

COUNTY OF EL DORADO
TRANSFER OF RESPONSIBILITY AND INDEMNITY AGREEMENT
FOR USE OF COUNTY SEPTIC SYSTEM
#172-O1711

This Transfer of Responsibility and Indemnity Agreement ("Agreement") is made and entered into on September 13, 2016, by and between the COUNTY OF EL DORADO, a political subdivision of the State of California, hereinafter called "COUNTY," and GABRIEL TYLER, hereinafter called "LESSEE:"

WHEREAS, LESSEE holds a valid lease executed 9/13/16 ("Lease") for the premises described as Hangar Space #H-09 Placerville Airport ("Premises"), a federally obligated airport property, and;

WHEREAS, LESSEE wishes to use COUNTY's septic system ("System") located at the Placerville Airport, described in Exhibit "A" attached hereto and made a part hereof, in connection with LESSEE's aeronautical use of the Premises in compliance with the terms of the Lease, and;

WHEREAS, connection to a public sewer is not feasible based on the location of the Premises, and;

WHEREAS, COUNTY wishes to authorize LESSEE'S use of the System that is consistent with LESSEE's aeronautical use of the Premises as defined by the terms of the Lease, in exchange for LESSEE'S acceptance of responsibility for the System and LESSEE'S promise to indemnify and hold COUNTY harmless from any and all liability in connection with LESSEE's use of the System;

NOW THEREFORE, COUNTY and LESSEE agree to the following terms and conditions:

1. AUTHORIZED USE:

LESSEE's use of the System is comprised of a single connection to the System for the operation of a bathroom facility ("Facility") previously installed on the Premises. This Agreement does not authorize the installation of additional connections, or any modification of the exiting connection, except as necessary for proper maintenance or repair as described below. LESSEE's use of the System is limited to LESSEE's aeronautical use of the Premises as defined by the Lease. Residential use of the Premises is prohibited by the FAA. Residential use includes any overnight occupation of the Premises that is not directly related to the care, maintenance or operation of an aircraft. Any use of the System that is outside the scope of the terms of the Lease is not authorized by this Agreement.

2. PERMIT REQUIRED:

LESSEE shall obtain an annual operating permit for LESSEE's use of the System from COUNTY'S Environmental Management Division ("EMD") within thirty (30) days of the last date of execution of this Agreement and each subsequent year during the term of this Agreement. LESSEE shall comply with EMD's terms and conditions for use of the System. LESSEE agrees to comply with annual inspections of the System as approved by EMD and is responsible for all costs associated with annual inspections as well as any additional inspections required by EMD. LESSEE shall comply with all correction notices issued by EMD. LESSEE's failure to obtain an

operating permit or to maintain the System in compliance with EMD's terms and conditions is grounds for immediate termination of this Agreement.

3. **TERM:**

LESSEE is authorized to use the System pursuant to this Agreement and this Agreement shall remain in effect for a term that is concurrent with the term of the Lease, including any renewals, agreed upon extensions of the Lease, or "hold-over" periods.

4. **INSURANCE:**

In addition to the insurance required by the terms of the Lease, LESSEE shall provide proof of a policy of insurance satisfactory to COUNTY'S Risk Management Division and documentation evidencing that LESSEE maintains insurance that meets the requirements specified by the Risk Management Division. Failure to keep and maintain the insurance required by the Risk Management Division is grounds for immediate termination of this Agreement.

5. **TRANSFER OF RESPONSIBILITY**

LESSEE assumes responsibility for the maintenance and keeping of the System and shall at all times during the term of the Lease and any renewal or extension thereof, maintain and keep the System and any facility connected to the System, in good order, repair and safe condition and in compliance with all requirements of law, at LESSEE'S sole cost and expense.

6. **HOLD HARMLESS/INDEMNIFICATION:**

To the fullest extent allowed by law, LESSEE shall, at LESSEE'S sole expense, indemnify, protect, defend, and hold harmless COUNTY from any and all claims, demands, suits, actions, and liabilities for any and all loss, damage, and liability for damages, including attorneys' fees and other costs of defense, whether for damage to or loss of property, injury to or death of any person, or economic or consequential loss, regardless of the degree of fault or negligence on the part of COUNTY, arising out of or relating directly or indirectly to LESSEE'S use, keeping or maintenance of the System, including without limitation:

- A. The use or occupancy, or manner of use or occupancy, of the Premises or the use or manner of use of the System by LESSEE;
- B. Any act, error, omission, or negligence of LESSEE, or of any invitee, guest, or licensee of LESSEE;
- C. Any alteration, activities, work, or things done, omitted, permitted, allowed, or suffered by LESSEE in, at, or about the Premises, or the System, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the effective date of Agreement or enacted, promulgated, or issued after the effective date of this Agreement;
- D. Any breach or default in performance of any obligation on LESSEE'S part to be performed under this Agreement;

- E. Any action to challenge COUNTY'S approval of this Agreement or LESSEE's use of the System by LESSEE, including, but not limited to, any action brought pursuant to the California Environmental Quality Act, California Public Resources Code Section 21000, et seq., or 14 Code of Federal Regulations Part 16, FAA Rules of Practice for Federally Assisted Airport Proceedings;
- F. LESSEE'S obligations pursuant to this Section include the duty to defend set forth in Civil Code Section 2778 and shall survive termination or expiration of this Lease; and
- G. LESSEE, as a material part of the consideration to COUNTY, hereby assumes all risk of damage to property or injury to persons arising from any cause except that caused by the active or sole negligence of COUNTY, its employees or agents, and LESSEE hereby waives all claims in respect thereof against COUNTY.

