

**Audubon Commission and Audubon Nature
Institute**

Payroll Audit

Final Report • October 28, 2020



OIG NEW ORLEANS OFFICE OF
INSPECTOR GENERAL

Derry Harper Esq., CIG



October 28, 2020

Re: Audubon Commission and Audubon Nature Institute Payroll Audit

I certify the inspector general personnel assigned to this project are free of personal or other external impairments to independence.

Derry Harper Esq., CIG
Inspector General

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The Office of Inspector General (OIG) conducted a performance audit of the Audubon Nature Institute's (Institute) internal controls over the employee new hire, termination, payroll, and executive compensation processes. The objectives of the audit were to determine if:

1. The Institute's policies governing the payroll process, including new hires and terminations, provided adequate controls to ensure all payroll expenses were business-related and allowed by law;
2. The Institute's policies governing the payroll process, including new hires and terminations, complied with best practices; and
3. The Institute complied with its policies, as well as applicable laws and/or best practices, as it pertained to the expenditure of the Audubon Commission (Commission) funds.

The Commission was an unattached board within the Executive Branch of the City of New Orleans (City), and was governed by the *City of New Orleans Home Rule Charter* (Charter).¹ The Commission was a public entity comprised of 24 board members who were each appointed to a six-year term by the City Mayor with the advice and consent of the New Orleans City Council (Council).

The Commission was charged with administering, operating, and maintaining Audubon Park and Riverview, Audubon Zoo, Audubon Aquarium of the Americas, Audubon Butterfly Garden and Insectarium, Woldenberg Riverfront Park, Entergy Giant Screen Theater, Freeport-McMoRan Audubon Species Survival Center, Audubon Center for Research of Endangered Species, Audubon Louisiana Nature Center, and Audubon Wilderness Park (collectively referred to as the Audubon Facilities).² The Audubon Facilities were and remain public assets held in the name of the Commission.³ As a public entity, Commission funds were public funds and use of those funds was subject to the La. Const. art. VII, §14(A) which prohibited the donation of public funds.

On October 24, 2013, the Commission entered into a Management and Cooperative Endeavor Agreement (Contract) with the Institute, a private non-

¹ City of New Orleans Home Rule Charter (Charter), §§4-102 and 5-802.

² Charter, §5-802.

³ Charter, §9-301(1) ("All public property held by the City of New Orleans or by any... board of the City of New Orleans at the effective date of this charter ... shall be the property of the City.")

profit organization, to manage and operate the Audubon Facilities,⁴ “on behalf of”⁵ and “for the benefit of the Commission.”⁶ In exchange for its services rendered to the Commission, the Institute received an annual \$50,000 management fee.⁷

The Institute was responsible for collecting fees, charges, and other monies from operating the Audubon Facilities. The Institute deposited those funds and other Commission funds (e.g. property taxes and ticket sales) in the Commission’s Operating bank account. The Commission was required to maintain and administer the Operating bank account.⁸ The Institute was not required to obtain prior authorization from the Commission to withdraw Commission funds.

The Institute did not lease or otherwise rent the Audubon Facilities from the Commission. Instead, the Contract authorized the Institute “to expend the funds of the Commission...”⁹ and required the Commission to “pay for the cost and operation of the Audubon Facilities as detailed annually in the budget of the Institute and as approved by the Commission.”¹⁰ The Contract also required the Commission to “reimburse the Institute for all expenses that it incurs on behalf of the Commission....”¹¹ To that end, the Institute used the Commission’s Operating bank account to transfer funds to the Commission’s Vendor bank account and the Commission’s Payroll bank account to pay for the operating expenses of the Audubon Facilities. The funds in these three bank accounts were owned by the Commission as evidenced by the Commission’s year-end audited financial statements. Furthermore, property taxes, revenues generated (e.g. ticket sales), and operating expenses incurred (e.g. salaries) from the operation of the Audubon Facilities were also reported as revenues and expenses, respectively, in the Commission’s year-end audited financial statements.

The Institute employed its own personnel, but the Commission was responsible for the payment of their salaries and benefits. The Commission also reported salaries and benefits expense for Institute employees in its year-end audited

⁴ *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013 (“Management/CEA” or “Contract”).

⁵ Management/CEA. Article 4.1.1.

⁶ Management/CEA.

⁷ Management/CEA. Article 5.

⁸ Management/CEA. Article 4.1.4.

⁹ Management/CEA. Article 4.1.3.

¹⁰ Management/CEA. Article 4.1.3 and Article 5.

¹¹ Management/CEA. Article 5.

financial statements. In 2014, the Commission paid \$24.6 million in salaries and benefits for the Institute's employees.

As a public body, the Commission was tasked with the specific purpose of conducting business for the City through its management of City-owned Audubon Facilities. The Commission did not separate itself from public entities in that it received dedicated tax dollars, submitted an annual budget to the Mayor and City Council, and was subject to provisions of the City Code and the Charter. The Institute received the Commission's public funds, and those funds, though being managed by a non-profit corporation, were subject to the same limitations and requirements imposed on any other public funds.

I. FINDINGS

The OIG noted the following findings:

- Finding 1: The Institute may have violated the Constitution because it used Commission funds to pay \$447,695 in bonuses and on-call pay to employees.
- Finding 2: The Institute's executive compensation may have violated La. Const. art. VII, §14(A) because the compensation was not comparable to other similar sized organizations and, therefore, may have been gratuitous in nature.
- Finding 3: Although, the executives' compensation was paid in accordance with the terms of employment contracts, the executives' fringe benefit payments alone may have violated La. Const. art. VII, §14(A) because no additional performance or duties were required of the executives to receive the additional compensation.
- Finding 4: Although the Institute developed a policy aligned with best practices, the Institute employees did not comply with the policy because hourly employees did not utilize the time reporting procedures; PTO information for salaried employees was not maintained; and Institute supervisors did not approve hourly and/or salaried employees' time.
- Finding 5: Despite effective internal controls over the termination process, the Institute management could not verify all property was returned upon termination and prior to issuing the employee's final paycheck.

RECOMMENDATIONS

To resolve these findings, the OIG recommends:

Recommendation 1: The Institute should revise its policies to recognize the public nature of Commission funds, including unconstitutional spending pursuant to La. Const. art. VII, §14(A) and develop restrictions for the compensation of on-call employees. The Institute should also require all managers, employees, and subsequent new hires to take annual training to educate all employees on prohibited expenses.

Recommendation 2: The Compensation Committee should revise its policy to include an annual review and full board approval of executive compensation. When determining executive compensation, the Compensation Committee should select a peer group with similar assets, revenues, and cost of living criteria to ensure reasonable, comparable executive compensation.

Recommendation 3: In addition to Recommendation #1, the Institute should structure the employment contracts so that additional duties and responsibilities are assigned for all additional compensation.

Recommendation 4: The Institute should replace or implement new time reporting protocols and communicate time-keeping policies and procedures to its employees to ensure policies are understood and followed.

Recommendation 5: The Institute should develop a process to catalogue property and equipment provided to Institute employees and to ensure they return all property and equipment prior to the issuance of the employee's final paycheck.

The OIG also noted the following positive findings:

Positive Finding 1: The Institute developed and adopted a new hire policy that complied with COSO's best practices. The Institute's internal controls over new hire processing were designed properly and implemented and operating effectively.

Positive Finding 2: The Institute developed and adopted a termination policy compliant with best practices. The Institute's internal controls over the termination process were designed properly and implemented and operating effectively.

