing that such insurance has been procured, is being properly maintained, the expiration date, and specifying that written notice of cancellation or modification of the policies shall be given to EPIC at least 30 days prior to such cancellation or modification. In addition, EPIC shall be named as an additional insured on Carrier's CGL and AL policies, and as a loss payee on the Cargo Liability Insurance policy as evidenced by an endorsement on the certificates of insurance. Upon request of EPIC or its designated insurance consultant, Carrier shall provide EPIC with copies of the applicable insurance policies.

**3.** Prior to commencing the performance of the Services, at the time of providing EPIC proof of Carrier's Workers' Compensation Insurance required by Section 1(d) of this Schedule, Carrier shall also provide EPIC with a clearance certificate issued by each workers' compensation board ("WCB") with jurisdiction over Carrier's operations, confirming that Carrier has an account in good standing with such WCB. If at any time during the Term, Carrier takes the position that it or its workers are exempt from any statutory requirement to maintain an account with a WCB or pay premiums to such WCB, or that Carrier is otherwise exempt from the applicable jurisdiction's workers' compensation law, and, as a result, Carrier fails to maintain applicable Workers' Compensation Insurance, then, Carrier shall immediately either: (i) provide EPIC with proof of Carrier's additional coverage from the applicable WCB and a copy of the corresponding clearance certificate, as described above; or (ii) provide EPIC with a copy of the WCB ruling confirming that Carrier is not subject to the applicable jurisdiction's workers' compensation law nor required to register for workers' compensation coverage,

as well as maintain, at Carrier's sole cost and expense, and provide proof to EPIC of Carrier's private Employer's Liability Insurance with minimum limits of \$1 million per occurrence for bodily injury; \$1 million per employee per disease; \$1 million policy limit per disease, naming EPIC as an additional insured, and meeting the requirements of Section 2 of this Schedule.

**4.** In no way will the insurance requirements in this Schedule serve to limit or reduce Carrier's liability under the Agreement.

**Attachment B**

**CARD PROCESSING AGREEMENT**

This Card Processing Agreement ("Agreement") is made as of the 1st day of October, 2019, by and among **EPIC Card Services, LLC**, ("ECS") with an office at 3841 Fairview Industrial Drive SE, Suite 150, Salem, Oregon, 97302, and City of Mineral Wells whose principal place of business is at 5300 Airport Road, Mineral Wells, TX 76067 ("Merchant").

WHEREAS, Merchant is the owner and operator of certain facilities located at Mineral Wells Airport (MWL) ("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:

**1. 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 October 1, 2019 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.

**2. Authorization to Honor Cards.** ECS grants to Merchant the privilege of accessing the ECS Processing System for the acceptance of Cards and Merchant agrees to process all payment card and contract fuel transactions at the Airport through the ECS payment processing network. 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.

**3. Terms, Conditions and 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; (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"); and (e) the Card Processing Agreement Terms in Attachment 2.

The terms and provisions detailed in the Payment Network Rules, the Credit Card Manual and the Card Processing Agreement Terms 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, Payment Network Rules or Card Processing Agreement Terms 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, the Payment Network Rules and the Card Processing Agreement Terms 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, the Payment Network Rules and the Card Processing 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: City of Mineral Wells  
PO Box 460  
Mineral Wells, TX 76078  
Fax: 940-328-7732  
Email: marla.beckham@mineralwells.gov

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

By: Marla Beckham  
(Signature)

Name: Marla Beckham  
(Printed)

Its: Chief Financial Officer  
(Title)

Date: 4/7/2020

City of Mineral Wells

By: Randy Criswell  
(Signature)

Name: Randy Criswell  
(Printed)

Its: CITY MANAGER  
(Title)

Date: 4/1/2020

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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, EPIC Signature Card, or any other EPIC Card Program	0% - Contract (for Jet Fuel + Ancillary Services & 1.75% for Ancillary Services and Avgas) <i>or</i> 1.75% - Retail	2 Business Days
<input checked="" type="checkbox"/> UVair	0% - Contract <i>or</i> 2.95% - Retail	Based on Your Contract <i>or</i> 2 Business Days for Non Contract
<input checked="" type="checkbox"/> American Express	3.35%	2 Business Days
<input checked="" type="checkbox"/> AVCard	3.25%	2 Business Days
<input checked="" type="checkbox"/> Discover	2.95%	2 Business Days
<input checked="" type="checkbox"/> Government Air Card	0% - Contract <i>or</i> 4.50% - Non Contract	Based on Your Contract <i>or</i> 2 Business Days for Non Contract
<input checked="" type="checkbox"/> MultiService	3.25%	2 Business Days
<input checked="" type="checkbox"/> MasterCard	2.10% - Qualified <i>or</i> 3.15% - Unqualified	2 Business Days
<input checked="" type="checkbox"/> Visa	2.10% - Qualified <i>or</i> 3.15% - Unqualified	2 Business Days

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

## Attachment 2

### EPIC CARD AGREEMENT TERMS AND CONDITIONS:

The following Terms and Conditions are incorporated into the EPIC Card Processing Agreement (the "Agreement"). All capitalized terms not otherwise defined herein shall have the meanings afforded them in the Agreement.

