

AGREEMENT
(Installation)

This Agreement (the "Agreement") is entered into between King Ranch Turfgrass LP ("KRT") and City of Euless (the "Customer"). Capitalized terms not defined in body of this Agreement will have the meaning given to them in the attached Work Information Sheet (the "WIS") which is made a part of this Agreement.

1. Scope of Work. KRT will install the Grass at the Project Site in accordance with the specifications set forth in the Work Information Sheet (the "Work") detailed below. Any changes to the specifications for the Work will require the prior written consent of both KRT and the Customer and will be subject to such price changes and Completion Date changes as the parties mutually agree.

Work Information Sheet
(WIS)

1. Specifications for Grass and Contract Price

Product Variety	Bu. Rate* (If Applicable)	Estimated SqFt/Acre Installed	Price Per SqFt/Acre	Total Price
Mini Verde	36/1000 sq ft	111,178 sq ft	\$ 0.55 / sq ft	\$ 61,147.90
Certified Tifway 419		9,000 sq ft	\$ 0.32 / sq ft	\$ 2,880.00
Contract Price[^]				\$64,027.90

[^] The figures set forth above for SqFt/Acre Installed reflect the parties' best estimate. The final Contract Price will be based upon the actual SqFt/Acre Installed and the Contract Price set forth above will be adjusted (increased or decreased, as applicable) proportionately.

*Bushel Volume (if applicable): 0.4 cubic foot bushel

2. Project Name & Address: Texas Star Golf Course
1400 Texas Star Parkway ,Euless, Tx 76040

3. Start Date: 6-30-2014

4. Completion Date: 7-3-2014

5. Authorized Representative of Customer: Scott Boven

6. KRT Contact Person: Doug Fiene

7. Architect: N/A

8. Notices: If to Customer: _____

 Attn: _____
 Facsimile: _____
 Email: _____

If to KRT:

King Ranch Turfgrass, LP

106 North Dennis St

Wharton, Texas 77488

Attn: Credit Manager

Facsimile: 713-287-2759

Email: contracts@krturfgrass.com

2. **Contract Price.** The Contract Price to be paid by the Customer to KRT for the Work is set forth on the WIS. The Contract Price set forth on the WIS is based on the ability of KRT to deliver the Grass to the Project Site in full truckloads. If through no fault of KRT, KRT must deliver the Grass in multiple partial truckloads, then the Contract Price will be increased by a reasonable amount, as determined by KRT, to compensate KRT for its increased costs.
3. **Taxes.** The Contract Price and other charges under this Agreement *do not* include any applicable local, state, or federal taxes. Any applicable tax or taxes will be added to the invoice as a separate charge to be paid by the Customer.
4. **Payment.** Payment is due in full no later than thirty (30) days after the date of invoice. Payment is to be made to P.O. Box 951909, Dallas, Texas 75395-1909. Payments still owing after the due date will bear interest at 1.5% per month until paid in full, but in no event shall such rate of interest exceed the maximum rate allowed by law. KRT's acceptance of such interest will not be deemed a waiver of any rights KRT may have by reason of the Customer's non-payment.
5. **Ownership / Return of Packaging Materials.** All pallets, tubes, containers, and other packaging materials supplied by KRT shall remain the property of KRT.
6. **Start Date.** KRT will use its commercially reasonable efforts to begin the Work on the Start Date.
7. **Completion Date.** Subject to Section 20 (Force Majeure), the Work will be substantially completed by KRT no later than the end of the Completion Date.
8. **Authorized Representative of Customer.** The person identified on the WIS as the Authorized Representative of Customer is the duly authorized agent of the Customer and KRT may properly rely on his instructions and directions.
9. **KRT Contact Person.** All instructions, directions, and other communications from the Customer to KRT will be directed solely to the person listed on the WIS as the KRT Contact Person. The Customer will not give instructions, directions, or other communications directly to any other employees, agents, or subcontractors of KRT.
10. **Responsibilities of the Customer.**
 - a. **Preparation of Areas to be Planted.** The Customer will be responsible for preparing the areas to be planted in a suitable condition for the Work to be performed by KRT in accordance with reasonable and customary industry practices.

b. **Communications.** The Customer will promptly provide to KRT all information received by the Customer that will affect KRT's performance of the Work.

c. **Maintenance of the Grass.** The Customer will be responsible for maintaining the Grass, including watering the Grass and soil, immediately after planting by KRT.