II. CONCLUSION

The Audubon Facilities are City property. Since 1972, Orleans Parish property tax payers provided funding for the acquisition, construction, and capital improvements to various Audubon Facilities. Since 1979, property tax payers have paid the debt associated with funding the acquisition, construction, and improvements to various Audubon Facilities.

The Contract between the Institute and the Commission included a \$50,000 management fee. The Institute's responsibilities under the management fee greatly exceeded that payment. The Contract also ended with a declaration that the relationship between the Commission and the Institute was a cooperative endeavor but failed to satisfy the requirements of *Cabela's*.¹² The Louisiana Constitution permitted cooperative endeavor agreements between public and private entities. However, funds spent pursuant to a cooperative endeavor agreement (CEA) were public. The Commission disregarded the basic principles of *Cabela's* in its application of a CEA. Under a typical management fee structure, a fee and obligations were established, and funds were paid pursuant to the terms of the contract. In that instance, the transfer of funds from the Commission to the Institute would change their nature into Institute funds and thus private. However, the inequities in the management fee structure and the hybrid Contract improperly allowed the Institute to mischaracterize Commission funds as those spent under the terms of the management agreement which resulted in prohibited donations.

¹² *Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, et al (Cabela's)*, 938 So.2d 11 (La. 9/6/06).

I. FACTUAL AND LEGAL ANALYSIS

The Audubon Park Commission (APC) was created by State Act for the City of New Orleans in 1914.¹³ In 1948, New Orleans voters authorized the incorporation of the City and Orleans Parish and Act 351 transferred control of all real public property, and the powers and duties of boards and commissions, to the City.¹⁴ As of 1954, the City replaced the commission form of government with a Charter.¹⁵

In 1982, the State attempted to abolish the APC as created by Act 191 of 1914, restructure its board, and recreate the APC as a state agency.¹⁶ After that legislation was declared unconstitutional, in 1983, Act 485 attempted to reenact the failed legislation by again declaring the APC a political subdivision of the State with enumerated powers set forth in La. R.S. 56:1761-1766. Soon thereafter, the legislation behind the second attempt by the State to restructure the Commission, its assets, and its reformulated board as a State subdivision was declared unconstitutional and implementation of Act 485 of 1983 was permanently enjoined¹⁷ based, in part, on the rights of local governmental entities protected by La. Const. art. VI, §6.¹⁸

In 1996, the APC changed its name to the Audubon Commission to reflect the city-wide presence of the Audubon Facilities.¹⁹ Other sections of the Charter and City Code further delineated the Commission's place in City government. As a board²⁰ listed in Section 4-102 of the Charter, the Commission was treated like other City boards, and was granted "the same powers and duties with respect to [its]

¹³ *City of New Orleans, etc., et al v. The STATE of Louisiana, etc., et al*, 443 So.2d 5621, 565 (La. 1983).

¹⁴ *City v. State*, 443 at 565-566, quoting Act 351 of 1948.

¹⁵ *City v. State*, 443 at 566.

¹⁶ *City v. State*, 443 at 367; See *City of New Orleans v. Treen*, 431 So.2d 390 (La. 1983) (Legislation was declared unconstitutional because the local law was enacted without publication requirements.)

¹⁷ *City v. State*, 443 at 573 (Since the City of New Orleans owns Audubon Park, Act 485 of 1983, which created a new Audubon Park Commission as a political subdivision of the state of Louisiana, was an unconstitutional taking of the City's property without just compensation. LSA-Const. 1974, Art.I, §4.

¹⁸ *City v. State*, 443 at 572-573, fn.26.

¹⁹ Charter, §5-801.

²⁰ Charter, §9-101. ("The term 'board' as used in this Charter shall be construed as applying to boards, commissions, authorities, and other public bodies except the Council.")

functions as those prescribed in this chapter for officers and department heads,²¹ unless otherwise provided by this Charter or applicable state or municipal law.”²²

The Commission was charged with administering, operating, and maintaining the Audubon Facilities²³ and was prohibited from accepting, assuming, or exercising any power or function relating to taxation or police power or which imposed a financial obligation on the city, derived from any state law unless approved by Council ordinance.²⁴ The Audubon Facilities were public assets held in the name of the Commission.²⁵

The Commission was comprised of 24 board members who were each appointed to a six-year term by the Mayor of the City with the advice and consent of the Council. The City was a political subdivision subject to state and local laws and the Constitution. As a board within the Executive Branch governed by Charter, the Commission’s administration and operations were required to comply with the Charter and state and local laws.²⁶

As a public entity, the Commission’s funds were public funds. The Commission was authorized to use its funds for purposes for which it had legal authority to do so (i.e. administering, operating, and maintaining the Audubon Facilities). According to the Charter, “[a]ll other funds received by the Commission, including but not limited to funds generated from the operation of facilities by the Commission, millage revenues, donations, and federal, state, or local funds, shall be administered *solely by the Commission....*” (emphasis added).²⁷

For the year ended December 31, 2014, the Commission generated \$40.0 million from the operations of the Audubon Facilities and received \$20.8 million of other revenue (e.g. grants, insurance proceeds, and other support/contributions).²⁸ The Commission received two dedicated property taxes to use for the operation and

²¹ See *id.* at §4-107 for discussion of powers and duties of officers and department heads.

²² Charter, §4-108.

²³ Charter, §5-802.

²⁴ *Id.*

²⁵ Charter, §9-301(1). (“All public property held by the City of New Orleans or by any ... board of the City of New Orleans at the effective date of this charter ... shall be the property of the City.”)

²⁶ Charter, §4-102.

²⁷ Charter, §5-803(1).

²⁸ *Audubon Commission Audits of Financial Statements December 31, 2014 and 2013*. April 30, 2015.

maintenance of certain Audubon Facilities.²⁹ Since 1979, the Commission issued a series of bonds to provide financing to acquire, construct, and make capital improvements to Audubon Zoo, Audubon Aquarium of the Americas, and Audubon Butterfly Garden and Insectarium. All bond issuances were secured by and payable solely from property tax revenues. To summarize, New Orleans property tax payers funded the acquisition, construction, and capital improvements to these facilities. For the years ended December 31, 2013, and 2014, the Commission collected \$9.3 million and \$9.6 million in property taxes, respectively. These public funds were subject to La. Const. art. VII, §14(A) which prohibited the donation of public funds. The Constitution stated,

...funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.³⁰

The powers, duties, functions, administration, and operation of the Commission were subject to the “Charter and other applicable state and municipal law.”³¹ As a public entity, the Commission was required to “comply with all state and municipal public bid laws dealing with the procurement and disposition of property.”³² City Council Ordinance 020272 permitted the Commission to contract with the Institute pursuant to the Ordinance and the Charter.³³ The Charter required the Commission to comply with municipal law.³⁴ Pursuant to MJL 10-05 any management agreement by the Commission was required to comply with City procurement policy. La. Const. art. VII, §14(C) and Home Rule Charter Art. IX, Chapter 3, Section 9-314 permitted a CEA between a city commission and a private association or corporation as long as the CEA was for a “public purpose.” Therefore, the Commission could enter into a CEA with the Institute. The Commission was required to comply with Section 9-314 to enter into a CEA. In September 2006, the Louisiana Supreme Court ruled that “Subsection (C)...

²⁹ On November 7, 1972, New Orleans voters approved a 50-year property tax commencing in 1973 and ending in 2022. The purpose of the tax was to establish and maintain a zoological garden in Audubon Park. In 2020, the City levied .15 mills for this purpose. On November 4, 1986, voters approved a 35-year property tax commencing in 1987 and ending in 2021.

