

EPIC Aviation, LLC

AGREEMENT FOR SERVICES #539-O1311

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and EPIC Aviation, LLC, an Oregon limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 3841 Fairview Industrial Drive, Suite 150, Salem, Oregon, 97309 and whose mailing address is Post Office Box 12249, Salem, Oregon 97309 (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide aviation fuel and related services for the Placerville and Georgetown Airports;

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder, and County has determined to rely upon such representations;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws;

WHEREAS, County has determined that the provision of such services provided by Contractor are in the public's best interest, and authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor agrees to furnish personnel and services necessary to provide Federal Aviation Administration (FAA) approved 100LL Avgas and Jet A Fuel and related support services for the Placerville Airport located at 3501 Airport Road, Placerville, California 95667 and the Georgetown Airport located at 6241 Aerodrome Way, Georgetown, California 95634. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Services," incorporated herein and made by reference a part hereof.

ARTICLE II

Term: This Agreement shall be effective upon final execution by all parties hereto and shall be effective for the period of March 20, 2013 to March 19, 2018.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Contractor in accordance with the procedures outlined in Exhibit B, marked "Billing and Settlement Procedures," incorporated herein and made by reference a part hereof.

The total amount of this Agreement shall not exceed \$2,260,000.00, inclusive of all costs and expenses.

ARTICLE IV

Prices: Prices for product sold, inclusive of all applicable taxes and fees, shall be Contractor's delivered price for each product on the date and for the method of delivery. The price shall be Contractor's established weekly price paid by other customers of the Contractor within a one-hundred (100) mile radius of County's designated places for delivery. Contractor shall fax weekly fuel price notices to County using the Placerville Airport fax number in Exhibit B.

ARTICLE V

Delivery: When ordered by County, Contractor shall make deliveries at County's two (2) designated places of business which shall not be less than six thousand (6,000) gallons for 100LL Avgas and four thousand (4,000) gallons for Jet A Fuel. Delivery shall be made freight on board (FOB) destination to the Georgetown or Placerville Airport within twenty-four (24) to forty-eight (48) hours from the time of the order.

In the event deliveries are made in transport truck or tank wagon lots, deliveries within ten percent (10%) of amounts called for by this Agreement or any installment thereof agreed upon by County and Contractor shall be deemed sufficient deliveries by Contractor. Only actual amounts delivered will be paid for by County.

ARTICLE VI

Brand: County shall not sell Contractor's products under trademarks or brand names of Contractor other than those authorized by Contractor. County further undertakes and agrees not to sell products purchased hereunder to any reseller whom County knows or has reason to believe will not sell such products only under Contractor's brand names as provided herein.

ARTICLE VII

Legal Requirements: Contractor and County shall comply with all applicable laws, ordinances, regulations, judicial and administrative orders, and other legal requirements of all governmental authorities, federal, state, municipal or other, pertaining to this Agreement and the loading, storage, transportation and sale of petroleum products.

ARTICLE VIII

Taxes: County assumes the payment of all domestic and foreign taxes and/or duties now or hereafter imposed, directly or indirectly, on the goods covered by this Agreement.

Contractor agrees to collect and remit all applicable federal, state and local taxes as required by law.

ARTICLE IX

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE X

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during the term hereof.

ARTICLE XI

Confidentiality: Contractor shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Contractor, and all Contractor's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Community Development Agency for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE XII

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE XIII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE XIV

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XV

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event

Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Contractor, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XVI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Ruth Young
Chief Fiscal Officer

With a Copy to:

County of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Sherrie Busby
Administrative Services Officer
Contract Services Unit

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

EPIC Aviation, LLC
P.O. Box 12249
Salem, Oregon 97309

Attn.: James E. Green, Vice President

or to such other location as Contractor directs.

ARTICLE XVII

Change of Address: In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor,

Contractor shall notify County in writing as provided in ARTICLE XVI, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgement in writing by County's Contact Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XVIII

Indemnity: Contractor shall defend, indemnify, and hold County and its officers, agents, employees and representatives harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to, or in any way arise out of, or are connected with Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers, agents, employees and representatives, or as expressly provided by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIX

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Contractor in performance of the Agreement.
- D. In the event Contractor is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Contractor shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance

likewise acceptable to the Risk Management Division.

- G. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Contractor agrees that no work or services shall be performed prior to the giving of such approval.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured (on an additional insured endorsement), but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.
- I. Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XX

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XXI

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XXII

California Residency (Form 590): All independent Contractors providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a limited liability company or corporation, certifying that they have a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXIII

County Payee Data Record Form: All independent contractors, limited liability companies or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Data Record Form with County.

ARTICLE XXIV

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the

unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXV

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVI

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Ruth Young, Chief Fiscal Officer, Administration and Finance Division, Community Development Agency, or successor.

ARTICLE XXVII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

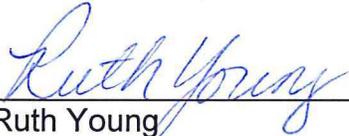
ARTICLE XXVIII

Partial Invalidity: If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXIX

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Contract Administrator and Division Concurrence:

By: 
Ruth Young
Chief Fiscal Officer
Administration and Finance Division
Community Development Agency

Dated: 7-28-13

Requesting Department Concurrence:

By: 
Kimberly A. Kerr, Acting Director
Community Development Agency

Dated: 7/29/13

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

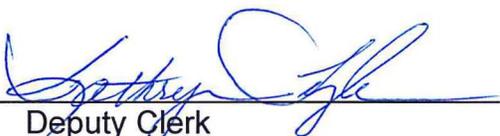
--COUNTY OF EL DORADO--

By: 

RON BRIGGS
Board of Supervisors
"County"

Dated: 8-14-13
Board date 6-18-13

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: 

Deputy Clerk

Dated: 8-14-13
Board date 6-18-13

--EPIC AVIATION, LLC--

By: 

James E. Green
Vice President and
Chief Financial Officer
"Contractor"

Dated: 8-2-2013

EPIC Aviation, LLC

Exhibit A

Scope of Services

Contractor shall perform all services necessary for the delivery of Aviation Fuel to County's airport facilities in a safe, professional manner. Contractor's equipment shall be in good and safe working order and all personnel shall be trained annually in safety measures to preclude accidents and the endangering of County personnel and property.