11. **Final Inspection.** The Customer will conduct its final inspection of the Work promptly after written notification from KRT that the Work is complete and ready for final inspection, but in no event will such final inspection occur more than two (2) days after such notification by KRT. All Work that is either (a) approved by the Customer after final inspection pursuant to the immediately foregoing sentence or (b) not subject to a written objection by Customer and delivered to KRT within two (2) days of written notification by KRT that the Work is completed and ready for final inspection, will be deemed to conform with the terms of this Agreement, and the Customer shall be bound to accept and pay for the Work in accordance with the terms of this Agreement.

12. **Warranties.** KRT warrants that at the time of the final inspection by the Customer, the Work will conform to the specifications set forth on the WIS. Any warranty given by KRT excludes any acts, omissions, conditions or events affecting or relating to the Grass or the Work not caused by KRT, including but not limited to, improper maintenance, excess or insufficient watering, unsuitable soil conditions, the presence of toxic elements in the soil or water (including salt), the existence or use of pre-emergents or herbicides, abnormal weather conditions, and the acts or omissions of others. KRT shall have no liability for any deterioration in quantity or quality of the Grass after the Customer approves the Work in accordance with Section 11 of this Agreement. It will be the Customer's responsibility to provide soil, water, and/or tissue analysis from any lab approved by KRT in its reasonable discretion, should any alleged breach by KRT occur.

EXCEPT FOR THE SPECIFIC WARRANTY SET FORTH IN THIS SECTION, KRT DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, AND THE CUSTOMER EXPRESSLY WAIVES, ANY OTHER WARRANTIES OF ANY KIND, RELATING TO THE WORK OR THE GRASS INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES CONCERNING THE QUALITY, COMPOSITION, OR CHARACTERISTICS OF THE WORK OR THE GRASS, REGARDLESS OF WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ALLEGEDLY ARISING FROM ANY USAGE OF TRADE OR FROM ANY COURSE OF DEALING. THE CUSTOMER AGREES THAT IT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF KRT OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO OTHER REPRESENTATIONS AND WARRANTIES HAVE BEEN MADE BY KRT. THE PROVISIONS OF THIS SECTION 12 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

13. **Limitation on Liability.** THE KRT PARTIES TOTAL LIABILITY ARISING OUT OF, OR RELATING IN ANY WAY TO, **OR A FAILURE TO PERFORM OR OTHER DEFAULT OF** THIS AGREEMENT OR THE WORK, ~~FOR ANY CLAIMS OF ANY NATURE~~ WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY THE

CUSTOMER TO KRT FOR THE WORK, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHERWISE, ~~AND WHETHER ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY OF THE KRT PARTIES (AS DEFINED BELOW).~~ THIS WILL CONSTITUTE THE KRT PARTIES' MAXIMUM LIABILITY UNDER ANY CIRCUMSTANCES. IN THE EVENT THE WORK FAILS TO CONFORM WITH THE TERMS OF THIS AGREEMENT, THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE CUSTOMER WILL BE EITHER: (A) A REFUND OF THAT PORTION OF THE CONTRACT PRICE THAT DIRECTLY RELATES TO THE NONCONFORMING WORK OR (B) THE REMEDIATION OF THE NONCONFORMING WORK, WITH THE DETERMINATION OF SUCH REMEDY TO BE AT KRT'S SOLE DISCRETION. IN NO EVENT WILL THE KRT PARTIES BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR INDIRECT DAMAGES OF THE CUSTOMER OR ANY OTHER PERSON, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITIES, REGARDLESS OF WHETHER NOTICE HAS BEEN GIVEN OR THERE IS AWARENESS THAT SUCH DAMAGES HAVE BEEN OR MAY BE INCURRED. THE PROVISIONS OF THIS SECTION 13 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

~~14. — **Indemnification.** — Customer shall release, indemnify, defend and hold harmless, KRT and its affiliates, and each of their respective partners, officers, directors, employees, agents and representatives (each a "KRT Party" and collectively the "KRT Parties"), from any and all claims, demands, causes of action, suits, proceedings, losses, damages, fines, penalties, liabilities, costs and expenses of any nature, (including reasonable attorneys fees and court costs) (the "Claims") sustained or incurred by or asserted against any KRT Party (including but not limited to those for death, for personal injuries, or for loss of or damaged property) by reason of or arising out of or related to: (i) any breach of this Agreement by Customer; (ii) any act of fraud, willful misconduct or gross negligence of Customer or its affiliates, or any of their respective partners, officers, directors, employees, agents and representatives (each a "Customer Party"); or (iii) personal injury to or illness or death of any Customer Party and personal injury to or illness or death of any third party, caused by any Customer Party, which injury, illness or death, in either case, arises out of or is incident to the Work; or (iii) any loss of or damaged property of any Customer Party and loss of or damaged property of any third party, caused by any Customer Party, which loss of or damaged property, in either case, arises out of or is incident to the Work. **THE FOREGOING SHALL APPLY EVEN IF CAUSED, IN WHOLE OR PART, BY THE JOINT, SOLE, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO THE KRT PARTIES, EXCLUDING HOWEVER, ANY CLAIMS TO THE EXTENT ARISING OUT OF THE WILLFUL MISCONDUCT OF ANY KRT PARTY. THE PROVISIONS OF THIS SECTION 14 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**~~