The property tax was dedicated to establish, acquire, construct, maintain, develop, and improve the aquarium and related facilities. In 2020, the City levied 1.80 mills for this purpose.

³⁰ La. Const. Art. VII, §14(A).

³¹ Charter, §5-801.

³² Charter, §5-803 (4).

³³ Ordinance 020272, City of New Orleans, Section 2.

³⁴ Charter, §5-801.

authorizes cooperative endeavors among the stated entities, but does not serve as an exception to La. Const. art. 14 (A).”³⁵ Furthermore, the Commission was subject to CAO Policy Memoranda 8(R), 24(R), and 122(R), municipal policies and/or laws that pertained to procurement and applied to City boards and commissions.

The Institute, a private non-profit organization, managed and operated the Audubon Facilities “on behalf of”³⁶ and “for the benefit of the Commission”³⁷ through the Contract.³⁸

The terms of the Contract authorized the Institute to:

(1) manage, operate, develop, improve and provide all services for the Audubon Facilities, including fundraising on behalf of the Commission...; (2) maintain all buildings, exhibits and Facilities; (3) care for all animals; (4) provide for the day-to-day operation of the Audubon Facilities; (5) care for all grounds, including trees, roads, lighting and walkways; (6) provide administrative, marketing, public relations and membership services, as required for the proper operation of the Facilities....³⁹

In exchange for its services rendered to the Commission, the Commission paid the Institute a \$50,000 annual management fee.⁴⁰ The Contract required:

[a]ll monies from the operation of the Audubon Facilities, and all tax revenues, shall be collected by the Institute on behalf of the Commission and deposited, on a daily basis, in an account maintained and administered by the Commission....⁴¹

The Institute was responsible for collecting fees, charges, and other monies from operating the Audubon Facilities. The Institute deposited those funds into the Commission’s Operating bank account which was required to be “maintained and

³⁵ *Cabela’s*, at 14.

³⁶ Management/CEA. Article 4.1.1.

³⁷ Management/CEA.

³⁸ *Id.*

³⁹ Management/CEA. Article 4.1.1.

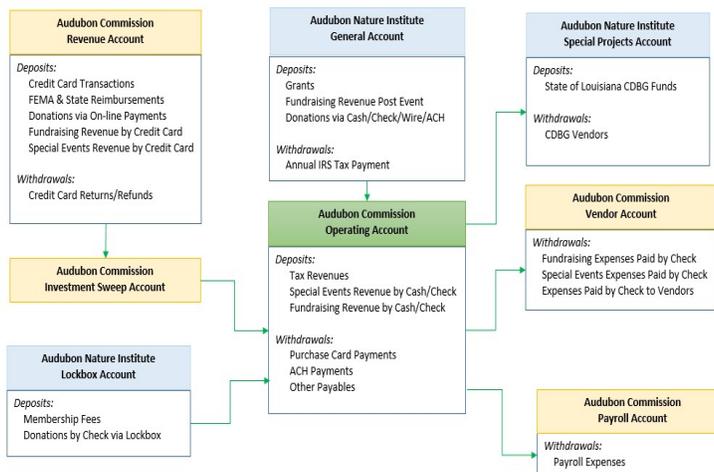
⁴⁰ Management/CEA. Article 5.

⁴¹ Management/CEA. Article 4.1.4.

administered by the Commission....”⁴² Commission funds, such as property taxes and ticket sales, were also deposited in the Commission’s Operating bank account.

The Institute did not lease or otherwise rent the Audubon Facilities from the Commission. Instead, the Contract authorized the Institute “to expend the funds of the Commission...”⁴³ and required the Commission to “pay for the cost and operation of the Audubon Facilities as detailed annually in the budget of the Institute and as approved by the Commission.”⁴⁴ The Contract also required the Commission to “reimburse the Institute for all expenses that it incurs on behalf of the Commission...”⁴⁵ To that end, the Institute used the Commission’s Operating bank account to transfer funds to the Commission’s Vendor bank account and the Payroll bank account to pay for the operating expenses of the Audubon Facilities, as shown in Figure 1. The funds in these three bank accounts were owned by the Commission as evidenced by the Commission’s year-end audited financial statements. Property taxes, revenues generated (e.g. ticket sales), and operating expenses incurred (e.g. salaries) from the operation of the Audubon Facilities were also reported as revenues and expenses, respectively, in the Commission’s year-end audited financial statements. Figure 2 illustrates the major funding sources of the Commission and the operating structure between the Commission and the Institute.⁴⁶

Figure 1. Flow of Funds between the Commission and the Institute.



⁴² *Id.*

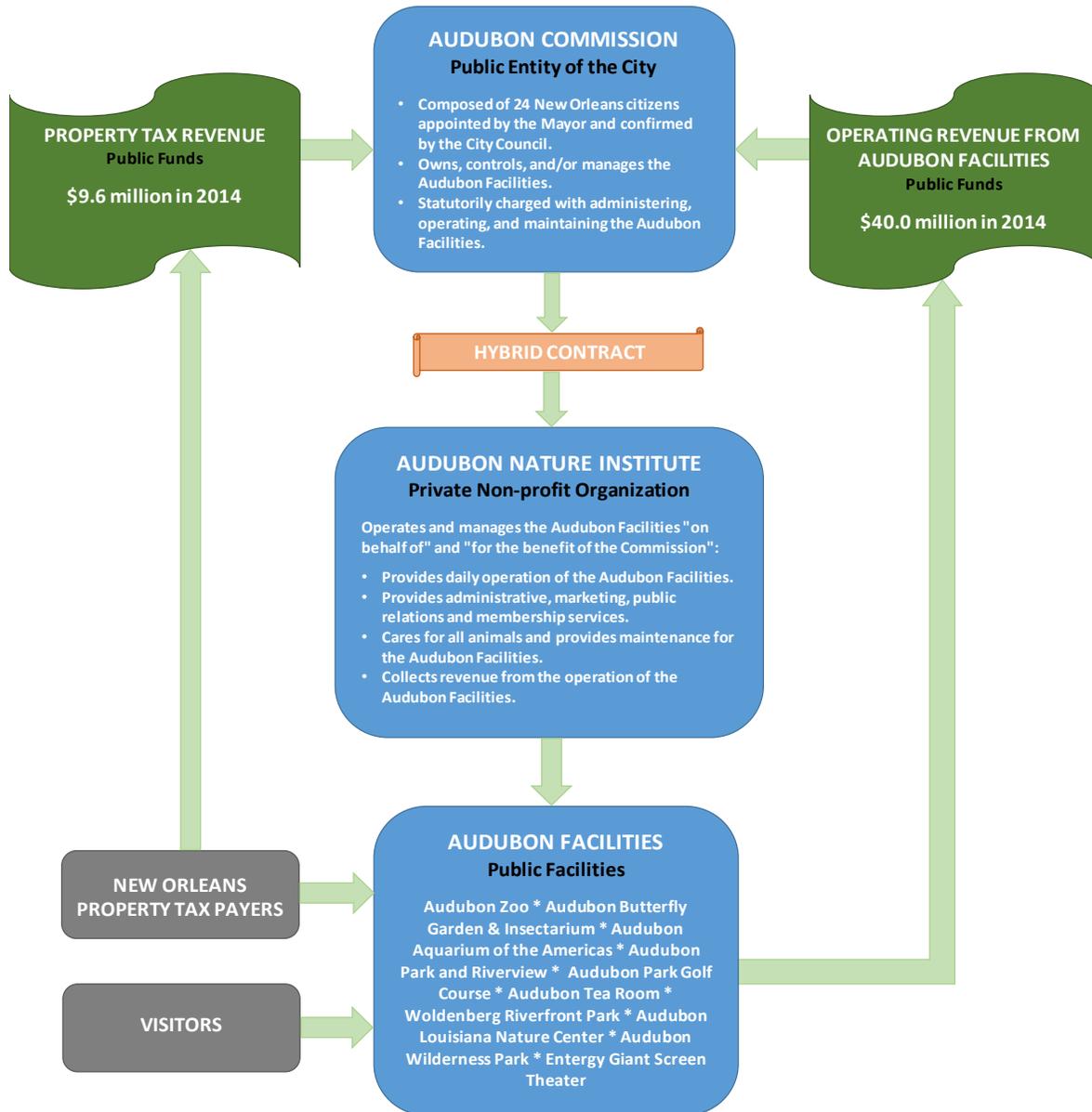
⁴³ Management/CEA. Article 4.1.3.

