

**FACILITY USE AGREEMENT
BY AND BETWEEN
THE UNIVERISTY OF TEXAS AT ARLINGTON
AND
THE CITY OF EULESS, TEXAS**

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This Facility Use Agreement (this "Agreement") is made and entered into by and between the University of Texas at Arlington, an institution of higher education of the State of Texas ("UTA") 701 S. Nedderman Drive, Arlington, Texas 76019 and the City of Eules, Texas ("City") 201 N. Ector Drive, Eules, Texas 76039. City and UTA are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, City owns The Texas Star Golf Course and Conference Centre (TSGC), located at 1400 Texas Star Parkway, Eules, TX 76040; and

WHEREAS, UTA desires to construct a short game facility "Facility" at the Texas Star Golf Course (the "Property" as depicted on Exhibit A) and to be granted certain limited access to the Property to be utilized as a practice and training facility for UTA Men's Golf Team; and

WHEREAS, UTA, in consideration of its limited access to use of the Property, will construct certain facilities and facility improvements on a portion of the Property depicted on Exhibit B as described in more detail below.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

**ARTICLE I.
DEMISE**

1.01 Use of Property. The UTA Men's Golf Team will be granted limited access to the Property as provided in Section 5.01 for golf team practices and/or golf training activities for UTA golf team participants only, limited to availability and limited to normal hours of operation unless otherwise approved by the Texas Star Golf Course and Conference Centre General Manager or his designee ("General Manager") and subject to other conditions and provisions set forth in this Agreement. The Property may, upon approval by the General Manager, be used by UTA for occasional tournaments, camps or clinics at dates, times, and rates mutually agreed upon between UTA and City. UTA Men's Golf Team will be granted priority access for use of the Facility during normal business hours for UTA golf team participants only excluding one

chipping green, either the existing chipping green or its replacement, which shall remain open to Texas Star members and guests at all times.

1.02 No Warranties. UTA stipulates that it has examined the Property and UTA accepts the Property “AS IS” as suitable for UTA’s intended use. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS AGREEMENT.

ARTICLE II. TERM

2.01 Term. The term of this Agreement shall be for a period of fifteen (15) years (the “Term”) commencing on the day of execution of this Agreement (the “Effective Date”). This Agreement may be extended for an additional five (5) years upon mutual agreement of both parties.

ARTICLE III. CONSTRUCTION AND MAINTENANCE OF FACILITY IMPROVEMENTS

3.01 Short Game Facility. No later than six (6) months after the Effective Date unless such time is extended by City, UTA shall design and commence construction, at its sole expense, of a short game practice facility, final design and construction plans to be approved by UTA and City providing for wedging and chipping practice for distances up to but not exceeding 110 yards, including all required and pertinent drainage, irrigation and landscaping improvements, fixtures and utilities (collectively the “Facility”). The Facility shall be architecturally and functionally consistent with the existing golf and practice facilities at the Property. The General Manager shall review and approve the design and construction plans of the proposed Facility prior to submission to City for appropriate permit review and issuance. No later than four (4) months after the commencement of construction, with City approved allowances provided for actual inclement weather, UTA shall have completed the Facility. The Facility must be constructed and installed in accordance with City, State and Federal requirements and all applicable City development and building codes, in the area depicted on Exhibit B. Once completed and accepted by City, the Facility shall become the property of City and shall be owned, operated and maintained solely by City.

3.02 Bonds. Before beginning any construction for the Facility, UTA, or its contractors, shall first provide to City two originals of the following, in forms acceptable to City:

- a) A good and sufficient Performance Bond (Exhibit C) in an amount equal to one hundred percent (100%) of the total cost of the improvements, guaranteeing the full and faithful execution of the work and performance of terms under this Agreement and for the protection of City against any improper construction of the

work or the use of inferior materials. The Performance Bond for the Facility shall guarantee completion of the improvements within four (4) months of commencement of construction.

- b) A good and sufficient Payment Bond (Exhibit D) in an amount equal to one hundred percent (100%) of the total cost of the improvements, guaranteeing payment for all labor, materials and equipment used in the construction of the facilities.
- c) A good and sufficient Maintenance Bond (Exhibit E) in an amount equal to one hundred percent (100%) of the total cost of the improvements, guaranteeing the improvements free from defects and covering all repairs for a period of two years from the date of acceptance by City.