7. **ALTERATIONS:**

LESSEE shall not make or permit any other person to make any alterations to the System without the written consent of COUNTY first obtained. All improvements, alterations, additions or modifications must comply with all applicable statutes, ordinances, rules and regulation established by a federal, state, county, or local government agency and shall be compatible with aeronautical use of the Premises and consistent with federal laws, FAA regulations, state statutes, and the rules and regulations governing the use of federally obligated airport property.

8. **ASSIGNMENT OR SUBLEASING:**

LESSEE shall not transfer, assign, or sublet its rights or interest to any other person under this Agreement, without the prior written consent of COUNTY. Such consent may be withheld by COUNTY for any commercially reasonable objection, including where such transfer, assignment, or sublease may result in a non-aeronautical use, commercial activity, or a use that is otherwise outside the scope of any terms or conditions governing the facility that is proposed to be connected to the System. Such consent may also be withheld by COUNTY if the proposed transfer or assignment may result in a use that is not compliant with the terms and conditions of EMD. COUNTY's consent may be conditioned on LESSEE and its transferee's agreement to amend this Agreement, the Lease, or any other agreement governing the facility that is proposed to be connected to the System, to reflect COUNTY'S terms and conditions that are in effect at that time.

9. **NOTICES:**

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party, COUNTY or LESSEE, to whom it is directed or any managing employee of such party or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to:

LESSEE: Gabriel Tyler
5444 Buck Mountain Road
Placerville, CA 95667

COUNTY: County of El Dorado
Board of Supervisors
Attention: Clerk of the Board
330 Fair Lane
Placerville, CA 95667

COPY TO: Community Development Agency
Aviation
2850 Fairlane Court
Placerville, CA 95667

Either party, COUNTY or LESSEE, may change its address for purposes of this Section by giving written notice of the change to the other party in the manner provided in this Section. Said notice shall become part of this Agreement upon acknowledgment in writing by the other party and no further amendment of this Agreement shall be necessary.

10. NON-EXCLUSIVE RIGHTS:

This Agreement does not vest in LESSEE an exclusive rights within the meaning of either Section 308(a) of the Federal Aviation Act of 1958 [codified at 49 U.S.C.A. § 40103(e)] or the Surplus Property Act of 1944 [codified at 49 U.S.C.A. §§47151-47153].

11. ACTS OF GOD, WAR/TERRORISM, AND OTHER CASUALTIES:

COUNTY shall not be responsible for monetary losses or damage to personal property, equipment, or materials of LESSEE caused by Acts of God, fire, epidemics, or public enemy including but not limited to acts of war and/or terrorism. LESSEE hereby waives any claims for damages against COUNTY resulting from said acts.

12. NON-DISCRIMINATION AND COMPLIANCE WITH LAWS:

This Agreement shall be subordinate and subject to the terms, conditions, restrictions and other provisions or any existing or future permit, lease and agreement between COUNTY and any federal, State, or local agency governing COUNTY'S control, operation, or maintenance of the Airport, or affecting the expenditure of federal funds for the Airport. LESSEE shall be bound by all such terms and conditions, and shall, whenever COUNTY may so demand, execute, acknowledge, or consent to any instrument evidencing such terms, conditions, restrictions, and provisions. LESSEE's use of the System and performance under this Agreement must comply with all terms of the Lease, including but not limited to:

- A. NON-DISCRIMINATION, AFFIRMATIVE ACTION, AND GENERAL CIVIL RIGHTS PROVISIONS – FEDERAL AVIATION ADMINISTRATION ASSURANCES; and
- B. COMPLIANCE WITH FEDERAL AVIATION ADMINISTRATION, STATE, AND COUNTY REGULATIONS.

LESSEE shall be responsible for compliance with the terms of the Lease and COUNTY shall have the right to immediately terminate this Agreement if LESSEE fails to comply with any of the applicable laws, standards, or criteria.

13. DEFAULT:

Either party shall be in default of this Agreement if it fails or refuses to perform any material provision of this Agreement that it is obligated to perform if the failure to perform is not cured within thirty (30) days after written notice of the default has been given by the non-defaulting party. If the default cannot reasonably be cured within thirty (30) days, the defaulting party shall not be in default of this Agreement if it commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

14. REMEDIES ON DEFAULT:

At any time after a party is in default and has failed to cure the default within the period provided herein, the party shall be in breach of this Agreement. In such an event, the non-defaulting party can terminate this Agreement in accordance with the terms herein or can cure the default at the defaulting party's cost. If the non-defaulting party at any time, by reason of the other party's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the non-defaulting party shall be due from the defaulting party to the non-defaulting party within ten (10) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate permitted by law from the date the sum was due until finally paid.