⁴⁴ Management/CEA. Article 4.1.3 and Article 5.

⁴⁵ Management/CEA. Article 5.

⁴⁶ See Appendix B for Audubon Facilities Flow of Funding diagram.

Figure 2. Commission and Institute Operating Structure.⁴⁷



⁴⁷ Figure 2 is a revised version of a Nola.com graphic that appeared in the article "How Audubon's public-private structure enabled The Fly fiasco." Robert McClendon. Nola.com, June 6, 2016.

II. EXPENSES PROHIBITED BY THE LOUISIANA CONSTITUTION

The Commission, as an unattached board within the Executive Branch of the City, is a public entity. The Institute manages and operates the Audubon Facilities “on behalf of”⁴⁸ and “for the benefit of the Commission”⁴⁹ through the Contract. The Contract requires the Commission to “pay for the cost and operation of the Audubon Facilities...” and to “reimburse the Institute for all expenses that it incurs on behalf of the Commission...”⁵⁰ To manage and operate the Audubon Facilities, the Institute was authorized “to expend the funds of the Commission...”⁵¹ The Institute directed funds from the Commission Operating bank account to the Commission Payroll bank account to pay its employees. In exchange for its services rendered to the Commission, the Institute received an annual \$50,000 management fee.⁵²

As a private non-profit, the Institute was responsible for managing and operating the Audubon Facilities. It did so with Commission funds. Commission funds were public funds and those funds were subject to the Louisiana Constitution. La. Const. art. VII, §14(A) prohibited the donation of public funds. The Constitution stated,

...funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.⁵³

La. Const. art. VII, §14(C) permitted the state and its political subdivisions to engage in cooperative endeavors with any public or private corporations so long as the CEA was for a “public purpose.” In January 2006, the Louisiana Attorney General opined that La. Const. art. VII, §14(C) “is not an exception to the general prohibition against donating public funds... [and] the mere fact that some... expenditures were made part of an executed cooperative endeavor agreement does not relieve the [entity] from complying with Article 7, Section 14(A).”⁵⁴ In September 2006, the Louisiana Supreme Court ruled that “Subsection (C)...

⁴⁸ Management/CEA. Article 4.1.1.

⁴⁹ Management/CEA.

⁵⁰ Management/CEA. Article 5.

⁵¹ Management/CEA. Article 4.1.3.

⁵² Management/CEA. Article 5.

⁵³ La. Const. art. VII, §14(A).

⁵⁴ La. Atty. Gen. Op. No. 05-0367.

authorize[d] cooperative endeavors among the stated entities, but [did] not serve as an exception to subsection (A).”⁵⁵

A public employee, as defined by La. R.S. 42:1102(18)(a), is “anyone, whether compensated or not, who is... engaged in the performance of a governmental function.” La. R.S. 42:1102(19) defined a public servant as a “public employee or an elected official.” The Louisiana Attorney General opined “[t]he Institute was formed for the purpose of operating and maintaining the Zoo and thus primarily performs a public purpose and is under government control.”⁵⁶ Additionally, under the terms of the Contract, the Institute “agree[d] that it, and its officers, directors and employees shall be subject to the Codes of Ethics of the City of New Orleans and the State of Louisiana. The enforcement of this provision shall be available only to the Commission insofar as is applicable to the expenditure of Commission funds.” As such, Institute employees were required to comply with those ethics codes.

The Institute employed its own personnel, but the Commission was responsible for the payment of their salaries and benefits. The Commission also reported salaries and benefits expenses for Institute employees in its year-end audited financial statements. In 2014, the Commission paid \$24.6 million in salaries and benefits for the Institute’s employees.

Finding 1. The Institute may have violated the Constitution because it used Commission funds to pay \$447,695 in bonuses and on-call pay to employees.⁵⁷

The Louisiana Attorney General, interpreting *Cabela’s*, developed a three-pronged test to determine if an expenditure is permissible under La. Const. art. VII §14(A):

[I]n order for an expenditure or transfer of public funds to be permissible under Art. VII, Sec. 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does

⁵⁵ *Cabela’s* at 14.

⁵⁶ La. Atty. Gen. Op. No. 95-213.

⁵⁷ The Institute generated a separate payroll cycle in 2013 and 2014 to pay bonuses to its employees. The bonuses were not paid to the CEO or EVP.

not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.⁵⁸

The Louisiana Third Circuit Court of Appeal opined, “bonuses paid from public funds are not legal as they are in violation of [the Louisiana Constitution Article VII §14(A)].”⁵⁹ Additionally, the Louisiana Attorney General concluded, “if employees are paid from public funds... they cannot be given retroactive raises or bonuses. The giving of a retroactive pay raise from public funds would be a gratuity which violates the prohibition of donation of public funds.”⁶⁰

On June 26, 2017, the Institute’s counsel stated, “Because ANI is not a political subdivision, the prohibitions concerning gifts or donations of government funds are not applicable to expenditures made by a private entity....” Although the Institute’s counsel provided a variety of “why statements,” this why statement was given during the OIG’s credit card and expense reimbursement audit as an overarching justification for its spending. After three audits, neither the Institute nor the Commission acknowledged the Institute’s use of Commission funds is subject to the Constitution.

Employee Bonuses. The Institute used Commission funds to pay \$430,720 in employee bonuses as they were paid directly from the Commission’s Payroll bank account. The funds in these bank accounts were owned by the Commission and were reported as the Commission’s cash in the Commission’s year-end audited financial statements.

During fieldwork for the Audubon Commission and Audubon Nature Institute Use of Funds audit, issued on September 15, 2020, auditors noted a disbursement made to an employee as a bonus payment. Instead of selecting a sample of all bonuses paid and projecting the error to the population, auditors obtained the payroll registers for all bonus payments and tested 100 percent of the population for the period of January 1, 2013, through December 31, 2014.

⁵⁸ La. Atty. Gen. Op. No. 09-0018.

⁵⁹ *State vs. Davis*, 539 So.2d 803, 810 (3rd Cir. 1989).

⁶⁰ La. Atty. Gen. Op. No. 93-366.

As shown in Figure 3 below, bonuses paid on November 15, 2013, and December 12, 2014, were given to employees for past services rendered and were not approved prior to the services being rendered.

Figure 3. Employee Bonus Payments.

