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**MICHAEL POST, C.P.A., M.B.A.**  
**HARRIS COUNTY AUDITOR**

August 14, 2020

Commissioner R. Jack Cagle  
Harris County Precinct 4  
1001 Preston, 9<sup>th</sup> Floor  
Houston, TX 77002

Dear Commissioner Cagle:

The Harris County Auditor's Office Audit Division has completed an audit of the current Cypresswood Golf Concession Agreement (Concession Agreement) between Harris County (County) and Foresight Cypress, LTD (the Contractor) for the operation of the Tradition Golf Course and Cypress Golf Course (Cypresswood Golf Courses). The original audit period for this engagement was August 15, 2017 to January 31, 2020, however, the audit period was expanded due to additional information received during the engagement. This required us to also review the prior Cypresswood Golf Concession Agreement (Prior Agreement) on a limited scope basis. The results of our audit are included in the attached report.

We appreciate the time and attention provided by you and your staff during this engagement. Please anticipate an email to complete the Audit Division's Post Engagement Survey. We look forward to your feedback. If you have any questions, please contact me or Errika Perkins, Chief Assistant County Auditor, 713-274-5673

Sincerely,

A handwritten signature in blue ink that reads "Michael Post". The signature is written in a cursive style with a long horizontal stroke at the end.

Michael Post  
County Auditor

Attachment

Report Copies:

District Judges  
County Judge Lina Hidalgo  
Commissioners:  
Rodney Ellis  
Adrian Garcia  
Steve Radack  
Vince Ryan

AUDIT REPORT  
**CYPRESSWOOD GOLF CONCESSION AGREEMENT**  
AUGUST 14, 2020

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## Executive Summary

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### OVERALL CONCLUSION

Based on the testing performed of the Concession Agreement, and the previous billings governed by the Prior Agreement, the Contractor has not paid \$559,829 of commissions related to revenues the Contractor received for the operation of the Cypresswood Golf Courses. Per the Contractor's attorney, commission payments have not been made as the Contractor believes that the Concession Agreement's Force Majeure clause is still in effect from Hurricane Harvey.

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### SCOPE AND OBJECTIVE

The objective of this engagement was to determine whether the Contractor complied with the terms of the Concession Agreement. The initial period to be examined was August 15, 2017 to January 31, 2020. Due to additional data received during the audit, the scope period of the engagement was extended to July 1, 2016 to August 14, 2017 to encompass previous unpaid amounts related to the Prior Agreement.

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### SUMMARY OF AUDIT ISSUES

#### Current Audit Issues

Issue #1 - The Contractor has failed to pay commissions to the County as required by the Agreements. The Contractor has not paid commissions to the County totaling \$559,829. Unpaid commissions for the current Concession Agreement total \$322,682. Unpaid commissions due for the Prior Agreement total \$237,147.

Issue #2 - The Auditor's Office Accounts Receivable Department did not submit the Contractor's collections balance to the County Attorney's Office in a timely manner, and did not invoice for \$348,710 in commissions due to the Contractor's interpretation of Force Majeure.

#### Previous Audit Issue

In the previous Cypresswood Golf Course Audit (report issued April 17, 2015) we determined that the Contractor owed the County \$263,356. At the request of the Precinct 4 Commissioner's Office, Commissioners Court approved the transfer of \$263,356 on January 31, 2017, from the Cypresswood Improvement Fund in order to zero out the outstanding balance.

The Cypresswood Improvement fund balance increases through Commission payments received from the Contractor, and subsequently has not increased since the Contractor's November 2016 commissions payment for the period of 07/01/2015 through 06/30/2016. In accordance with the Agreements, the purpose of the Cypresswood Improvement Fund is to construct outdoor recreational and capital improvements at the Cypresswood Golf Course. Excess funds, not needed to construct improvements, can be used by the County for other County parks.

The audit issues, management's action plan to address the issues, and background information regarding this audit are discussed in more detail on the following pages.

## AUDIT ISSUES

### **ISSUE #1: Commissions Not Paid in Accordance with the Agreements**

**What is the Issue:** The Contractor is not in compliance with the commission payment requirements of the Agreements. Specifically, the Contractor has not paid commissions to the County totaling \$559,829, see the following table:

