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

April 21, 2023

Dear Members of Commissioners Court, MG Rick Noriega, Executive Director, Universal Services, and Daniel Ramos, Executive Director, Office of Management and Budget:

The Harris County Auditor's Office Audit Division has completed an audit of the expenses from the Hotel Occupancy Tax (HOT) special revenue fund. The results of our audit are included in the attached report.

We appreciate the time and attention provided by your team. Please expect an email request to complete our 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 fluid and cursive.

Michael Post  
County Auditor

Report Copies:

District Judges  
County Judge Lina Hidalgo

Commissioners:

Adrian Garcia  
Lesley Briones  
Rodney Ellis  
Tom Ramsey  
Christian Menefee  
David Berry



INTERNAL AUDIT REPORT  
**HOTEL OCCUPANCY TAX – SPECIAL REVENUE FUND  
EXPENDITURES AUDIT**

APRIL 21, 2023

## Executive Summary

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### OVERALL CONCLUSION

The overall controls related to the expenditures of the HOT special revenue fund were found to be effective. Opportunities were identified to strengthen controls related to the Office of Management and Budget (OMB) and the Commissioner Precincts' compliance with Texas Tax Code requirements and the monitoring of HOT special revenue fund expenditures. The issues were discussed with the management of OMB and the Commissioner Precincts. Management action plans have been developed, which will address the issues identified by October 31, 2023

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### SCOPE AND OBJECTIVE

The scope of the audit was for the 12 months ended September 30, 2022. The objective was to evaluate HOT special revenue fund expenditures for compliance with Texas Tax Code Chapter 352.

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### SUMMARY OF AUDIT ISSUES

- The County did not spend the required amount of HOT special revenue fund to comply with the Texas Tax Code requirement.
- A donation of \$10,000 from the HOT special revenue fund was made to an art museum without a contract or monitoring.

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. Each audit issue is ranked based on the likelihood and impact of the risk to Harris County.

## AUDIT ISSUES

### **ISSUE #1: Noncompliance with Texas Tax Code 352.105 Requirement** **[MODERATE]**

**What is the Issue:** Tax Code 352.105 requires the County to spend \$1,294,648 of HOT special revenue fund in Fiscal Year (FY) 2022 on eligible activities. However, the County only spent \$91,259 (or 7%) on eligible activities during the period.

**Why it Happened:** OMB management was not aware of the expenditure requirement of Tax Code 352.105. Hence, OMB only allocated a budget of \$10,000 to each of the Commissioner Precincts and the County Judge's Office.

**Why it Matters:** Non-compliance with the State Tax Code requirement may lead to an unmet public need.

**What is Expected:** Tax Code 352.105 states that in each county FY, a county must spend, for purposes provided by Section 352.101(a)(3), an amount that is not less than 15% of the amount for revenue derived from the application of the tax at a rate of one percent.

Tax Code 352.101(a)(3) defines the use of revenue for general promotion and tourist advertising of the county and its vicinity and conducting a solicitation program to attract conventions and visitors, and of which may be conducted by the county or through contracts with persons or organizations selected by the county.

**What Actions are Suggested:** OMB should allocate a sufficient budget to each of the Commissioner Precincts and the County Judge's Office to fulfill the budget requirement. In addition, OMB should periodically monitor the expenditures to ensure compliance with the Texas Tax Code Chapter 352.105 requirement.

### **MANAGEMENT'S ACTION PLAN**

**Responsible Party:** Daniel Ramos, Executive Director, OMB

Budget services will ensure to allocate the Restricted Hotel Tax Revenue identified on the annual FEAR (approximately \$1.8M-\$2.0M) equally between the five Commissioners Court member departments and General Admin (to account for budget to be used on county-wide projects such as NCAA Final 4, World Cup, etc.). On an annual basis, as part of the budget adoption, OMB will remind Commissioners Court members of the 15% annual expenditure requirement and direct them to CAO about making sure agreements are in place before distributing funds.