15. **Breach /Termination.**

a. **Breach by Customer.** If the Customer fails to make payment as provided for in this Agreement or otherwise fails to perform any of its other obligations under this Agreement and such failure continues for a period of five (5) days after written notice of such failure is given by KRT to the Customer, then KRT may immediately stop the Work and terminate this Agreement and KRT will be entitled to receive payment for all Work performed plus recover payment for reasonable overhead, profit, and other damages. Such right and remedy is in addition to all other rights and remedies of KRT under this Agreement or at law or equity.

b. **Breach by KRT.** If KRT fails to perform any of its obligations under this Agreement and such failure continues for a period of thirty (30) days after written notice of such failure is given by the Customer to KRT (or if such failure of KRT cannot reasonably be cured within 30 days, such longer period of time as may reasonably be required to correct such failure), then the Customer may terminate this Agreement. Notwithstanding the above, the customer shall have the right to terminate this agreement if KRT has not completed the work by the completion date.; ~~provided that,~~ the Customer will remain obligated to pay KRT for all Work performed by KRT in accordance with this Agreement through the date of termination.

16. Governing Law; Jurisdiction; Jury Waiver.

a. ANY QUESTIONS CONCERNING THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE PRINCIPLES OF CHOICE OR CONFLICTS OF LAWS.

b. THE PARTIES HERETO AGREE THAT THE FEDERAL AND STATE COURTS LOCATED IN ~~HARRIS- TARRANT~~ COUNTY, TEXAS WILL BE THE EXCLUSIVE COURTS OF JURISDICTION AND VENUE FOR ANY PROCEEDING BETWEEN THE PARTIES THAT MAY BE BROUGHT, OR ARISE OUT OF, IN CONNECTION WITH OR BY REASON OF THIS AGREEMENT, AND THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL OBJECTIONS TO JURISDICTION OR VENUE THAT THEY MAY HAVE UNDER THE LAWS OF THE STATE OF TEXAS OR THE UNITED STATES. ANY PROCESS AGAINST THE PARTIES HERETO IN, OR IN CONNECTION WITH, ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE SERVED ON THEM PERSONALLY OR BY CERTIFIED MAIL AT THE ADDRESS SET FORTH ON THE WIS WITH THE SAME EFFECT AS THOUGH SERVED ON THEM PERSONALLY.

c. THE PARTIES HERETO AGREE THAT THEY HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION TO ENFORCE OR INTERPRET THE PROVISIONS OF THIS AGREEMENT.

d. The provisions of this Section 16 shall survive termination of this Agreement.

17. Notices. All notices and communications required or permitted hereunder shall be in writing, shall be delivered by telecopier (transmission confirmed), receipted courier service, or mailed by certified or registered mail service with postage prepaid and shall be deemed to have

been duly given when received at the address set forth on the WIS (or to such other address as the parties may designate by written notice).

18. Counterparts. This Agreement may be executed in two or more counterparts or originals, each of which counterparts shall be deemed an original, but all of which counterparts or originals together shall constitute one and the same instrument.

19. Binding Effect. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns; provided, however, that ~~the Customer~~ KRT may not assign this Agreement without the prior written consent of ~~KRT~~ the Customer.

20. Force Majeure. In the event the performance of KRT's obligations under this Agreement is prevented or delayed by an act of God, war, civil insurrection, fire, flood, storm, weather conditions, grass production shortages, transportation delays, strike or labor disputes, labor shortages, acts or omissions of others, or by any law, regulation, or order of any governmental authority, or by any other cause beyond the control of KRT, KRT's performance under this Agreement, to the extent it is prevented or delayed, shall be excused and KRT shall not have any liability therefore. Notwithstanding the above, the customer shall have the right to terminate this agreement if KRT has not completed the work by the completion date.

21. Severability. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

22. Entire Agreement. This Agreement, together with the WIS, constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings of written or oral agreements between the parties with respect to the subject matter hereof. This Agreement may be amended only by a written agreement signed the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective officers duly authorized to do so.

CUSTOMER

KING RANCH TURFGRASS, LP

Company: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____