<b>Summary Table (for Commissions Due)</b>			
Reference	Time Period		Commissions Due
A	7/1/2016 - 6/30/2017	Pre Hurricane Harvey (Prior Agreement)	\$211,119
B	7/1/2017 - 8/14/2017	Pre Hurricane Harvey (Prior Agreement)	\$26,028
C	8/15/2017 - 8/31/2017	Pre Hurricane Harvey (Current Agreement)	\$4,047
D	9/1/2017 - 12/31/2017	Post Hurricane Harvey (Golf Courses Closed)	-\$154
E	1/1/2018 - 12/31/2018	Post Hurricane Harvey (Current Agreement)	\$123,969
	1/1/2019 - 12/31/2019	Post Hurricane Harvey (Current Agreement)	\$183,562
	1/1/2020 - 1/31/2020	Post Hurricane Harvey (Current Agreement)	\$11,258
<b>Total</b>			<b>\$559,829</b>

- A. On January 25, 2018, the Auditor's Office Accounts Receivable Department provided notice to the Contractor that a payment of \$211,119, due to the County for the time period of 7/1/16 – 6/30/17, was delinquent by 120 days. On January 26, 2018, the Contractor's attorney replied to the Auditor's Office request for payment and stated that the Contractor would not be paying the amount due until the passing of a Force Majeure event (Hurricane Harvey – August 2017) and/or until operations were back in effect.
- B. After the completion of the 12 month billing of 7/1/16 – 6/30/17 noted above, the Contractor and the County continued to operate under the requirements of the Prior Agreement for 45 additional days, 7/1/17 – 8/14/17. In accordance with the Prior Agreement, the minimum annual commission payment totaled, \$211,119, therefore, prorated commissions due from the Contractor for the 45 day period were \$26,028.
- C. The current Concession Agreement began on August 15, 2017. Due to Hurricane Harvey, the Concession Agreement was in effect for little more than a week before the course was closed. Audit Services requested QuickBooks financial data from the Contractor for the period of August 15, 2017 to August 31, 2017, and calculated the amount due to the County under the Concession Agreement's provisions to be \$4,047.
- D. The Contractor's financials revealed that no revenues were received by the Cypresswood Golf Courses during the period of 9/1/17 through 12/31/17 due to Hurricane Harvey. As no revenues were received by the Contractor, no commissions are due to the County for this time period. However, as a result of credits/refunds provided to golf customers for prior months, commissions due were reduced by \$154.

E. The Contractor's financials revealed that revenues were received by the Cypresswood Golf Courses during the period of 1/1/18 through 1/31/20. Commissions for this period were calculated to be \$318,789. Specifically, commissions of \$123,969 were related to revenues earned in 2018; commissions of \$183,562 were related to revenues earned in 2019; and commissions of \$11,258 were related to revenues earned in January 2020.

**What is Expected:** For the right to use this County property, the Concession Agreement requires the Contractor to pay the County quarterly; eight percent (8%) of all amounts received through the operation of the Cypresswood Golf Courses (e.g. Fees, dues, & rentals), one percent (1%) of all amounts received from the sales at the pro-shop (e.g., clothing, golf clubs, etc.), and one percent (1%) of all food and beverage sales.

The County and the Contractor had a Prior Agreement with different commission requirements. The Prior Agreement required the Contractor to make an annual payment to the County for the following gross receipts collected: one percent (1%) of Cart Rental, one percent (1%) of Food and Beverage, and fifteen percent (15%) of Green Fee Receipts.

*Note: Audit Services did not audit the Contractor's financial data for the period of July 1, 2016 through August 14, 2017. As such, Audit Services relied upon the invoicing procedures performed by the Auditor's Office Accounts Receivable Department.*

**Why it Matters:** The Contractor's failure to comply with the Agreements, by withholding commissions, has resulted in a financial loss to the County.

**Why it Happened:** Per the Contractor's attorney, commission payments have not been made as the Contractor believes that the Concession Agreement's Force Majeure clause is still in effect as a result of Hurricane Harvey. However, the Harris County Attorney's Office does not agree with the Contractor's interpretation of the Concession Agreement's Force Majeure clause. Per the Harris County Attorney's Office, if Cypresswood Golf Courses are operational and receiving income, then they are not in a Force Majeure status.

**What Action(s) are Suggested:** The County Attorney's Office, in conjunction with the County Auditor's Office Accounts Receivable Department, should determine the best course of action to collect all commissions due.

From February 1, 2020, forward, the County Auditor's Office Accounts Receivable Department should request the applicable financial data from the Contractor, calculate the amount due to the County in accordance with the Concession Agreement, and invoice the Contractor for commissions due.

Per discussion with the Precinct 4 Commissioner's Office, Precinct 4 and the County are serious about collecting past and future concessionaire fees timely. Precinct 4 wants to work with the Contractor as much as possible to resolve this issue.

## **MANAGEMENT'S ACTION PLAN**

### **County Attorney's Office**

**Responsible Party:** County Attorney's Office

The Harris County Attorney's Office of Vince Ryan will pursue breaches of contract claims and monies owed to Harris County brought to the attention of the Office. If the Harris County Attorney's Office feels legal action is warranted it will request Commissioner's Court approval to file suit against Foresight Cypress LTD.

