

AUDITOR'S REPORT

CYPRESSWOOD GOLF COURSE CONCESSION AGREEMENT FOR THE 24 MONTH PERIOD ENDED JUNE 30, 2014



April 17, 2015

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HARRIS COUNTY AUDITOR

April 17, 2015

Commissioner R. Jack Cagle
County Commissioner, Precinct 4
1001 Preston, 9th Floor
Houston, Texas 77002

Mr. Mike Post
Chief Assistant County Auditor
1001 Preston, 8th Floor
Houston, Texas 77002

RE: Cypresswood Golf Course Concession Agreement for the 24 month period ended June 30, 2014

The Audit Services Department performed procedures relative to the Cypresswood Golf Course Concession Agreement (Agreement). The purpose of the engagement was to evaluate controls for collecting and recording annual payments from the Cypresswood Golf Club, and to evaluate the compliance with the requirements of the Agreement.

The procedures performed included the following:

- Examined the County's Cypresswood Golf Club special revenue fund to identify whether funds were used for the improvement and operation of the Cypresswood Golf Club as required by Local Government Code §331.006.
- Evaluated the Concessionaire's compliance with the terms of the Agreement, including the maintenance of specified types and amounts of insurance coverage.
- Evaluated the Cypresswood Golf Club fees to identify whether they are higher than the authorized maximum fees/prices approved by Commissioners Court on September 12, 2000.
- Met with the County Attorney's Office to determine whether the Agreement or other policies authorize the Auditor's Office to examine the financial records of the Concessionaire.
- Evaluated the annual payments made to the County for the 24 months ended June 30, 2014, to identify whether payments were made in accordance with the requirements of the Agreement,

Commissioner R. Jack Cagle
County Commissioner, Precinct 4

Mr. Mike Post
Chief Assistant County Auditor

received, recorded, and deposited timely. Some procedures were not performed and will be performed in a future engagement.

The engagement process included providing you with a combined engagement and scope letter and conducting an entrance and exit conference with your personnel. The purpose of the letter and conferences was to explain the process, identify areas of concern, describe the procedures to be performed, discuss issues identified during the engagement, and solicit suggestions for resolving the issues. A draft report was provided to you and your personnel for review.

The enclosed Auditor's Report presents the significant issues identified during our procedures, recommendations developed in conjunction with your staff, and any actions you have taken to implement the recommendations. Less significant issues and recommendations have been verbally communicated to your staff.

We appreciate the time and attention provided by you and your staff during this engagement.

Sincerely,



Barbara J. Schott
County Auditor

cc: District Judges
County Judge Ed Emmett
Commissioners:
El Franco Lee
Jack Morman
Steve Radack
Devon Anderson
Vince Ryan
William J. Jackson

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OVERVIEW

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. Thereafter, the Agreement shall automatically extend for two additional ten (10) year terms under the same conditions and terms unless either party indicates in writing its intent to terminate the Agreement. As witnessed in the Fifth Amendment to the Agreement, dated June 4, 2010, Foresight Cypress Ltd (Concessionaire), 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.

As consideration for the use of the 516.79 acres that are owned by the County, in addition to the surrender to the County of all fixed improvements at the termination of the Agreement, the Concessionaire is required to pay the following percentages of their gross annual receipts, as defined in the Agreement: 1% of Cart Gross, 1% of Food and Beverage Gross, and 15% of Green Fee Gross Receipts.

Pursuant to the Agreement, if the Concessionaire comingles or collects a fee or charge which includes in whole or in part fees or charges that come within two or more of the gross annual receipt categories of Cart, Food and Beverage, or Green Fees, the Concessionaire then shall pay the County the highest percentage applicable to any of the categories included in the amount so collected. For example, if the Concessionaire charges a single price for the purchase of a green fee, and this purchase includes the use of a golf cart, then the Concessionaire shall pay the highest percentage applicable (15%) for all funds collected.

The County Auditor's Grants and Accounts Receivable Department (Accounts Receivable) is responsible for monitoring the billing, collection, and recording of all annual payments received from the Concessionaire.