Date Paid	Eligibility Requirement	Amount Paid
November 15, 2013	One week’s pay for every full-time employee hired prior to August 9, 2013 and every part-time employee who worked 500 hours between January 1, 2013 through November 2, 2013 and received a paycheck in September and/or October 2013.	\$369,870
December 12, 2014	\$100 to all full-time employees and \$50 to every part-time employee, employed as of December 12, 2014.	\$60,850
Total Bonuses Paid to Institute Employees		\$430,720

On-call pay. The Code of Federal Regulations stated, “An employee who is not required to remain on the employer’s premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on-call.”⁶¹ The Louisiana Attorney General opined, “...if the on-call time is not compensable because the employees are able to use the on-call time for personal purposes, such payments will be unlawful as they constitute a prohibited donation of public funds.”⁶²

The Institute paid \$16,975 in on-call pay to five information technology (IT) employees without adequately restricting their time.⁶³ These five IT employees rotated on-call assignments during weekends and special events. The employees received a \$300 stipend for weekends and a \$125 stipend for special events when they were on-call. The only restriction to the employee’s time was that they monitor their cell phones. Although the Louisiana Constitution permits standby pay in limited circumstances, the Institute did not restrict its employees’ time to the extent on-call could not be used for personal purposes. The Institute used Commission funds to pay employees on-call pay because these payments were paid directly from the Commission’s Payroll bank account. The funds in these bank

⁶¹ 29 C.F.R. §785.17.

⁶² La. Atty. Gen. Op. No. 15-0048.

⁶³ OIG auditors tested 100 percent of on-call time paid in 2014.

accounts were owned by the Commission and were reported as the Commission's cash in the Commission's year-end audited financial statements.

To further note, the Institute did not provide training to educate its managers and employees on prohibited donations; therefore, employees did not know they may have incurred prohibited expenses.

Recommendation 1. The Institute should revise its policies to recognize the public nature of Commission funds, including unconstitutional spending pursuant to La. Const. art. VII, §14(A) and develop restrictions for the compensation of on-call employees. The Institute should also require all managers, employees, and subsequent new hires to take annual training to educate all employees on prohibited expenses.

The Institute should revise its policies to include language on prohibited donations and the three-prong test criteria set forth in *Cabela's*. Incorporating this information into the Institute's policies memorializes the information in an easily accessible format and gives employees a permanent reference guide.

In conjunction with the policy changes, and to ensure all employees are aware of expenditures prohibited by the Constitution, the Institute should develop a training program to educate current and future managers and employees on prohibited donations. This training should also educate employees on the three-prong test, which will help employees determine if an expense is prohibited by the Constitution. The training should be required annually of all managers and employees and be required as part of the orientation process for new employees.

Update. Audubon has started the process of segregating funds generated by the Institute for its employee-related expenses including bonuses and on-call pay.

III. EXECUTIVE COMPENSATION

As part of its governance composition, the Institute’s Executive Committee was “composed of the elected officers, the immediate past Chairman and the chairpersons of the standing committees.”⁶⁴ The Compensation Committee consisted of the Institute “Board Chairman, Vice-Chairman, Immediate Past Chairman and Treasurer.”⁶⁵ The Compensation Committee was required to meet before the previous executive compensation contracts expired to “make and approve a resolution to set the base salary and benefits” for the executive compensation for the next contract period.⁶⁶ The resolution was approved by the Executive and Compensation Committees.

According to the National Council of Nonprofits, the compensation committee:

...should take a look at “comparable” salary and benefits data, such as data available from salary and benefit surveys, to learn what non-profit employers with similar missions, and of similar budget size, that are located in the same, or a similar geographic region, pay their senior leaders.⁶⁷

The National Council of Nonprofits also stated:

Ensuring that the board has approved “reasonable and not excessive” compensation for the executive director/CEO [Chief Executive Officer] is one of the fiduciary responsibilities of every nonprofit board. (“Are the assets of this nonprofit being used prudently and to advance the mission?”) Boards that engage in an **annual process** of reviewing and approving the compensation of the executive director/CEO and that **document this process** in the minutes of board meeting(s), will be protecting their nonprofit (and themselves). Adopting a written policy that requires the full board to approve the compensation (salary AND benefits) is a recommended practice.⁶⁸

⁶⁴ Restated By-Laws Audubon Nature Institute, Inc, Article VII, Section 1. January 30, 2001.

⁶⁵ Audubon Nature Institute Executive Compensation Policy. November 19, 2014.

⁶⁶ Audubon Nature Institute Executive Compensation Policy. November 19, 2014.

⁶⁷ Executive Compensation. National Council of Nonprofits.

<https://www.councilofnonprofits.org/tools-resources/executive-compensation>.

⁶⁸ *Id.* (Emphasis in original.)

Finding 2. The Institute’s executive compensation may have violated La. Const. art. VII §14(A) because the compensation was not comparable to other similar sized organizations and, therefore, may have been gratuitous in nature.

According to the Institute:

Approximately 70% of zoos and aquariums operate pursuant to a public-private agreement. Some, such as the San Diego Zoo, have implemented the nonprofit management model since 1916; others such as Audubon Zoo since 1975; and others, such as the Houston and Dallas zoos since 2002 and 2009. The management structure of Commission facilities is consistent with what many other major cultural and environmental assets have been doing and are doing around the country.... Audubon always strives to employ best practices in public and nonprofit management.

The Executive Compensation Policy requires the Compensation Committee to:⁶⁹

1. Meet every three years to review and approve executive compensation.
2. Approve the contract along with the Executive Committee.
3. Create the employment contract by reviewing the:
 - a. Compensation analysis from comparable zoos, aquariums, museums, and other national attractions.
 - b. Independent salary and benefit studies of other similar entities including for-profit and not-for-profit organizations, IRS Form 990s of similar organizations or documented phone calls with similar organizations.
 - c. Six (6) year history of the Personal Service Agreement, outlining raises, length of term and any notable changes.
 - d. Most recent Compensation Survey conducted by the Association of Zoos & Aquariums (AZA) that compares the salaries of the Officers with that of similarly qualified individuals in comparable positions at similar organizations, with a comparable number of facilities, annual visitation, staffing, and operating budgets.⁷⁰

⁶⁹ Audubon Nature Institute Executive Compensation Policy. November 19, 2014.

⁷⁰ *Id.*

Auditors noted the Compensation Committee met and reviewed the six-year history of the executives' contracts and an independent assessment of executives' compensation from Heidi Töppel & Ashwin Chase (HTAC Study). The Executive and Compensation Committees unanimously approved the 2011 compensation contracts for the CEO and Senior Executive Vice President (EVP).⁷¹

The Institute's executive compensation policy did not include size and geographical location of organizations in the peer group. Nor did the policy adhere to best practices because the policy did not require:

- An annual review of executive compensation; and
- Full board approval.

The OIG obtained the HTAC Study which identified a peer group of 16 organizations with executive compensation for 16 CEOs and ten EVP/Chief Administrative Officers (CAO), as shown in Figure 4 below.

Figure 4. Peer Group Identified in the HTAC Study.⁷²

Peer Group	CEO Comparison	EVP/CAO Comparison
ASPCA (New York City)	Yes	No
Boston Fine Arts Museum	Yes	No
California Academy of Sciences (San Francisco)	Yes	Yes
Chicago Zoological Society (Brookfield Zoo)	Yes	Yes
Cincinnati Museum Center	Yes	No
Columbus Zoological Park Association Inc	Yes	No
Georgia Aquarium (Atlanta)	Yes	No
Indianapolis Children's Museum	Yes	No
Monterey Bay Aquarium	Yes	Yes
Museum of Contemporary Arts Chicago	Yes	Yes
Museum of Fine Arts Houston	Yes	Yes
National Aquarium in Baltimore	Yes	Yes
National Resources Defense Council (New York City)	Yes	Yes
New England Aquarium Corporation (Boston)	Yes	Yes
Shedd Aquarium Society (Chicago)	Yes	Yes
Zoological Society of Philadelphia	Yes	Yes

⁷¹ The Compensation Committee did not contain the AZA study as part of their compensation analysis; however, the auditors noted that the AZA study did not provide any identifiable information for zoos of comparable size and in the region.

