



**AVIATION REFUELER LEASE AGREEMENT
(OFF ROAD USE ONLY VEHICLE)**

THIS AGREEMENT made and entered into this 1st day of May, 2018 by and between **EPIC Aviation, LLC** having its principal office at 3871 Fairview Industrial Dr. SE, Suite 100, Salem, OR 97302, hereinafter referred to as "Lessor," and **City of New Braunfels, dba City Terminal**, hereinafter referred to as "Lessee,"

Lessor agrees to deliver and lease to Lessee for Lessee's use on the **New Braunfels Municipal Airport**, the aviation refueling truck or trucks (hereinafter referred to as "Refueling Equipment") described as indicated in Addendum "A" to this agreement (the "Agreement").

This confirms the Lessor's and Lessee's mutual understanding that the Refueling Equipment described on the attached Addendum "A" is, as of the above date, leased to Lessee subject to the following terms and conditions:

1. For the use of said Refueling Equipment during the term hereof, Lessee hereby agrees to pay Lessor the rental set out in the Addendum "A," plus all applicable sales, property, and use tax; said rental be paid to Lessor in advance on the first day of each month, and to commence as of August 1, 2018 or **upon delivery (whichever is later)**. Lessor shall be permitted to increase said rental while Agreement is in effect by giving Lessee at least sixty (60) days advance written notice of the effective date of said increased rental. In the event of an increase in the rental, Lessee shall have the right to terminate this Agreement on the effective date of said increase by giving Lessor at least thirty (30) days advance written notice of its intention to terminate on said effective date.
2. This Agreement shall remain in effect for a minimum primary term commencing on the date of execution and continuing for five (5) years or until end of that certain fuel purchase contract between Lessor and Lessee dated September 1, 2014 (hereinafter referred to as "FPC") whichever is longer. Thereafter this Agreement shall automatically renew for subsequent equal periods unless notice of intent to terminate at the end of the then current term is delivered in writing by either party. Such notice shall be delivered at least ninety (90) days and no more than one hundred twenty (120) days prior to the end of the then current term. If for any reason Lessee does not lease said Refueling Equipment, including any additional Refueling Equipment leased hereunder or substituted Refueling Equipment exchanged at the request of Lessee, for at least sixty (60) months or until termination of the FPC, whichever is longer, Lessee agrees to pay Lessor a sum equal to twice the cost of delivering said Refueling Equipment to Lessee. Said sum shall not exceed **\$5000** per unit.

3. The Refueling Equipment shall at all times remain the exclusive property of Lessor and nothing in this Agreement shall be construed to transfer any ownership right or interest to Lessee in the Refueling Equipment. Lessee shall, at all times, at its sole cost, keep the Refueling Equipment free and clear from all liens, encumbrances, levies, attachments or other judicial process from every cause whatsoever (other than a claimant through the act of Lessor), and shall give Lessor immediate notice thereof and shall to the maximum extent allowed by law indemnify and hold Lessor harmless from any loss or damage, including attorneys' fees, caused thereby.
4. Lessee shall exercise exclusive supervision and control of the Refueling Equipment during the term of this Agreement and Lessee shall allow only qualified and duly trained operators to use, operate, maintain and/or repair the Refueling Equipment. Lessee shall, at all times, ensure that the Refueling Equipment is used, operated, maintained and repaired in a careful and prudent manner, and in complete compliance with the manufacturer's specifications. Lessee shall, at its own cost and expense, ensure strict compliance with, and conformance to, all applicable laws, rules, ordinances, codes and regulations (be they federal, state, local or otherwise) relating in any way to human health and safety, the environment, or the possession, use, maintenance or repair of the Refueling Equipment.
5. The Refueling Equipment shall not be removed from the location specified above without the prior written consent of Lessor.
6. Lessee shall not make any modifications or alterations to the Refueling Equipment without the express, written permission of Lessor. In the event Lessor grants such permission, a condition of any consent to such modification or alteration shall be that all cost of modifying, altering and restoring the Refueling Equipment shall be solely borne by Lessee.
7. Prior to the delivery of each unit of Refueling Equipment covered by this agreement, Lessee shall obtain and maintain in force at all times during the term of this agreement insurance coverage listed below extending to the Refueling Equipment as shown in Addendum "A". Minimum limits are required, or such higher limits as may be required by state or federal law or regulation.