RESULTS

Based on procedures performed on the Agreement during the 24 month period ended June 30, 2014, it appears that the County's Special Revenue Fund was in compliance with Local Government Code §331.006. Additionally, it appears that the fees/prices charged by the Concessionaire were not higher than the maximum fees/prices that were authorized by Commissioners Court on September 12, 2000, and the controls for recording annual payments received appeared to be effective.

However, the procedures performed identified the following controls for collecting the annual payment that could be improved, and areas of non-compliance with the Agreement:

- Based on guidance provided to us by the County Attorney's Office, we requested the 2013 financial records from the Concessionaire for testing. It was noted that the Concessionaire did not include certain fees defined as gross receipts in the Agreement and used an incorrect percentage on other gross receipts when calculating the annual payment amount due to the County.
- Accounts Receivable received less than the required annual minimum payment for September 1, 2011, and September 1, 2012. In addition, an amendment to the contract should be considered allowing a right to audit clause and submission of annual audited financial statements to Accounts Receivable.
- The County Attorney's Office did not receive and, therefore, did not review and/or approve the Concessionaire's insurance certificates.

These and other matters are discussed in the attached Issues and Recommendations matrix.

ISSUES AND RECOMMENDATIONS

Subject	Background	Issue	Recommendation	Management Response
<p>Calculation of 2013 Annual Payment</p>	<p>Pursuant to the Agreement, the Concessionaire shall make an annual payment to the County for the following gross receipts collected: 1% of Cart Gross, 1% of Food and Beverage Gross, and 15% of Green Fee Gross Receipts. The Agreement defines Cart Gross as the money or value of other consideration received from the rental of golf carts or other equipment; Food and Beverage Gross as the money received or the value of other consideration from the sale of food and beverages or other items for human consumption and; Green Fee Gross Receipts as all money received or the value of other consideration received by the Concessionaire for the entrance to or use of all or any part of the above</p>	<p>The Concessionaire did not provide the County with 15% of the following gross receipts in their 2013 annual payment (The Agreement defines the items listed below as green fees):</p> <ul style="list-style-type: none"> • Golf Lessons • Miscellaneous Golf Fees • Membership Dues • Range Fees • Rental Clubs • Tournament Services <p>Additionally, the Concessionaire used an incorrect percentage to calculate the fees owed to Harris County. Per the Agreement, if the Concessionaire collects a fee or charge which includes both cart and green fees, the County shall be paid the highest percentage applicable (15%).</p>	<p>Accounts Receivable Management should consult with the County Attorney's Office and determine if an invoice should be sent to the Concessionaire for the remaining balance of \$239,424.96.</p> <p>In addition, Accounts Receivable should review and verify the calculated payment amounts to ensure that the annual payments are correct and in compliance with the Agreement.</p> <p>In addition, the County Attorney's Office, in conjunction with the Commissioner's Office, Precinct 4, should consider an amendment to the Agreement. First, to add a right to audit clause, and second to require the Concessionaire to submit</p>	<p>Accounts Receivable Accounts Receivable has met with the County Attorney's Office and are awaiting a recommendation from the CAO and the Commissioner Cagle's Office regarding the potential billing. See Precinct 4's management response.</p> <p>Accounts Receivable supports amending the agreement for clarification and audit purposes as noted and will follow the new agreement as written, including spot auditing payments when provided with the proper supporting documentation.</p> <p>Commissioner's Office Management has requested a meeting with the Concessionaire and seeks an amicable resolve of all issues outlined in the audit. Consultation with the County Attorney's Office will continue to address funds due</p>