Fuel

Jet A Fuel meeting ASTM D 1655 latest revision and 100LL Aviation Gasoline meeting ASTM D910 latest revision. Jet fuel must be supplied without anti-icing additive as requested by County's Contract Administrator or designee.

- A minimum order quantity shall be 6,000 gallons of 100LL Avgas or 4,000 gallons of Jet A Fuel.

Contractor shall have adequate stock and appropriate equipment for the delivery of goods. Contractor shall provide ordering capability twenty-four (24) hours per day, seven (7) days per week.

Invoicing Requirement

Contractor shall render a Bill of Lading and Certificate of Analysis to the delivery facility at the time of delivery. A signature from a County employee on the Certificate of Analysis is required to ensure all documentation and fuel specifications have been met. Invoices and payments shall be for net gallons delivered.

Other Services

Contractor shall provide the following services at no additional charge to County:

- annual inspection of self-serve facility, refueling equipment and trucks, and on-site training by a regional technical representative employed by Contractor;
- annual seminar that includes quality control training, 14CFR139, Section 321 Fire Training and TSA Ramp security training;
- annual seminar for equipment maintenance training provided by industry original equipment manufacturers (OEMs);
- manuals shall be listed by name and subject;
- list of all required testing equipment along with on-site instruction of use;
- web-based and on-site training;
- marketing consultation for changes/updates to County webpage, printed collateral and advertising;
- credit card settlement process; and
- up to \$5,000.00 for system maintenance and/or equipment upgrades as invoices are submitted by County to Contractor for system maintenance and/or equipment upgrades.

Training and site visits shall be arranged at a time mutually agreeable to Contractor and County and will be coordinated by County's Contract Administrator or designee.

Software Updates

There shall be no additional charge for software updates from Contractor. Charges may apply for software updates as required by other entities (i.e., credit card compliance required by state or federal laws).

Product Identification and Imaging

Contractor shall provide and maintain at Contractor's expense, brand name and product signs, decals and windsocks.

Cooperative Advertising

At Contractor's expense, Contractor shall deposit \$.005 per gallon of fuel purchased by County into a Cooperative Advertising account. Funds accumulate for one calendar year and can be used by County for up to 50% reimbursement from Contractor up to the amount accrued in the Cooperative Advertising account each calendar year for uniforms, print media or specialty items that include the EPIC logo. Funds will not be rolled over to the next calendar year. Contractor's Marketing Department shall provide consultation to County on various options to maximize County's cooperative advertising and overall budget.

Training

Contractor shall pay a portion of the cost of National Air Transportation Association (NATA) Safety1st on-line training bi-yearly for County employees who work at either the Placerville or Georgetown Airport. The table below represents on-line training prices and compensation paid by Contractor.

Pricing Per County Employee	NATA Members	Non-Members
County Pays	\$49.95	\$74.95
Contractor Pays	\$85.00	\$85.00
Total Price	\$134.95	\$159.95

EPIC Aviation, LLC

Exhibit B

Billing and Settlement Procedures

Billing

Includes assembly of fuel delivery documentation within forty-eight (48) hours of fuel delivery; verification of the fuel delivery information; processing of invoices to County within seventy-two (72) hours of fuel delivery; and transmitting invoices to County via mail, facsimile or email as directed by County's Contract Administrator. Ten days from the date of delivery and subject to approval and verification of invoices and fuel delivery documentation by County, funds shall be transferred from County's designated fuel account as maintained by Contractor to Contractor through an electronic funds transfer.

Mailing Address:
County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Placerville Airport Contact Numbers:
Phone (530) 622-0459
Fax (530) 622-0270

Credit Card Settlement

Includes daily settlement of electronic point of sale and card lock systems; posting of sales to County's designated fuel account as maintained by Contractor within two (2) to three (3) business days; and payment of Contractor fuel invoices from County's designated fuel account as maintained by Contractor.

Contractor shall issue payments by check from fuel sales over fuel costs proceeds semi-annually or at intervals determined by County's Contract Administrator and agreed upon by Contractor.

Credit Card Processing Fees

The following represents the types of credit cards accepted by Contractor and the rate charged to County for each credit card type for credit card transactions when fuel is purchased by County's customers. This percentage is deducted from the amount deposited in County's designated fuel account as maintained by Contractor.

Credit cards accepted to process:

<u>Card Type</u>	<u>Rate</u>	<u>Reimbursement Time</u>
EPIC Card	1%	2 Business Days
MultiService	3.25%	2 Business days
AVCard	3.25%	2 Business days
MasterCard	2.15% Qualified 2.95% Unqualified	2 Business Days
Visa	2.15% Qualified	2 Business Days
Visa	2.95% Unqualified	
Discover	2.05%	2 Business Days
American Express	2.95%	2 Business Days
UVair	2.95%	3 Business Days