Lessee shall furnish Lessor with certificates evidencing such insurance including a copy of all required endorsements. Such certificate shall also specify the leased equipment by VIN number as being covered in the policy.

Commercial General Liability Coverage

Aviation general liability, including airport premises

Minimum Limit

\$1,000,000.00

Combined single limit per accident

EPIC Aviation, LLC and Trans Lease, Inc. Its Successors and/or Assigns (ISAOA) must be specified as additional insured together with an endorsement providing a 30-day written notice of termination (with respect to the operation of Lessor's named equipment) under the policy.

Property Coverage

Mobile equipment property (Inland Marine)

Replacement Value*

\$2,500 Maximum Deductible

Trans Lease, Inc. 4475 E. 74th Avenue Suite 103 Commerce City, CO 80022 Its Successors and/or Assigns (ISAOA) and ZB, N.A. dba Vectra Bank Colorado PO Box 25007 Salt Lake City, UT 84125 must be specified as Lender's Loss Payee with an endorsement providing a 30-day written notice of termination.

Certificates must show both Effective dates and Expiration dates.

* Lessee assumes all risk of loss of, or damage to, the Refueling Equipment. Lessee shall be responsible for all loss of or damage to the Refueling Equipment from any cause whatsoever during the term of this Agreement. Such responsibility is limited to the full replacement value of the Refueling Equipment, as shown in Addendum "A".

In the event that Lessee fails to obtain and maintain such insurance or fails to provide Lessor with certificates evidencing such insurance, Lessor may at their discretion terminate said lease or purchase such insurance on Lessee's behalf and at Lessee's expense and Lessee shall be obligated to pay the entire cost of such insurance with the next monthly rental payment.

8. Lessee shall to the maximum extent allowed by law indemnify, defend, and hold harmless Lessor, any subsidiary and affiliated companies (collectively "lessor and its affiliates"), and their respective directors, officers, agents, and employees, from and against all expense (including attorneys' fees), liabilities, and claims of whatsoever kind and nature, including but not limited to, those for damage to property (including lessee's property) or injury to or death of persons (including lessee), directly or indirectly resulting, or alleged to result, from anything occurring from any cause on or about or in conjunction with the maintenance, upkeep, repair, replacement, operation, or use of any premises owned and/or operated by the lessee, or anything located thereon, or otherwise resulting from or in conjunction with the lessee's use of the Refueling Equipment or the operations or products of lessee or the negligence of lessee. Said Refueling Equipment, if not new equipment, is leased "as is" without warranty. New equipment will carry the extent of the refueler manufacturer's warranty as stated in the operating manual that accompanies the equipment. It is also agreed that Lessee shall not add to or remove from said Refueling Equipment any equipment or appurtenances without the written consent of the Lessor.
9. In the event of an accident, loss of, theft or damage to the Refueling Equipment, Lessee agrees to notify Lessor immediately by telephone, and thereafter, immediately report in writing to Lessor and the public authorities (where required by law) all information deemed relevant thereto by Lessor.
10. It is further understood and agreed that each party accepts the applicable responsibilities listed in the attachment hereto, entitled Lessee/Lessor Responsibilities, which is incorporated herein by this reference. Lessor shall be permitted access to inspect the Refueling Equipment at all reasonable times.