⁷² As reported in the HTAC Study.

According to the HTAC Study, the peer group selected included facilities with the following characteristics:

- Concentration on Zoo and Zoological Societies that [were] more than stand-alone entities, but include[d] research and educational centers
- Emphasis on wildlife preservation and protection as well as related public policy and advocacy
- Significant impact on their city's culture and economy, which included some non-zoological organizations
- National focus with world class and top-rated zoological parks in the country
- Comparable metrics such as number of employees, revenue, and assets with the goal of having the metrics fall in a range of one-half to twice the size of Audubon....⁷³

The OIG noted the HTAC Study also used the peer group financial information from the entities' income tax returns (990s).^{74,75} For the peer group, the 2011 total revenues ranged from \$12.6 million to \$102 million, as shown in Figure 5 below.⁷⁶ The revenue generated for the Institute was \$55 million.⁷⁷ The peer groups' range of revenues, as documented in the HTAC Study, was 23 percent to 185 percent of the revenue generated by the Institute. Because the amount of revenues in the peer group varied widely, some peer group organizations did not appear to be comparable to the Institute. Therefore, the OIG performed a benchmarking analysis to determine if the assessment used entities with similar missions, similar budget size, and same or similar geographic regions, as recommended by the National Council of Nonprofits.

⁷³ *The Audubon Nature Institute Executive Compensation Assessment*. Prepared by: Heidi Töppel & Ashwin Chase. May 9, 2011.

⁷⁴ *Return of Organization Exempt from Income Tax*. Candid (candid.org) provides entities' 990s online that can be obtained through Charity Navigator (www.charitynavigator.org).

⁷⁵ All financial information was obtained from the HTAC Study. Auditors did not verify the accuracy of the information contained in the study.

⁷⁶ *The Audubon Nature Institute Executive Compensation Assessment*. Prepared by: Heidi Töppel & Ashwin Chase. May 9, 2011.

⁷⁷ As reported in the HTAC Study.

Figure 5. 2011 Total Revenues for the Peer Group.⁷⁸

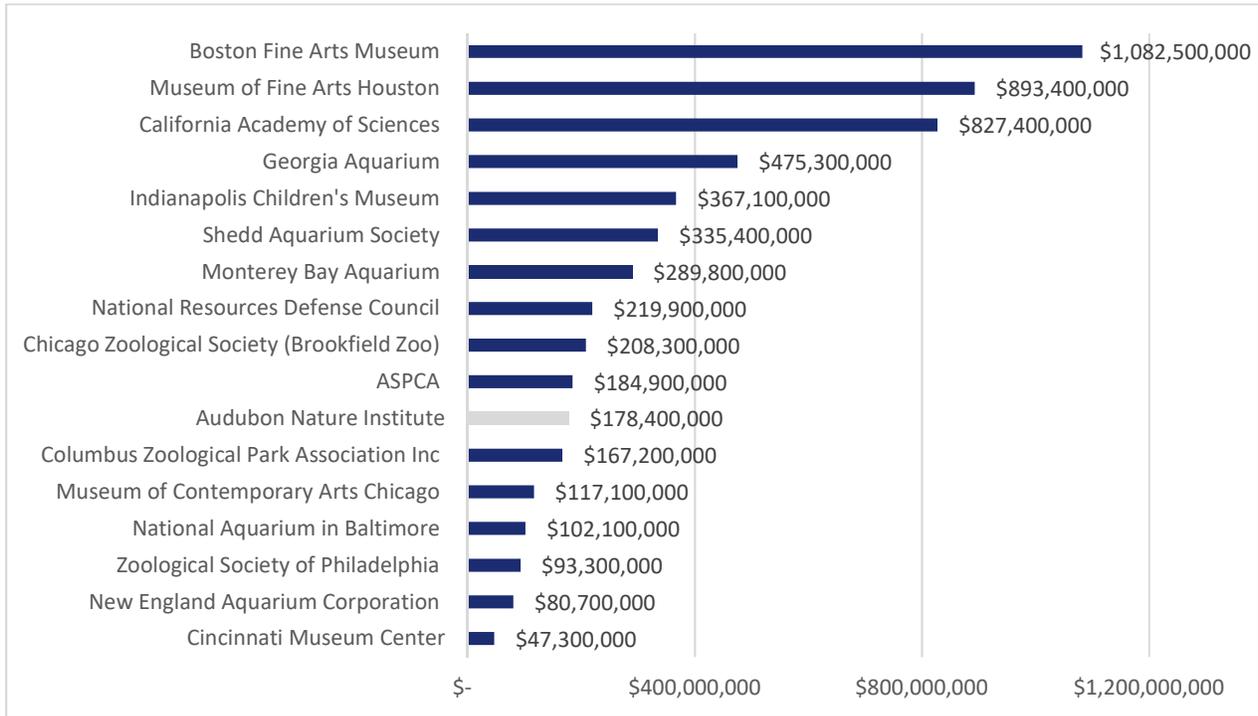


The OIG also compared the 2011 total assets, as shown in the HTAC Study for the peer group, to the total assets managed by the Institute. For the peer group, the assets ranged from \$47.3 million to \$1.1 billion as shown in Figure 6. The Institute managed \$178.4 million in assets.⁷⁹ The range of assets in the peer group was 27 percent to 607 percent of the assets managed by the Institute.

⁷⁸ As reported in the HTAC Study.

⁷⁹ *Id.*

Figure 6. 2011 Total Assets for the Peer Group.⁸⁰



The OIG also noted the peer group was located in a wide variety of locations across the United States. Some locations, like Cincinnati, Columbus, and Indianapolis, had a similar cost of living to New Orleans. Other areas, such as Boston, Chicago, New York City, and San Francisco, had much higher costs of living than New Orleans. To compare the compensation at an equivalent level, the OIG adjusted the compensation shown in the HTAC Study to the New Orleans cost-of-living using the Cost of Living Index.⁸¹

Auditors adjusted executive compensation for the peer group to the New Orleans' cost-of-living for 2011 and noted that the CEO and the EVP of the Institute were both the second highest paid executives in their peer group. See Figures 7 and 8 for details.

⁸⁰ *Id.*

⁸¹ Published by the Council for Community and Economic Research since 1968.