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:

#### 1 Term and Termination

- a. This Agreement shall be effective and binding on the parties hereto as of the day and year first written above and shall continue through December 31st of the year first written above. Thereafter, this Agreement shall automatically renew for subsequent twelve (12) month periods, commencing on January 1st and ending on December 31st, unless any party gives non-renewal notice at least 30 days prior to the expiration of the then-current term. Further, any party may terminate this Agreement upon thirty (30) days prior written notice to the other party at any time during the term.
- b. ECS may terminate this Agreement at any time, with or without notice: (i) if Merchant fails to comply with the Requirements or materially breaches this Agreement; (ii) upon any voluntary or involuntary bankruptcy or insolvency proceedings involving Merchant or any of its parent entities, or if ECS otherwise determines in its reasonable discretion that Merchant is financially insecure, resulting in material risk of loss to ECS; (iii) if Merchant no longer sells fuel to end-users or otherwise materially alters the nature of its business; (iv) if Merchant is or becomes listed on the MATCH List or similar terminated merchant list maintained by the payment card networks; or (v) if ECS, its processor, or Acquiring Bank become prohibited by law from providing the services under this Agreement to Merchant.

2 Changes to Applicable Requirements 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 agrees to review the Credit Card Manual 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.

3 Reserve Account At any time during the term of this Agreement or upon termination or expiration of this Agreement, ECS may establish a reserve account for Merchant in a non-segregated and non-interest bearing account in ECS's name (the "Reserve Account") to ensure the payment of chargebacks and other returned Card transactions, fines and penalties, processing charges and other amounts due from Merchant to ECS under this Agreement. If ECS determines in its reasonable discretion that such a Reserve Account is necessary or appropriate to protect ECS from financial loss, ECS and/or its Acquiring Bank shall have sole control of the Reserve Account and may determine the amount of the Reserve Account in its commercially reasonable discretion. The Reserve Account may be funded as follows at the discretion of ECS: (i) ECS may debit settlement and other funds owed to Merchant under this Agreement to fund the Reserve Account (rather than paying them directly to Merchant); (ii) ECS may debit the amount of the Reserve Account from Merchant's Settlement Account; or (iii) ECS may require Merchant to deposit funds directly into the Reserve Account. Funds held in Merchant's Reserve Account shall be used only to pay amounts due to ECS or Acquiring Bank. ECS may retain funds held in Merchant's Reserve Account until Merchant has paid all amounts owing or that may be owed by Merchant under this Agreement, including all chargebacks and other returned Card transactions, processing charges, fines, penalties, and other amounts due under this Agreement. Merchant hereby grants ECS a perfected first priority security interest to secure Merchant's obligations under this Agreement in (i) the Reserve Account, and (ii) all funds underlying Card transaction receipts processed by ECS or Acquiring Bank.

#### 4 Card Acceptance. Without limiting the generality of the Requirements set forth in the Agreement:

a. Merchant shall honor authorized sales on Cards that are valid at the time of sale. If a customer presents a Card for payment, Merchant shall verify that the Card is valid and has not expired and that the person signing the transaction record is an authorized user of the Card, and Merchant shall obtain authorization for the transaction through the ECS Processing System. If authorization for the transaction is denied (or Merchant otherwise does not receive an authorization for the Card transaction), then Merchant shall not complete the Card transaction.

b. Merchant shall prepare a transaction record that complies with the applicable Requirements for each Card transaction. All transaction records must be processed electronically. Merchant shall make a manual imprint of all Cards electronically processed but requiring the Card account number be entered manually in order to prove that the Card was present at the time of sale. In the event the imprinted and hand written amounts on a transaction record do not match, the lesser amount shall be presumed the correct amount. Unless ECS and Merchant agree otherwise in writing, proceeds from transaction records that are owed to Merchant under this Agreement, at ECS's sole discretion, may be off-set against Merchant's account with EPIC Fuels in the form of a credit memo, reducing the amount owed by Merchant to EPIC Fuels.