11. Upon the expiration, cancellation or termination of this Agreement or any Lease (including any cancellation or termination occurring after or in connection with an Event of Default hereunder), Lessee shall perform any testing and repairs required to place the units of Equipment in the same condition and appearance as when received by Lessee and in good working order for the original intended purpose of the Equipment. Lessee shall remove installed markings that are not necessary for the operation, maintenance or repair of the Equipment. All Equipment will be cleaned, cosmetically acceptable, and in such condition as to be immediately installed into use in a similar environment for which the Equipment was originally intended to be used. All waste material and fluid must be removed from the Equipment and disposed of in accordance with then current waste disposal laws. Lessee shall pay for all costs to comply with this Section 11. Without limiting the foregoing, upon return, each unit of Equipment must be clean, in good appearance, and in operable condition, and shall meet all of the following conditions:

- a. Cab will be free from significant body damage:
 - i. Glass will be intact
 - ii. Interior will be clean
 - iii. Gauges will operate
 - iv. Lights will operate
- b. Mechanical Power Train
 - i. Engine and transmission will start and function normally
 - ii. Differential will be free of excessive noise
- c. Pumping system– will be complete and free from damage
- d. Tank– will be free of leaks and significant body damage or tank dents
- e. Entire Unit – will perform in its entirety as an aircraft refueler, that is, it will pump fuel on demand and shut down on demand, and fully conform to ATA 103 standards, and shall pass all requirements and checks contained within ATA 103 pertaining to aircraft refueling vehicles.

12. Until Lessee has fully complied with the requirements of Section 11 above, Lessee's Rent payment obligation and all other obligations under this Agreement shall continue from month to month notwithstanding any expiration, cancellation or termination of the corresponding Term. During such month to month period, Lessor may terminate Lessee's right to use the Equipment upon ten (10) days' notice to Lessee.

13. In the event of default of this Agreement, or any other contract between Lessor and Lessee, Lessee shall allow Lessor to peaceably enter the premises where the Refueling Equipment is located and render it inoperative or remove it without legal process and without notice or liability to Lessee. Lessee hereby waives any right to a hearing or to receive any notice of legal process, as a pre-condition for Lessor recovering the Refueling Equipment. The remedies provided herein are not exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity, any one or more of which may be exercised simultaneously or successively.

14. This agreement supersedes and takes place of all former agreements, and amendments thereto, heretofore entered into between the parties covering the lease of Refueling Equipment at the location above stated.
15. This Agreement shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the local law of the State of Texas, excluding any conflicts of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction. Any suit or action in regard to or arising out of the terms or conditions of this Agreement shall be litigated in the state or federal courts serving Comal County, Texas. The parties hereby submit to the jurisdiction of such courts, expressly waive any objection or challenge to such jurisdiction, and agree not to claim that the state or federal courts serving Comal County, Texas are inconvenient forums. Upon demand, Purchaser shall immediately reimburse Seller for all amounts (including reasonable attorneys' fees and legal expenses) expended by Seller, to the extent permitted by applicable law, in the enforcement or defense of any obligation or the exercise of any right or remedy described in this Agreement. Reimbursement shall include costs incurred in any legal action, arbitration, mediation, or other proceeding, both at trial and on any appeal therefrom or petition for review thereof. If a court construes this provision to award attorneys' fees and costs to the prevailing party then the term "prevailing party" shall mean the party prevailing on issues related to this Agreement only.
16. In the event of any action to enforce this Agreement or to seek a declaration of right or responsibilities hereunder, the prevailing party shall be entitled to its reasonable attorneys' fees, at arbitration, trial and upon appeal, in addition to all other costs and expenses allowed by law.
17. When duly executed, this agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns; provided, however, that Lessee shall not assign this agreement in whole or in part without the prior written consent of Lessor; and provided further that Lessor's consent shall not be unreasonably withheld if reasonable requirements imposed by Lessor are first met. If Lessee is a corporation, partnership, or other business entity, the sale, assignment or other disposition or transfer of any interest in such entity shall be deemed an assignment of this agreement or rights there under for purposes of this paragraph.
18. Lessee shall be solely responsible for and pay any and all license fees, assessments, sales, use and other taxes, including, but not limited to, sales and personal property taxes, relating in any way to the Refueling Equipment.