ISSUES AND RECOMMENDATIONS

Subject	Background	Issue	Recommendation	Management Response
Calculation of 2013 Annual Payment (Continued)	<p>described areas (the golf courses) or any facilities or equipment thereon, excluding cart rentals.</p> <p>Additionally, if the Concessionaire comingles or collects a fee or charge which includes in whole or in part fees or charges that come within two or more of the three categories of fees, namely cart, food and beverage, or green fee gross, then the Concessionaire shall pay the County the highest percentage applicable to any of the categories included in the amount so collected.</p>	<p>As a result of the excluded gross receipts and the incorrect percentage calculations, the County was underpaid \$239,424.95 for the September 2013 annual payment.</p>	<p>annual audited Financial Statements with the annual payment documentation. In addition, the County Attorney's Office should determine if an analysis of payments received for previous years should be performed to ensure payments were appropriately calculated.</p>	<p>to Harris County and to determine a course of action.</p> <p>Management also supports amendment of the Concessionaire Agreement for the purposes of (a) adding a right to audit clause and (b) requiring submittal of annual audited statements with annual payment documentation by the Concessionaire.</p>
Percentage Due to County	<p>The Agreement set the following gross receipts schedule of payments to be paid to Harris County: 1% of Cart Gross, 1% of Food and Beverage Gross, and 15% of Green Fee Gross</p>	<p>The Concessionaire paid Harris County 1% of the gross receipts for rental clubs rather than 15% of the gross receipts as specified in the Agreement for the September 1, 2012,</p>	<p>Accounts Receivable Management should consult with the County Attorney's Office and determine if an invoice should be sent to the Concessionaire for the</p>	<p>Accounts Receivable</p> <p>Accounts Receivable has met with the County Attorney's Office and are awaiting a recommendation from the CAO and the Commissioner Cagle's Office regarding the</p>

ISSUES AND RECOMMENDATIONS

Subject	Background	Issue	Recommendation	Management Response
Percentage Due to County (Continued)	Receipts. The Agreement defined “Green Fee Gross Receipts” as all money or the value of other consideration received by the Concessionaire for entrance to or use of all or any part of the golf courses or any facilities or equipment thereon, excluding cart rentals.	and September 1, 2013, annual payments. As a result, Harris County was underpaid \$3,577.56 for the September 1, 2012, payment and \$4,234.70 for the September 1, 2013, annual payment.	remaining balance of \$7,812.26 (\$4,234.70 of this amount is included in the \$239,424.96 amount reported as due in the Issue on page 6). Additionally, Accounts Receivable should confirm the percentages shown on the Concessionaire’s annual payment documentation to the percentages in the Agreement and verify that all calculations are correct.	potential billing. See Precinct 4’s management response.
Minimum Annual Payments	The Fifth Amendment to the Agreement set a minimum annual payment that is due to the County by September 1st of each year. The Amendment states that “any annual payment by Concessionaire to Harris County shall never be less than the average of the four annual payments	The Concessionaire's annual payments made for September 1, 2011, and September 1, 2012, were each less than the minimum required annual payment. The Concessionaire underpaid \$18,848.42 in 2011 and \$1,504.85 in 2012. As a result, Harris County	Accounts Receivable Management should consult with the County Attorney’s Office and determine if an invoice should be sent to the Concessionaire for the remaining balance of \$20,353.27 for fiscal years 2011 and 2012. In addition, Accounts	Accounts Receivable Accounts Receivable has met with the County Attorney’s Office and are awaiting a recommendation from the CAO and the Commissioner Cagle’s Office regarding the potential billing. See Precinct 4’s management response. Account Receivable will implement additional control

ISSUES AND RECOMMENDATIONS

Subject	Background	Issue	Recommendation	Management Response
Minimum Annual Payments (Continued)	made for the four years preceding the date of this agreement.” The calculated annual minimum payment is \$211,118.91.	received a total of \$20,353.27 less than it was due for 2011 and 2012 combined.	Receivable should ensure that future annual payments are not less than the calculated minimum required payment as stated in the Fifth Amendment to the Agreement.	procedures to ensure that annual payments are not less than the calculated minimum payment per the agreement.
Insurance Coverage	Article IX of the Agreement requires the Concessionaire to procure and keep in force the following insurance: A) Worker's Compensation; B) Liability and Property Damage with minimum limits as to personal injury and death of \$250,000 as to each person, \$500,000 as to each incident, and \$100,000 as to property damage; and C) Fire and Extended Coverage covering all buildings constructed by the Concessionaire in any amount equal to at least eighty percent (80%) of the full insurable value of	Duplicate originals or certificates of all insurance policies were not delivered to the County and, therefore, the County Attorney's Office did not review and/or approve the required insurance coverage as required by the Agreement.	The County Attorney's Office should request the required duplicate originals or certificates of all current insurance policies from the Concessionaire and review the policies as set forth in the Agreement.	Commissioner's Office Precinct 4 supports this recommendation and believes proof of insurance certificates should be made available upon request from the County Attorney's Office.