3.03 Liens. UTA agrees that it shall not undertake any act which will cause a lien to be filed against the Property, and UTA acknowledges that it has no power to encumber or cloud City's title. UTA further agrees that if, because of any act or omission of UTA, or any of its officers, agents, servants, employees, contractors or subcontractors, any mechanics lien or other lien, charge, or order for the payment of money shall be filed against any portion of the Property, or upon the right, title, and interest of UTA created by this Agreement, UTA shall, at its own cost and expense, cause the same to be discharged of record or bonded within fifteen (15) days after written notice by City to UTA of the filing thereof. **UTA HEREBY AGREES TO INDEMNIFY AND HOLD CITY HARMLESS AGAINST AND FROM ALL COSTS, LIABILITIES, SUITS, PENALTIES, CLAIMS, AND DEMANDS RESULTING FROM THE FILING OF ANY SUCH LIEN, TO THE EXTENT ALLOWED BY THE CONSTITUTION OF AND THE LAWS OF THE STATE OF TEXAS.**

3.04 City Responsibilities and Maintenance. After acceptance of the Facility, City agrees to provide the following to the Facility:

- a) All required water service for irrigation purposes;
- b) Regular maintenance of turf, grounds, irrigation consistent with the quality standards of the Property.
- c) Priority Access above all other users for UTA golf team members, subject to TSGC Operational Hours, of the Facility only excluding one chipping green, either the existing chipping green or its replacement, which shall remain open to Texas Star members and guests at all times.

3.05 UTA Responsibilities and Maintenance. UTA agrees, not including City's obligations under section 3.04 of this Agreement, to always maintain and leave the Property in a condition equal or better than that existing prior to the Effective Date.

ARTICLE IV.

OTHER RESPONSIBILITIES OF UTA

4.01 UTA agrees to provide the following to City, TSGC, Facility and Facility Improvements:

- a) Support of the TSGC by:
 - 1. Hosting a link to TSGC on the UTA Athletics website.
 - 2. Hosting the annual fundraising golf tournament at TSGC if TSGC has availability at mutually agreeable date and rate.
 - 3. Hosting an annual collegiate golf tournament if TSGC has availability at mutually agreeable dates and rates.
 - 4. Encouraging other UTA and community organizations to hold their annual golf outings at TSGC.
 - 5. Advertising TSGC as the "Supporter of UTA Golf".
- b) Pay an annual \$2,000 stipend to TSGC for range balls, due within 30 days of the Effective Date and each calendar year thereafter on the anniversary of the Effective Date.
- c) Insure that UTA golf team members dress and conduct themselves in a professional manner.
- d) Coordinate with TSGC pro shop to schedule all tee times.
- e) Provide all transportation necessary for UTA golf team.

ARTICLE V. OTHER RESPONSIBILITIES OF CITY

5.01 CITY agrees to provide the following to the Facility:

- a) Maintain the Facility to the same standards as TSGC.
- b) Provide golf balls for use on the Facility.
- c) Allot twenty five (25) tee times for UTA team qualifiers during each calendar year based on availability. TSGC will allow these tee times to be booked at no cost during prime hours, subject to availability.
- d) Allow UTA golf team use of the TSGC, for practice and instructional purposes, after 2:00 pm and subject to availability.
- e) Provide UTA golf team with access to the driving range, at no cost, (including the use of range balls) subject to availability, weather and Operational Hours.

- f) Provide two (2) coach-only carts at no cost, subject to availability, during organized practices on TSGC.

ARTICLE VI. TERMINATION

6.01 Termination.

a) For Convenience. City or UTA may terminate this Agreement at any time for any reason upon giving 30 days advanced written notice to UTA. If City terminates for Convenience, City agrees to reimburse UTA a pro-rata share of the actual construction costs of the Facility not to exceed \$225,000. Such reimbursement will be equal to $1/15^{\text{th}}$ of the construction cost times the number of full years remaining on the Agreement. Example: City terminates contract after 5 years for Convenience, City agrees to pay UTA \$150,000 ($\$225,000/15*10$ years).

b) For Cause. Notwithstanding subsection (a), if City or UTA fails to fulfill any obligation under this Agreement, City or UTA shall be considered to be in default. If City or UTA fails to cure such default within thirty (30) days after written notice or within a mutually agreeable timeframe provided for in writing, UTA or City may terminate this Agreement.

ARTICLE VII. ASSIGNMENT AND SUBLEASE

7.01 Assignment. UTA may not assign this Agreement or any portion thereof, except with the written consent of City, nor may UTA assign, transfer or delegate to any person UTA's rights or duties with respect to the Property unless it obtains City's written consent.

ARTICLE VIII. INSURANCE

8.01 UTA covenants and agrees that during the Term of this Agreement, UTA or its contractor will furnish to City, at UTAs or contractors sole cost and expense, a certificate of insurance as proof that it has secured and paid for a policy providing general liability insurance covering all risks related to the construction of the Facility. The amounts of such insurance shall not be less than \$1,000,000.00 for personal injury or death, each occurrence.