c. Merchant shall provide the cardholder with a transaction receipt that complies with the Requirements. If Merchant has elected to participate in the EPIC Flex Program, the transaction receipts for purchases of fuel using a Card will reflect the volume of fuel purchased but will not display the price per gallon or total price of fuel purchased, as further set forth in the Requirements of the EPIC Flex Program.

d. Merchant shall be solely and exclusively responsible and liable for the collection and remittance of any and all taxes to proper authorities regardless of whether charged to the cardholder.

e. ECS or its processing company may decline to accept, or if accepted, may charge back to Merchant any Card transaction record: (i) related to a transaction or purchase not authorized by ECS or not providing a valid authorization code; (ii) pertaining to an expired Card or a Card for which Merchant has received an invalid Card message; (iii) in which required information is either omitted or illegible; (iv) where the authorized user of the Card has not received his or her copy of the transaction receipt; (v) relating to a purchase involving fraud or misuse of a Card, regardless of Merchant's knowledge of such fraud or misuse; (vi) that becomes the subject of a dispute between Merchant and the authorized user of the Card; (vii) concerning a transaction (including a series of related transactions) with an aggregate face amount in excess of any single sale limitations agreed to by Merchant and ECS; (viii) related to a Card transaction in which Merchant has granted any right of ownership or security interest to any person other than ECS; (ix) that is charged back by the Card issuer or applicable payment card network for any reason whatsoever; (x) that is presented to ECS by Merchant more than ten (10) days after the transaction date; (xi) that relates to a transaction occurring after the expiration or termination of this Agreement; (xii) related to any transaction involving a cash advance; (xiii) related to a transaction in which Merchant has failed to strictly comply with the Requirements; (xiv) any credit issued against a transaction not processed through the ECS Processing System; or (xv) any card not present transaction. ECS's chargeback rights and rights of recourse against Merchant shall survive the termination or expiration of this Agreement.

f. In the event of a chargeback or other reversal of a Card sales transaction, Merchant shall pay the full amount of such Card sales transaction to ECS within three (3) days of its receipt of notice that such amount is due. Upon full reimbursement to ECS of any such Card sales transaction amount, title to the transaction records that is the subject of the chargeback or other reversal shall pass to Merchant. If ECS receives any funds in payment of a transaction record that has been previously charged back to Merchant, ECS will credit such funds to Merchant's account less any applicable fees.

g. Merchant shall be solely responsible for ensuring that it has received proper payment for each Card transaction submitted for processing under this Agreement. Merchant shall have forty-five (45) days from the date of a Card transaction to provide ECS notice that the Card transaction has not been properly accounted for or that payment has not been received; provided, however, that if ECS should fail to timely file any Daily Transmittal Report, such forty-five (45) period shall be extended by the period of ECS's delay. If no such notice is given, such Card transaction shall be deemed settled and closed without recourse. ECS shall provide Merchant a summary of Card remittances (the "Daily Transmittal Report") each day on ECS's website after closing a batch of Card transactions submitted by Merchant for processing. The Daily Transmittal Report will show the Card transactions and amounts that have been credited to Merchant's account or paid to Merchant during the period covered by such Daily Transmittal Report. Merchant's obligations under this Section 5(g) shall not be affected by ECS's failure to submit any Daily Transmittal Report to Merchant.

h. ECS shall not be responsible for the failure of any Card transaction to successfully process by reason that Merchant processed the transaction through a third party point of sale device, third party software or application, or third party processor. In the event that ECS is required to engage in correcting the issue, ECS's then-standard hourly rate for the services provided will be charged to the Merchant for those efforts. In such event, ECS shall submit a cost estimate and Merchant must approve such estimate before ECS performs such services.

**5 Processing Charges** Merchant shall pay ECS the fees and charges set forth in the Agreement or the Credit Card Manual. Merchant acknowledges and agrees that ECS may change the amount of such fees and charges upon giving Merchant at least ten (10) days written notice. Any rate changes shall be based on market rates and conditions.

**6 Processing Devices** ECS may provide Merchant with PoS Equipment for use at Merchant's point of sale. Merchant will not transact (or permit the processing of) sales of products or services using such PoS Equipment or the ECS Processing System other than those authorized by the terms of this Agreement and permitted (or not prohibited) by the Requirements. ECS retains title to all PoS Equipment provided to Merchant. In the event that any PoS Equipment is used in violation of the terms and conditions set forth in this Agreement or the Requirements, ECS may immediately revoke the privilege of honoring Cards and repossess all PoS Equipment. In the event of a termination of this Agreement, Merchant shall take such action as is necessary to return all PoS Equipment to ECS promptly, but no later than ten (10) business days from date of termination. If the device is not returned within ten (10) business days from the date of termination, then a late return fee of five hundred (\$500.00) dollars will be assessed to Merchant.