The remedies set forth in this Section are in addition to and do not in any manner limit any other legal remedies.

15. ADDITIONAL GROUNDS FOR TERMINATION:

Notwithstanding Sections 13 and 14 above, COUNTY shall have the right to terminate this Agreement in its entirety immediately upon the happening of any of the following:

A. LESSEE is in default of the Lease or is otherwise violating any of the terms of the Lease or any other conditions governing the Facility that is connected to the System; or

B. LESSEE fails to obtain an operating permit from EMD or fails to maintain the System in compliance with EMD's terms and conditions; or

C. LESSEE'S making of any general assignment for the benefit of creditors, without the prior written consent of COUNTY as specified in this Agreement; or

D. Intentionally supplying COUNTY with false or misleading information or misrepresenting any material fact on its application or documents, or in its statement to or before COUNTY, or intentional failure to make full disclosure on its financial statement or other documents.

16. TERMINATION:

Upon termination of this Agreement, any improvements to the System of a permanent nature shall become the property of COUNTY without charge to COUNTY and, at COUNTY'S

option, LESSEE shall remove any facility connected to the System at LESSEE'S sole obligation and expense. If LESSEE fails to remove said facility within one hundred and twenty (120) days after notice from COUNTY, COUNTY may, at its discretion, after written notification to LESSEE of its intent to do so, cause said facility to be removed and the costs for storage, removal and additional rental thereof shall be paid by LESSEE, or COUNTY may dispose of said facility as otherwise allowed by law, including, but not limited to, Civil Code Section 1980 et seq. and Section 1993 et seq.

17. SOLE AND ONLY AGREEMENT:

This Agreement, together with the Lease, contain the entire agreement of the parties with respect to LESSEE's use of the System and no other agreement, statement or promise made by any party or to any employee, officer or agent of any party which is not contained in this Agreement or the Lease shall be binding or valid.

18. ATTORNEY FEES:

Should any litigation be commenced between COUNTY and LESSEE concerning this Agreement, the Lease, or the rights and duties of either COUNTY or LESSEE in relation thereto, the party, COUNTY or LESSEE, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in the litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

19. GENERAL PROVISIONS:

A. Time of Essence: Time is and shall be of the essence in this Agreement and in each and every provision contained in this Agreement.

B. Incorporation of Prior Agreements; Amendments: This Agreement together with the Lease contains all the agreements of the parties with respect to LESSEE's use of the System. This Agreement hereby supersedes any agreement previously entered into pertaining to the System and no prior agreement or understanding pertaining to the System shall be effective. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

C. Binding Effect; Choice of Law; Venue: This Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors, and assigns. This Agreement shall be governed by the laws of the State of California. Any dispute or litigation arising hereunder or relating to this Agreement shall be brought in the County of El Dorado.

D. Consents: Wherever in this Agreement consent of one party is required to an act of the other party, such consent shall not be unreasonably withheld or delayed.

E. Construction of Agreement; Severability: To the extent allowed by law, the provisions in this Agreement shall be construed and given effect in a manner that avoids any violation of statute, regulations, or law. COUNTY and LESSEE agree that in the event any provision of this Agreement is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision of this Agreement.

F. Relationship: The parties intend by this Agreement to establish the relationship of lessor and lessee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of lessor and lessee.

20. NO CONTINUING WAIVER:

The waiver by either party of any breach of any of the provisions of this Agreement or the Lease shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision.

21. INTERPRETATIONS:

As this Agreement was jointly prepared by both parties, the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.


22. CONTRACT ADMINISTRATOR:

The COUNTY officer or employee with responsibility for administering this Agreement is Katy Sampson, Assistant Director, Administration and Finance, Community Development Agency, or successor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

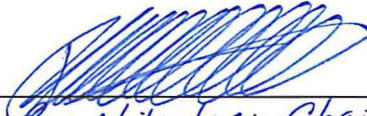
-- LESSEE --

Dated: 09/04/16

By: 
Gabriel Tyler
"LESSEE"

-- COUNTY OF EL DORADO --

Dated: 9/13/16

By: 
Ron Mikulac, Chair
Board of Supervisors
"COUNTY"

ATTEST:
James S. Mitrison,
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Gabriel Tyler

Exhibit A

Septic System Description Placerville Airport Hangar Space H-09

The septic tank is located approximately nine (9) feet south and fourteen (14) feet east of the north edge of the concrete slab adjacent to the east side of Hangar H-09. The septic tank is a round steel tank, approximately 800 gallon capacity, twelve (12) feet in depth.

A one (1) inch metered water line supplies water to the bathroom in Hangar H-09. The water line begins approximately twenty (20) feet south of the location of the septic tank. The septic system is connected to the water line via a four (4) inch black PVC pipe, inserted into a six (6) inch gray electrical conduit. The septic line extends above ground from the east side of Hangar H-09 and goes below ground to a four (4) inch clean-out located at the southeast corner of Hangar H-09. There is an operational leach system; its location is unknown.