EXECUTED the day and year first above written.

EPIC AVIATION, LLC

**City of New Braunfels,
dba City Terminal**

By _____
Lessor

By _____
Lessee

Date _____

Date _____

**ADDENDUM "A" TO
AVIATION REFUELER LEASE AGREEMENT
(OFF ROAD USE ONLY VEHICLE)**

This is an addendum to an Aviation Refueler Lease Agreement made on **May 1, 2018**, between **EPIC AVIATION, LLC** of Salem, Oregon the "Lessor", and the "Lessee."

**City of New Braunfels dba City Terminal
2333 FM 758
New Braunfels, TX 78130**

Unit #	R21802
Make	International
Serial/VIN #	TBD
Tank Size	5,000 Gallons
Lease	\$2,393 per month
Options	
Replacement Value	\$225,900
Effective	August 1, 2018 or upon delivery (whichever is later)

EPIC AVIATION, LLC

**City of New Braunfels
dba City Terminal**

By _____
Lessor

By _____
Lessee

Date _____

Date _____

Addendum "B"

Certificate of Acceptance and Inspection

EQUIPMENT LEASE DATED: May 1, 2018
Referencing the following equipment:

Vehicle: R21802
VIN# TBD

Year/make: 2018 International
Tank size: 5,000 Gallons

Lessor: EPIC AVIATION, LLC
P.O. Box 12249
Salem, OR 97309

Lessee: City of New Braunfels
dba City Terminal
2333 FM 758
New Braunfels, TX 78130

Miles:		Hours:	
Meter 1:		Meter 2:	

Note: The following must be performed prior to accepting the vehicle and using the vehicle for fueling.

Refueler Truck Condition

	OK	Repair	Comments
1 Air Filter			
2 Oil Filter			
3 Engine Fuel Filters			
4 Chassis Lube			
5 Antifreeze - level of protection			
6 Fire Extinguisher Seal			
7 Engine Operation			
8 Belts			
9 Coolant System - leaks			
10 Lights, Fuses, Lenses, Reflectors			
11 Batteries and cable terminals			
12 General tightness - Cab and Chassis			
13 Brakes - Check			
14 Brake Interlocks			
15 Engine Oil - level			
16 Transmission Fluid - level			
17 Hydraulic fluid - level (if applicable)			
18 Coolant - level			
19 Tires - condition, inflation			
20 Dispensing System - leaks			
21 Water Sumps - drain			
22 Nozzles - ground wires, dust caps			
23 Windshield Wipers, Arms, Blades			

- [illegible]

OK Repair Comments

- [illegible]

RMS Certification

Unit meets required Q.C. standards.

Sign _____ Date _____

RMS signature required, if equipment found to be in good working order and condition.

Lessee Acknowledgement

The Lessee acknowledges that the Equipment described in the above referenced lease was received at the location(s) set forth in the lease and was unconditionally accepted by the Lessee on (date) _____ in good working order and condition.

IMPORTANT! LESSEE MUST FILL IN DATE ABOVE!

Name of Lessee

By _____ Title _____

LESSEE/LESSOR RESPONSIBILITIES

LESSEE RESPONSIBILITIES

The Lessee shall at Lessee's expense, maintain the equipment at all times in good, safe and efficient operation condition, and to that end shall:

- 1 Furnish all fuel, engine oil, hydraulic fluids, lubricants and coolants at prescribed levels. **Do not use Avgas Fuel in a Gas Powered Refueler or Jet Fuel in a Diesel Powered Refueler. Use appropriate fuel only, such as Unleaded Gas or Diesel.**
- 2 ***All model year 2007 or newer diesel engines must be fueled with ultra low sulfur diesel as prescribed by chassis manufacturer.***
- 3 ***All damage to the engine and related expenses caused by the use of Avgas, Jet fuel or non spec diesel in Refueling Equipment will be the responsibility of the Lessee.***
- 4 Lessee shall keep complete and accurate maintenance records and Lessor shall be entitled to inspect the Refueling Equipment and the maintenance records at any time during regular business hours.
- 5 Engine oil change, including change of oil filter and chassis lubrication, shall be performed every two hundred (200) hours of use or three (3) months whichever comes first. Air filter shall be changed at least once a year or sooner if condition dictates.
- 6 Lessee shall maintain a 50/50 mix of antifreeze and water in the Refueling Equipment cooling system.
- 7 Make all repairs necessitated by neglect, abuse, normal wear and tear, including **but not limited to** the following chassis and equipment maintenance and repairs:
 - Furnish and install spark plugs, ignition points and condenser and adjust timing.
 - Service air filter, furnishing oil or replacement element as required.
 - Furnish and install engine accessory drive belts.
 - Furnish and install cooling system hoses and correct leaks.
 - Furnish and install light bulbs, sealed beams, fuses, lenses, reflectors and broken glass.
 - Maintain and charge batteries, replenish water, clean terminals, furnish and install new batteries and cables.
 - Clean engine fuel line sediment bowls, furnish and install fuel filter elements.
 - Inspect recharge and certify all fire extinguishers.
 - Furnish and install brake fluid and adjust brakes as needed
 - Drain water sumps as required.
 - Furnish and install new dispensing nozzles, ground wires, connectors and ground wire reels.
 - Furnish and install replacement windshield wiper blades, arms and hoses.

- Pay for meter calibration, and licensing, required by city, county or state authority. Lessor assumes no responsibility for non-compliance of these licenses.
 - General tightening of chassis, body and tank. Correct any leaks in the dispensing apparatus repairable by tightening and/or gasket replacement.
 - Furnish and install replacement aviation product filters.
 - Maintain and or replace Pump, PTO, and Product Delivery System
- 8 Lessee shall maintain proper torque of wheel lug nuts and tire pressure. Lessee shall repair and change tires as necessary.
- Tires shall be of matched generic type and tread design as originally supplied and have a minimum of 10/32nds remaining tread. Front tires will be original casings (recapped casings are acceptable for the rear tires)
- 9 All Refueling Equipment maintenance and or operational manuals as supplied with Refueling Equipment shall be returned with vehicle when equipment is returned to Lessor.

LESSOR RESPONSIBILITIES

1. **EPIC Aviation, LLC** shall provide major repairs and/or replacement for vehicle drive train (engine, transmission, differential) which, in **EPIC Aviation, LLC** sole judgment are not necessitated by Lessee's neglect, abuse, accident or failure to perform maintenance.
2. All other repairs and replacement of the equipment, which **EPIC Aviation, LLC** deems necessary or desirable, shall be made by and at the expense of the Lessee. Lessee shall give **EPIC Aviation, LLC** prompt notice, prior to work being done, or any maintenance or repair which Lessee is not obligated to make hereunder, but which Lessee deems necessary. If Lessee fails to perform any maintenance or repair which Lessee is obligated hereunder within ten (10) days after notification and request by **EPIC Aviation, LLC**, may (without prejudice to its other rights on account of such breach of the Lease) perform such maintenance or repair and shall be reimbursed by Lessee on demand for all costs incurred by **EPIC Aviation, LLC** relating to the necessary maintenance or repair including any additional operating expenses resulting there from. Without **EPIC Aviation, LLC** prior written consent, Lessee shall not make any alterations of, additions to, or removals from the equipment or **EPIC Aviation, LLC** identification and lettering thereon. **EPIC Aviation** shall have the right at any time to inspect, repair and replace equipment and, for such purpose, to enter any premises where the same is located.