**Due Date:** September 30, 2023 (next budget adoption due date)

### **ISSUE #2: Donation of HOT Fund without Monitoring** **[MODERATE]**

**What is the Issue:** Commissioner Precinct 3 donated \$10,000 of HOT special revenue fund to an art museum to encourage and promote the arts without establishing a contract or monitoring function to ensure funds are spent for a public purpose.



**Why it Happened:** Commissioner Precinct 3 was not aware that monitoring activities should occur when transferring HOT special revenue fund to a private organization.

**Why it Matters:** Without a contract or monitoring function, Precinct 3 was not able to ensure HOT special revenue fund were spent on allowable activities.

**What is Expected:** The Texas Constitution, Article 11, Sec.3 states that no county, city, or other municipal corporation shall hereafter make any appropriation or donation to any private corporation or association.

The Texas Supreme Court has articulated a three-part test to determine whether a transfer of funds from a public entity to a private entity satisfies the limitations of article III, subsection 52(a). The entity making the transfer must (1) ensure that the transfer is to “accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment; and (3) ensure that the political subdivision receives a return benefit.”

Harris County Auditor’s Office Revenue Manual states that a county to which this section applies may delegate the authority to spend the county’s HOT special revenue fund to a private organization only through a contract.

**What Actions are Suggested:** Precinct 3 should establish a contract with the entity when granting HOT special revenue fund to private organizations. Additionally, Precinct 3 should obtain and review supporting documentation for expenditures submitted by the private organization to ensure compliance with Texas Tax Code 352.101.

## **MANAGEMENT’S ACTION PLAN**

**Responsible Party:** Curt Kates, Chief Financial Officer, Precinct 3

Commissioner Precinct 3 will implement the following corrective actions:

1. Document whether each appropriation meets the 3-pt test as prescribed by the Texas Supreme Court
2. Transfer funds only when a contract is in place that provides guidance on fund expenditures
3. Require parties receiving funds to provide supporting documentation to evidence how the funds were used
4. Retain copies of contracts and supporting documents according to retention expectations

**Due Date:** October 31, 2023



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## BACKGROUND

The HOT special revenue fund was established in September 1987, per Texas Tax Code Chapter 352. All hotels and motels in the State, regardless of size, collect an occupancy tax from their guests to support the fund. The total amount collected by each hotel/motel is a combination of State, City, and County, as well as the Houston Sports Authority occupancy taxes. Each year, OMB allocates \$10,000 from the HOT special revenue fund to Commissioner Precincts 1 to 4 and the County Judge's Office. OMB also uses HOT special revenue funds for payments on HOT bond debt and NRG Stadium utility bills. See **Exhibit A** for expenditure information collected from other counties and cities.

## ACCOUNTABILITY

We conducted our audit in accordance with the International Standards for the Professional Practice of Internal Auditing (Standards). The Standards require that we comply with the Code of Ethics and obtain reasonable assurance that significant risks to the activity are minimized to an acceptable level.

The engagement's scope did not include a detailed inspection of all transactions. There is a risk that fraud or errors were not detected during this engagement. Therefore, the official 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.



## EXHIBIT A – SUMMARY OF OTHER COUNTY AND CITY HOT FUND

	Bexar County	El Paso County	City of Dallas	City of Houston
Is HOT special revenue fund collected by the County/City?*	Yes	Yes	Yes	Yes
How are HOT special revenue fund used?	Bonds and debt payments	Facility and entertainment equipment rentals, performance fees, historical assets, projects, events that are geographically located within the County, and marketing and promotion	Convention center, arts & culture, visit Dallas	Art organizations
How are HOT special revenue fund expenditures monitored?	Bexar County signs agreements with entities who use HOT special revenue fund.	El Paso County obtained the approval from Commissioners Court to sign agreements with entities who use HOT special revenue fund.	City of Dallas signs agreements with entities who use HOT special revenue fund.	City of Houston signs agreements with four organizations to spend HOT special revenue fund. As part of their contractual obligations, the four organizations must submit periodic reports of expenditures to the City of Houston for review.

\*Note: Internal Audit team (IA) reached out to the City of Austin and the City of Fort Worth but did not receive a response. IA discussed this issue with Tarrant County, Travis County and Dallas County, and noted that all three counties do not collect HOT special revenue fund at the county level.