**7 Payment for Approved Card Transactions.** With respect to each Card sales transaction submitted by Merchant to the ECS Processing System in accordance with the Requirements, and subject to approval of the transaction, ECS will pay Merchant the amount of the Card sales transaction reflected in the transaction record, less applicable service and processing charges, within forty-

eight (48) hours of final submission of the approved Card sales transaction record to ECS's processing center. Merchant shall establish and maintain a demand deposit bank account at a bank approved by ECS for receipt of all Card settlement funds (the "Settlement Account") and hereby authorizes ECS to (i) make credits to the Settlement Account for settlement and other funds owed to Merchant under this Agreement and (ii) make debits from the Settlement Account to pay for all fees, charges, and other amounts owed by Merchant under this Agreement, in each case, by ACH, wire transfer or other electronic means and without further authorization required from Merchant.

**8 Title to Fuel** For clarity, title to fuel sold by Merchant to cardholders shall at no time during the sale transaction pass to ECS or to any of its affiliates, regardless of the Card-type used (including EPIC Cards or any other Card issued by ECS or any of its affiliates), unless otherwise expressly agreed in writing by Merchant and ECS (or one of ECS's affiliates).

**9 No Disclosure of Cardholder Information.** Merchant shall not sell, provide, exchange, or otherwise disclose to third parties (other than to Merchant's processors for the purpose of assisting Merchant in completing a Card transaction or as specifically required by applicable law) any cardholder's account number information, any other financial or other information about the cardholder's account, or any nonpublic personal information about the cardholder without obtaining the prior written consent of the cardholder. These prohibitions shall be applicable to any and all forms, documents and media in which such account numbers or other information may be set forth or stored (including but not limited to electronic data, carbon copies and photocopies). Merchant shall strictly comply with all data security standards set forth in the Requirements and shall utilize data storage, transmission, and disposal procedures that will prevent any improper disclosure of cardholder account numbers and other information. Merchant shall notify ECS immediately of any known or suspected data security breach or unauthorized access to cardholder data and shall cooperate fully with ECS, card issuers and applicable payment card networks to identify the source and scope of and remediate the effects of the breach or unauthorized access.

**10 Indemnification** Except for ECS's express obligations relating to the processing of Cards as set forth in this Agreement, ECS shall not be, by virtue of this Agreement, under any liability whatsoever to Merchant. Furthermore, Merchant shall be responsible for any and all proceedings, claims, liabilities, losses, damages, costs, judgments, fines, fees, and penalties (including those imposed by payment card networks), obligations, expenses and settlements, including without limitation attorneys' fees and court costs, howsoever arising out of or in connection with: (a) any Card transaction processed by Merchant; (b) Merchant's use of the PoS Equipment for any purpose; (c) Merchant's failure to strictly comply with the Requirements or any provision of this Agreement; (d) any data breach that is caused or contributed to by Merchant or that occurs at the Merchant's facility or on its systems; or (e) relating to Merchant's excessive chargebacks.

**11 Limitations on Liability** In no event shall (i) the liability or financial responsibility of ECS under this Agreement exceed the fees or processing charges paid to it for the transaction or activity giving rise to the liability or financial responsibility, or (ii) shall ECS or its respective affiliates, directors, officers, employees, shareholders, members, agents and representatives be liable for any indirect, special, consequential, incidental, punitive or exemplary damages under this Agreement or relative to the transactions or activities hereunder, whether or not such damages were foreseeable.

**12 Waiver** No waiver by any party of any provision of this Agreement shall be binding unless expressly made and confirmed in writing. Further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly refers and shall not apply to any other matter, non-compliance or breach.

**13 Amendment** Except as otherwise stated herein, this Agreement shall not be modified other than by mutual agreement among all of the parties and recorded in writing by the parties, except ECS may unilaterally amend this Agreement from time to time upon notice to Merchant if required or appropriate to comply with any change in applicable law, regulations, or regulatory order or guidance, including the execution of this Agreement by the Acquiring Bank pursuant to a joinder agreement executed by ECS and the Acquiring Bank in form and substance satisfactory to ECS.

**14 Binding Nature; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided, however, Merchant shall not assign this Agreement, in whole or in part, without the prior written consent of ECS.

**15 Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas (without reference to any conflict of law rules). Each party hereto expressly and irrevocably submits to the exclusive jurisdiction of the State of Texas and to the venue of federal and state courts serving Palo Pinto County, Texas, and agrees to accept service of process by registered mail. Each party hereto irrevocably waives any objection it might otherwise have to such venue, and any right to remove or transfer jurisdiction to any other forum. Each party further agrees that all discovery related to any litigation arising out of this Agreement shall take place in Texas.