**Due Date:** February 28, 2021

### **County Auditor's Office – Accounting Division – Accounts Receivable**

**Responsible Party:** Leslie Wilks Garcia

Management agrees with the issue, and, in accordance with A.28, *AR Policy Statement* and A.28-10, *Past Due Accounts Receivable Collections*, we will work with the County Attorney's Office to determine the best course of action to collect all commissions due. Accounts Receivable will invoice all outstanding, unbilled commissions and, as of February 2020, will request the required financial documentation from the concessionaire for regular commission billings to resume.

**Due Date:** February 28, 2021

## **ISSUE #2: Non-Compliance with County Policy**

**What is the Issue:** The Auditor's Office Accounts Receivable Department did not submit the Contractor's collections balance to the County Attorney's Office in a timely manner, and did not invoice for \$348,710 in commissions due to the Contractor's interpretation of Force Majeure.

**What is Expected:** Pursuant to County Accounting Procedure A.28, *AR Policy Statement*, the Accounts Receivable Department should provide information regarding receivables that are more than 90 days past due to the County departments rendering the service and to the County Attorney, along with any other information, as appropriate, on a monthly basis.

**Why it Matters:** Failure to validate vendor's claims of nonpayment with the Harris County Attorney's Office can result in lost revenue opportunities for the County and lost services for the County's constituents.

**Why it Happened:** Per Accounts Receivable Office Management, competing priorities with the PeopleSoft implementation caused delays in their communications to the County Attorney's collections team. In addition, the invoicing process was not performed as they were unaware that the golf courses were operational after Hurricane Harvey.

**What Action(s) are Suggested:** Accounts Receivable Management should implement procedures to ensure that the delinquent account listings are submitted to the County Attorney's Office on a monthly basis, in a manner and form agreed to by the County Attorney's Office. In addition, the Accounts Receivable Department should invoice the Contractor for all unbilled, outstanding commissions.

## **MANAGEMENT'S ACTION PLAN**

### **County Auditor's Office – Accounting Division – Accounts Receivable**

**Responsible Party:** Leslie Wilks Garcia

Management agrees with the issue and is in the process of implementing additional controls to prevent and monitor for such compliance risks. The Accounts Receivable staff will receive periodic training regarding applicable procedures, including A.28, *AR Policy Statement* and A.28-10, *Past Due Accounts Receivable Collections*. Upon stabilization of the new PeopleSoft system that was implemented in March 2020, a monitoring routine will be developed to help management monitor certain activity, or lack thereof, that may be indicative of failure to follow County policies and procedures. Accounts Receivable is also working with the Harris County Attorney's Office to update the intake procedures for overdue invoices and will grant them access to PeopleSoft's Accounts Receivable Collections Workbench tool. Accounts Receivable will invoice the unbilled, outstanding commissions as soon as the supporting information is forwarded to the Department.

**Due Date:** February 28, 2021

## BACKGROUND

Harris County entered into an Agreement granting United States Golf Corporation the right and responsibility to construct, operate, and maintain two public golf courses in Spring, Texas on April 29, 1986. The initial term of the Agreement was forty years, and in the Third Amendment to the Agreement, dated August 20, 1996, the term was increased to fifty years. Per the Fifth Amendment to the Agreement, dated June 4, 2010, Foresight Cypress Ltd, a Texas limited partnership, acquired all of the assets and assumed all of the obligations of United States Golf Corporation in the Agreement by virtue of an Assignment and Assumption Agreement dated February 7, 2005.

On September 12, 2017, the Prior Agreement was replaced by a new 20-year Concession Agreement between the County and the Contractor. This current Concession Agreement covers the period of August 15, 2017 to July 31, 2037, with two additional 10-year optional renewal periods. It requires the Contractor to maintain and operate the Cypresswood Golf Courses and the property upon which they are located. It contains a Force Majeure clause which states that neither party (County or Contractor) will be liable for any failure or delay in performing its obligations under the Concession Agreement if such failure or delay is due to an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves, periods of excessive rain and floods, etc.).

On August 25, 2017, Hurricane Harvey made landfall along the Texas coast near Port Aransas. The Cypresswood Golf Courses were negatively impacted by this event.

## ACCOUNTABILITY

The work performed required our staff to exercise professional judgment in completing the scope procedures. As the procedures were not a detailed examination of all transactions, there is a risk that fraud, errors, or omissions were not detected during this engagement. The official, therefore, retains the responsibility for the accuracy and completeness of their financial records and for ensuring sufficient controls are in place to detect and prevent fraud, errors, or omissions.