8.02 City shall be named as an additional insured under the above-described policies, and each such policy shall contain endorsements waiving subrogation rights against City and providing that such policies may not be cancelled unless City is provided with written notice of such intent to cancel at least thirty (30) days prior to any such cancellation. Each such insurance policy shall be procured from a company authorized to do business in the State of Texas and shall be satisfactory to City. UTA or Contractor shall provide evidence satisfactory to City that such coverage has been procured and is being maintained at all times during the Term.

**ARTICLE IX.
INDEMNIFICATION**

9.01 TO THE EXTENT ALLOWED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, UTA SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD HARMLESS CITY AND ANY OFFICER, AGENT, EMPLOYEE, OR OFFICIAL OF THE CITY (HEREINAFTER REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ANY AND ALL LIABILITY, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF UTA, ITS PERSONNEL, EMPLOYEES, MEMBERS, PLAYERS, PARTICIPANTS, COACHES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, RESULTING IN PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH UTA'S CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE, USE OR CONDITION OF THE PROPERTY OR UTA'S IMPROVEMENTS CONSTRUCTED THEREON OR UTA'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION.

**ARTICLE X.
GENERAL PROVISIONS**

10.01 Notices. All notices required herein shall be sent to the respective Parties by certified mail, return receipt requested, at the following addresses:

To City: City of Euless
 Attention: City Manager's Office
 201 N. Ector Dr.
 Euless, Texas 76039

To UTA: The University of Texas at Arlington
 Intercollegiate Athletics
 Attn: Director of Athletics
 701 S. Nedderman Drive
 Arlington, TX 76019

10.02 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

10.03 Interpretation and Place of Performance. This Agreement shall be enforceable and construed under the substantive laws of the State of Texas, shall be performed in Tarrant County, Texas, and venue for any action brought to interpret or enforce this Agreement shall lie in Tarrant County, Texas.

10.04 Partial Invalidity. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.05 Force Majeure. In the event that either Party is delayed, hindered, or prevented from performing any action required herein, either Party shall not be liable or responsible if the delay is due to strike, riot, act of God, shortage of labor or materials, war, governmental laws, regulations, or other restrictions or any other causes of any kind which are beyond the reasonable control of either Party, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

10.06 Amendment. This Agreement may not be altered, waived, or otherwise modified, except where done in writing, and signed by the Parties.

EXECUTED this ____ day of _____, 2013

CITY:

CITY OF EULESS, TEXAS

By:

Gary L. McKamie, City Manager

Attest:

City Secretary

UTA:

University of Texas at Arlington

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Notary Public

{Seal}

Exhibit A



Exhibit B



Exhibit C

PERFORMANCE BOND

THE STATE OF TEXAS
THE COUNTY OF TARRANT

KNOW ALL MEN BY THESE PRESENTS:

That, _____
(hereinafter called the Principal), as principal, and _____
a corporation organized and existing under the laws of the State of _____
with its principal office in the City of _____ (hereinafter called
the Surety), as Surety, are held and firmly bound unto CITY OF EULESS (hereinafter
called the Owner) in the amount _____ Dollars
(\$ _____), for the payment whereof the said Principal and Surety bind themselves,
and their heirs, administrators, executors, successors, and assigns, jointly and
severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the
Owner, dated the _____ day of _____, 20____, for construction of
a short game facility at the Texas Star Golf Course, which contract is hereby referred to
and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if
the said Principal shall faithfully perform said Contract and shall in all respects duly and
faithfully observe and perform all and singular the covenants, conditions and
agreements in and by said contract agreed and covenanted by the Principal to be
observed and performed, and according to the true intent and meaning of said Contract
and the Plans and Specifications hereto annexed, then this obligation shall be void;
otherwise to remain in full force and effect;

PROVIDED HOWEVER, that this bond is executed pursuant to the provisions of
Chapter 2253 of the Texas Government Code as amended by Acts of the 73rd
Legislature, 1993, and all liabilities on this bond to all such claimants shall be
determined in accordance with the provisions of said Chapter to the same extend as if
it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time,
alteration or addition to the terms of the contract, or the work performed hereunder, or
the plans, specifications, or drawings accompanying the same, shall in anyway affect
its obligation on this bond, and it does hereby waive notice of any such change,
extension of time, alteration or addition to the terms of the contract, or to the work to be
performed hereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20_____.