ISSUES AND RECOMMENDATIONS

Subject	Background	Issue	Recommendation	Management Response
Insurance Coverage (Continued)	<p>such buildings above its foundation.</p> <p>Additionally, Article IX requires the Concessionaire to deliver duplicate originals or certificates of all insurance policies to the County Attorney for review and approval.</p>			

RISK ASSESSMENT AND SUMMARY OF RECOMMENDATIONS

The risk matrix below presents the assessed level of risk or exposure identified during our procedures. Inherent risk relates to factors that because of their nature cannot be controlled or mitigated by management. Inherent risk includes factors such as legislative changes, number and dollar amount of transactions processed, and/or complex nature of transactions. Control risks relate to factors that can be influenced or controlled by management. Controls such as policies and procedures, electronic or manual approvals, system security access, and separation of job responsibilities may be instituted by management in order to mitigate control risk. Control risk is assessed during the planning phase in order to establish the nature, timing, and extent of testing and at the conclusion of the engagement in order to incorporate actions taken to implement our recommendations. The overall risk considers a combination of inherent and control risks.

Inherent Risk:	Control Risk:		Overall Risk:
<input checked="" type="checkbox"/> High <input type="checkbox"/> Moderate <input type="checkbox"/> Low	Prior to Procedures	After Procedures	<input checked="" type="checkbox"/> High <input type="checkbox"/> Moderate <input type="checkbox"/> Low
	Needed Improvement	Needs Improvement	
Type of Procedures: Audit			
Purpose: To evaluate controls for collecting and recording annual payments from the Concessionaire and to evaluate the compliance with the requirements of the Agreement.			
Outstanding Audit Recommendations: See below.			
Priority Rating:	Audit Recommendations:		
1	Accounts Receivable Management should consult with the County Attorney’s Office and determine if an invoice should be sent to the Concessionaire for the remaining balance of \$239,424.96. In addition, Accounts Receivable should review and verify the calculated payment amounts to ensure that the annual payments are correct and in compliance with the Agreement.		
2	The County Attorney’s Office, in conjunction with the Commissioner’s Office, Precinct 4, should consider an amendment to the Agreement. First, to add a right to audit clause, and second to require the Concessionaire to submit annual audited Financial Statements with the annual payment documentation. In addition, the County Attorney’s Office should determine if an analysis of payments received for previous years should be performed to ensure payments were appropriately calculated.		

1	Accounts Receivable Management should consult with the County Attorney's Office and determine if an invoice should be sent to the Concessionaire for the remaining balance of \$7,812.26 (\$4,234.70 of this amount is included in the \$239,424.96 amount reported as due in the Issue on page 6). Additionally, Accounts Receivable should confirm the percentages shown on the Concessionaire's annual payment documentation to the percentages in the Agreement and verify that all calculations are correct.
1	Accounts Receivable Management should consult with the County Attorney's Office and determine if an invoice should be sent to the Concessionaire for the remaining balance of \$20,353.27 for fiscal years 2011 and 2012. In addition, Accounts Receivable should ensure that future annual payments are not less than the calculated minimum required payment as stated in the Fifth Amendment to the Agreement.
1	The County Attorney's Office should request the required duplicate originals or certificates of all current insurance policies from the Concessionaire and review the policies as set forth in the Agreement.

Priority Rating	<ol style="list-style-type: none"> 1. Implement immediately (30 – 90 days) – Serious internal control deficiencies; or recommendations to reduce costs, maximize revenues, or improve internal controls that can be easily implemented. 2. Work towards implementing (6 – 18 months) – Less serious internal control deficiencies, or recommendations that can not be implemented immediately because of constraints imposed on the department (i.e., budgetary, technological constraints, etc.). 3. Implement in the future (two – three years) – Recommendations that should be implemented, but that can not be implemented until significant and/or uncontrolled events occur (i.e., legislative changes, buy and install major systems, requires third party cooperation, etc.).
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