Figure 7. 2011 CEO Salaries Adjusted for Cost of Living.⁸²

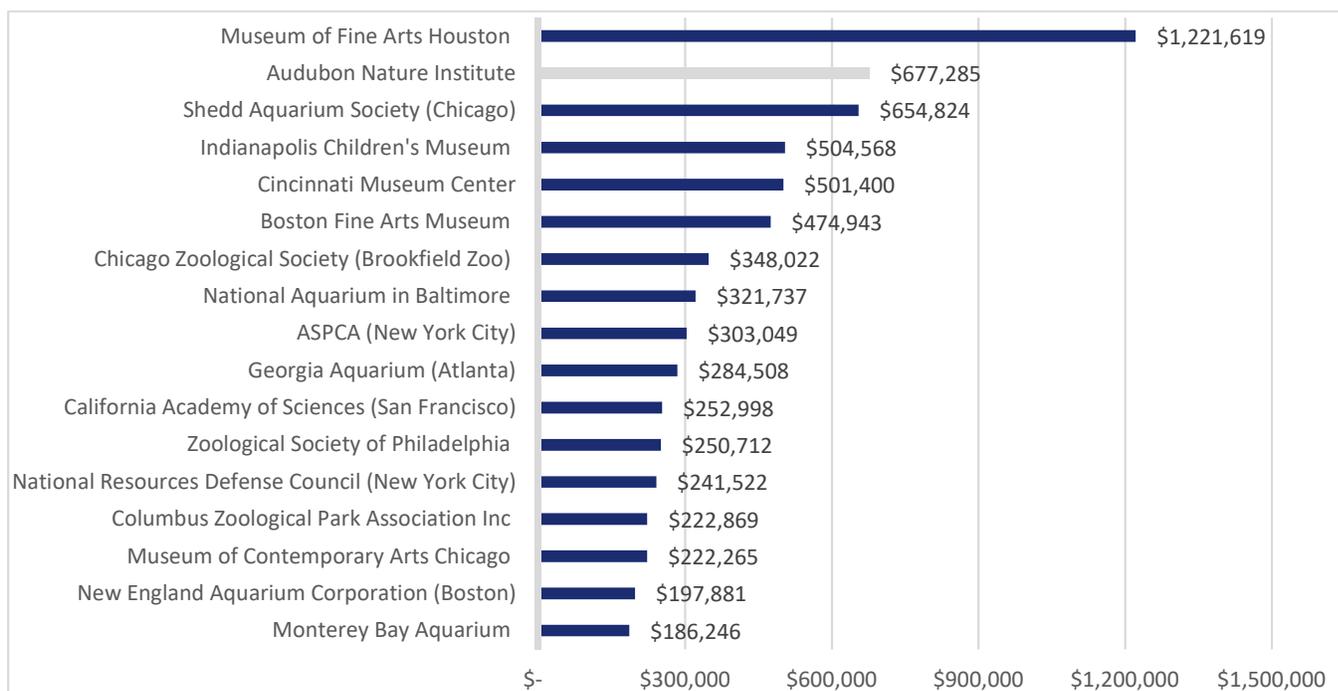


Figure 8. 2011 EVP/CAO Salaries Adjusted for Cost of Living.⁸³



⁸² As reported in the HTAC Study.

⁸³ *Id.*

La. Const. art. VII, §14(A) stated:

...funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.⁸⁴

The Louisiana Attorney General, interpreting *Cabela's*, developed a three-pronged test to determine if an expenditure is permissible under Article VII §14(A). The Louisiana Attorney General stated:

[I]n order for an expenditure or transfer of public funds to be permissible under Art. VII, Sec. 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.⁸⁵

When the OIG compared the peer group's revenues and assets to those generated and managed by the Institute, the Institute was in the 50th percentile and the 38th percentile, respectively. However, when the compensation of the CEO and EVP were compared to the peer group, the CEO was in the 85th percentile and the EVP was in the 92nd percentile. This analysis indicates that some of the executive compensation could be gratuitous.

The Institute pointed out the CEO is at the top of the salary range because he is "the best." The Institute also stated,

It is imperative to recognize that the Audubon Nature Institute Board is not limited to considering peer comparable data in setting compensation. It is incumbent upon the Board to also consider intangible criteria to ensure that the organization is attracting and retaining the best talent to lead.

⁸⁴ La. Const. art. VII, §14(A).

⁸⁵ La. Atty. Gen. Op. No. 09-0018.

In setting executive compensation, the Nature Institute Board through its Compensation Committee and Executive Committee considered:

- Overall performance
- Length of service
- Experience in Zoo/Aquarium/Park management and operation of ten (10) separate facilities
- Substantial development and fundraising experience and successes
- Competition in the market
- Experience and success in securing state and federal capital funding
- Experience and success in securing conservation partnerships with other zoos and aquariums
- Incentive to continued employment with Audubon
- Leadership in the community and professional organizations including the Association of Zoos and Aquariums.

The Institute also stated it “maintains a robust policy on Executive Compensation and has fully complied with that policy.”

Recommendation 2. The Compensation Committee should revise its policy to include an annual review and full board approval of executive compensation. When determining executive compensation, the Compensation Committee should select a peer group with similar assets, revenues, and cost of living criteria to ensure reasonable, comparable executive compensation.

Executive Compensation Contracts. The CEO and the EVP entered into employment contracts with the Institute. The employment contracts determined the responsibilities of each position and the compensation provided to each executive. The Executive Committee and the Compensation Committee approved both employment contracts on August 18, 2011, and those contracts were in effect during the scope period of this audit. The CEO’s compensation terms were as follows:⁸⁶

⁸⁶ Figure 9 also illustrates the CEO’s compensation package during the scope period of the audit.

1. The base salary on August 18, 2011, was \$329,810.
2. The base salary was adjusted on August 18th each year thereafter according to the change in the Consumer Price Index (CPI).
3. A merit adjustment to the CEO’s salary was permitted at any time, limited to five percent annually.⁸⁷
4. Fringe benefits (provided as additional cash compensation in his paycheck) equal to 31.5 percent of the CEO’s base salary each pay period.
5. Additional pay of 25 percent of the CEO’s base salary each pay period.
6. Contributions were made by the Institute into a 457(f), deferred compensation plan.
7. An automobile, local transportation, and communication allowance of \$700 per month.
8. Twenty days of paid time off (PTO) in addition to the 28 days allowed for employees with fifteen or more years-of-service.

Figure 9. CEO Compensation Package from Jan. 1, 2012, through Dec. 31, 2014.

Year	Regular Pay	Fringe Benefits	Additional Pay	Auto/Travel/ Communications Allowance	457(f) Contributions	Total Annual Compensation
2012	\$ 331,600	\$ 104,454	\$ 82,900	\$ 8,400	\$ 175,046	\$ 702,400
2013	337,058	106,173	84,265	8,400	161,581	697,477
2014	340,921	107,390	85,230	8,400	161,581	703,522

The compensation terms for the EVP were as follows:⁸⁸

1. The base salary on August 18, 2011, was \$213,180.
2. The base salary was adjusted on August 18th each year thereafter according to the change in the CPI.
3. A merit adjustment to the EVP’s salary was permitted at any time, limited to five percent annually.⁸⁹
4. Fringe benefits (provided as additional cash compensation in his paycheck) equal to 15 percent of the EVP’s base salary each pay period.
5. Additional pay of 25 percent of the EVP’s base salary each pay period.

⁸⁷ The Compensation Committee did not grant merit adjustments during the audit scope period.

⁸⁸ Figure 10 also illustrates the EVP’s compensation package during the scope period of the audit.

⁸⁹ The Compensation Committee did not grant any merit adjustments during the scope period of this audit.

6. Contributions were made by the Institute into a 457(f), deferred compensation plan.
7. An automobile, local transportation, and communication allowance of \$400 per month.

Figure 10. EVP Compensation Package from Jan. 1, 2012, through Dec. 31, 2014.

Year	Regular Pay	Fringe Benefits	Additional Pay	Auto/Travel/ Communications Allowance	457(f) Contributions	Total Annual Compensation
2012	\$ 214,366	\$ 32,155	\$ 53,592	\$ 4,800	\$ 69,327	\$ 374,240
2013	217,895	32,684	54,474	4,800	63,994	373,847
2014	220,362	33,054	55,090	4,800	63,994	377,300

Finding 3. Although, the executives’ compensation was paid in accordance with the terms of their employment contracts, the executives’ fringe benefit payments may have violated La. Const. art. VII, §14(A) because no additional performance or duties were required of the executives to receive the additional compensation.

The auditors obtained payroll records for the CEO’s and EVP’s compensation received from 2012 through 2014, recalculated their pay, and confirmed that their pay, although may be unconstitutionally gratuitous, complied with the terms of their compensation agreements.