Principal

Surety

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

The name and address of the Resident Agent of Surety is:

Exhibit D

PAYMENT BOND

THE STATE OF TEXAS
THE COUNTY OF TARRANT

KNOW ALL MEN BY THESE PRESENTS:

That, _____
(hereinafter called the Principal), as principal, and _____
a corporation organized and existing under the laws of the State of _____
with its principal office in the City of _____ (hereinafter called
the Surety), as Surety, are held and firmly bound unto CITY OF EULESS (hereinafter
called the Owner) in the amount _____ Dollars
(\$_____), for the payment whereof the said Principal and Surety bind themselves,
and their heirs, administrators, executors, successors, and assigns, jointly and
severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the
Owner, dated the _____ day of _____, 20____, to commence
work and complete work with the time established in AGREEMENT for construction of
a short game facility at the Texas Star Golf Course, which contract is hereby referred to
and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if
the said Principal shall pay all claimants supplying labor and material to him or a
subcontractor in the prosecution of the work provided for in said contract, then, this
obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of
Chapter 2253 of the Texas Government Code as amended by Acts of the 73rd
Legislature, 1993, and all liabilities on this bond to all such claimants shall be
determined in accordance with the provisions of said Chapter to the same extend as if
it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, or
the plans, specifications or drawings accompanying the same, shall in anywise affect
its obligation on this bond, and it does hereby waive notice of any such change,
extension of time, alteration or addition to the terms of the contract, or to the work to be
performed there under.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20_____.

Principal

Surety

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

The name and address of the Resident Agent of Surety is:

Exhibit E
MAINTENANCE BOND

THE STATE OF TEXAS
THE COUNTY OF TARRANT

KNOW ALL MEN BY THESE PRESENTS:

That, _____

(hereinafter called the Principal), as principal, and _____

a corporation organized and existing under the laws of _____

and _____ as sureties, do hereby expressly acknowledge themselves to be held and bound to pay unto the CITY OF EULESS, a municipal corporation, the sum of _____ Dollars
(100% Total Contract Price)

(\$ _____), for the payment of which sum will and truly to be made unto said CITY OF EULESS and its successors, said principal and sureties do hereby bind themselves, their assigns, and successors jointly and severally.

This obligation is conditioned, however, that whereas said _____ has this day entered into a written contract with said CITY OF EULESS for the construction of a short game facility at the Texas Star Golf Course, which contract and plans and specifications therein mentioned and adopted by the CITY OF EULESS, expressly made a part thereof as though the same were written and embodied herein.

WHEREAS, under the specifications and contract, it is provided that the Contractor shall maintain and keep in good repair the work constructed and/or equipment furnished by him as contemplated by the plans, specifications, drawings, etc., for a period of two (2) years. The period shall be two (2) years from the date of acceptance as shown on the "Certificate of Completion" as issued by the Engineer, or the date of final payment by the Owner, whichever bears the later date, all necessary repairs, reconstruction and renewal of any part of said construction, and to furnish the labor and materials to make good and to repair any defective condition growing out of or on account of the breakage or failure of any substance or the improper function of any part of the construction work or equipment. The Contractor shall reimburse the Owner for the costs of all Engineering and special services required to be furnished by the Owner which are directly attributable to the restoration of the constructed work. Said maintenance contemplates restoration of the constructed work to be functional use during the said period as set forth above. It is being understood that the purpose of this section is to require the correction of all defective conditions resulting from

materials furnished or work and labor performed by the said Contractor under the conditions prescribed by the plans and specifications; and in case the said Contractor shall fail or refuse to perform as provided within ten (10) days after proper written notifications have been furnished to him by the Owner, it is agreed that the Owner may do said work and supply such materials and the said Contractor and Sureties herein shall be subject to the liquidated damages mentioned in said Contract for each calendar day's failure on its part to comply with the terms of the said provision of said Contract and this Maintenance Bond.

NOW THEREFORE, if the said Contractor shall keep and perform its said agreement to maintain said work and keep the same in good repair for the said maintenance period as provided above, then these presents shall be null and void and have no further effect, otherwise, this bond shall remain in full force and effect, and Owner shall have and recover from the Contractor and Sureties damages in the premises, as provided. It is further understood and agreed that this obligation shall be a continuing one against the principal and sureties hereon, and that successive recoveries may be had hereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time.

IN WITNESS WHEREOF, the said _____

(Name of Contractor)

Has caused these presents to be executed by

(Name of Contractor's Authorized Agent)

and the said _____

(Name of Surety)

has caused these presents to be executed by its _____

(Attorney-in-Fact or Official)

and the said _____

(Attorney-in-Fact or Official)

has hereto set his hand this _____ day of _____, 20__.

SURETY

PRINCIPAL

By: _____

ATTEST:

By: _____
SURETY

SECRETARY

NOTE: Date of Maintenance Bond must not be prior to date of Contract. Power of Attorney must be attached.

NOTE:

1. MAINTENANCE BONDS ARE MADE PAYABLE TO PROJECT CITY.
2. IF CITY'S REQUIREMENT IS OF A GREATER AMOUNT, IT WILL SUPERSEDE THE REQUIREMENT SET OUT IN THIS SECTION.