As noted above, the Louisiana Constitution prohibits the donation of public funds. Because the contract did not require the executives to perform additional duties, the fringe benefit compensation was gratuitous. Gratuitous payments are considered donations of public funds because they do not pass the Louisiana Attorney General’s three-pronged test. Because the Commission and the Institute incorrectly concluded the Institute was not subject to the Constitution as it pertained to the expenditure of Commission funds, the Institute did not consider the Constitution when developing the executive contracts.

Recommendation 3. In addition to Recommendation #1, the Institute should structure the employment contracts so that additional duties and responsibilities are assigned for all additional compensation.

Update. Finding 3 was partially resolved.⁹⁰ The CEO's base salary plus fringe benefits was \$533,541 in 2014. The OIG obtained the current CEO contract (signed January 15, 2018) and noted the Institute combined the fringe benefits with the base salary and classified the \$555,971 in compensation as "base salary and fringe benefits."⁹¹

⁹⁰ The Institute did not provide a contract for the new EVP.

⁹¹ This amount does not include the automobile allowance of \$11,400 each year or the contributions to the CEO's 457(f) which ranged between \$161,581 and \$175,046 during the audit period.

IV. NEW HIRE PROCESS

The Louisiana Legislative Auditor (LLA) recommended that entities maintain a personnel file for each employee containing the employment application and approved starting salary or rate of pay amount.⁹²

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) recommended:

When selecting and developing control activities management should consider whether duties are divided or segregated among different people to reduce the risk of error or inappropriate or fraudulent actions.... This segregation of duties generally entails dividing the responsibility for recording, authorizing, and approving transactions....⁹³

The Institute's policy required the Institute managers to obtain:

- Approval for the position and pay rate with a Human Resources (HR) Position Requisition form (requisition) before hiring a new employee. HR, the departmental Vice President (where applicable), and the EVP were all required to approve the requisition before any position could be filled.
- A background check and pre-employment drug test for all candidates, after the requisition was approved.⁹⁴

Positive Finding 1. The Institute developed and adopted a new hire policy that complied with COSO's best practices. The Institute's internal controls over new hire processing were designed properly and implemented and operating effectively.

Auditors randomly selected 90 of the 262 employees hired during 2014 and inspected their employee file.

⁹² "Payroll." LLA. https://www.la.gov/documents/best-practices/payroll_article.pdf

⁹³ Committee of Sponsoring Organizations of the Treadway Commission. Internal Control – Integrated Framework. Principle 10. May 2013.

⁹⁴ Audubon Nature Institute Hiring Policy. November 19, 2014.

In 98.9 percent of the new hires tested:

- A properly approved position requisition was included in the file; and
- An employment application was included in the file.⁹⁵

In 100 percent of the new hires tested:

- The new employee's pay rate agreed to the amount approved on the requisition;
- Background checks and pre-employment drug testing were completed for all candidates over the age of 18; and
- Pay increases were properly documented and approved.⁹⁶

The Institute established well documented policies that required approvals at an appropriate level of management for the new hire process. The OIG noted that the policies properly segregated the recording, authorization, and approval functions for the new hire process.

⁹⁵ Auditors inferred with a confidence level of 90 percent that the most likely error rate was 1.1 percent for the population or a total of three employees.

⁹⁶ Auditors inferred with a confidence level of 90 percent that there were most likely no errors in the population.

V. PAYROLL PROCESSING

The *Internal Control – Integrated Framework* published by COSO recommended that an organization:

- Establish policies to “reflect management’s statement of what should be done...;”
- Establish procedures which “consist of actions that implement a policy,”⁹⁷
- Require authorizations and approvals by “higher level of management... and a determination if the transaction is valid;” and
- Segregate duties so that “recording, authorizing, and approving transactions” are performed by different individuals.⁹⁸

According to the LLA,

Payroll is generally the largest expenditure.... Therefore, it is important that controls over payroll are in place and working properly.... All procedures for processing, reviewing, and approving payroll, including leave taken and overtime worked should be in writing so that there is a clear understanding of what should be done, how it should be done, who should do it, and when it should be done.⁹⁹

The LLA also stated effective payroll processing controls consist of:

- Time reports documenting hours worked that were completed and filed by the employee with the supervisor’s review and approval documented; and
- PTO records to document leave taken by employees.¹⁰⁰

The Institute paid its employees bi-weekly and used Automatic Data Processing, Inc. (ADP) to process payroll. The Institute’s Payroll Procedures Policy required:

- Hourly employees to report time using “a bio-recognition scanner that recognizes the employees [sic] hand and automatically logs the time or... through a conventional time card....”

⁹⁷ *Internal Control – Integrated Framework*, Committee of Sponsoring Organizations of the Treadway Commission. May 2013. Principle 12.

⁹⁸ *Internal Control – Integrated Framework*, Committee of Sponsoring Organizations of the Treadway Commission. May 2013. Principle 10.

⁹⁹ “Payroll.” LLA. https://www.lla.la.gov/documents/best-practices/payroll_article.pdf

¹⁰⁰ *Id.*

- Supervisors to review and approve time for “both hourly and salary employees.”
- Salaried employees to fill out a PTO Request form for leave time.¹⁰¹

Finding 4. Although the Institute developed a policy aligned with best practices, the Institute did not comply with the policy because hourly employees did not utilize the time reporting procedures; PTO information for salaried employees was not maintained; and Institute supervisors did not approve hourly and/or salaried employees’ time.

Auditors randomly selected 90 bi-weekly pay vouchers from all 18,437 pay vouchers issued during 2014 to determine if the Institute adhered to its policy.¹⁰² For the 90 vouchers tested, employee pay was calculated accurately based on the information in the payroll register, pay increases were properly documented and approved, and PTO was properly recorded based on usage and anniversary accruals.^{103, 104}

Of the 90 pay vouchers selected for testing, 46 pay vouchers were for hourly employees, and 44 pay vouchers were for salaried employees. Hourly employees did not consistently use the hand scanner to clock-in and clock-out. Instead, supervisors manually entered time, at least once, for 31 (67 percent) of the hourly employee pay vouchers tested. Because employees did not always clock-in and clock-out with a hand scan or sign the timesheet attesting to time worked, auditors could not determine if the employees were paid accurately for time worked. When supervisors entered and approved employees’ time, it circumvented the segregation of duties necessary to provide oversight and review that could prevent and detect errors and/or fraud, waste, and abuse. The lack of segregation of duties could result in inaccurate pay for the employees involved. For example, overtime of 2.9 hours was improperly paid twice to one employee

¹⁰¹ Audubon Nature Institute Payroll Procedures. December 31, 2014.

¹⁰² Salaried and hourly pay vouchers were included together in each bi-weekly payroll register. Therefore, auditors were unable to select separate random samples for hourly and salaried employees. For this reason, the results of employee clock-in and clock-out and supervisory approvals could not be projected to the entire population.

¹⁰³ The auditors inferred with a confidence of 95 percent that there were most likely no errors in this sample.

¹⁰⁴ PTO forms were not maintained for the vouchers tested; therefore, the auditors recalculated the PTO balance for the amounts recorded.

for an overpayment of \$81.59. Projected to the entire population the total overpayment would be \$14,157.¹⁰⁵

Sixteen of the 44 salaried employees tested (36 percent) recorded PTO on their pay vouchers, totaling 248 hours. Auditors were unable to determine if the PTO charged was accurate and complete because the Institute did not maintain documentation of time worked and/or vacation taken. The LLA’s Best Practices for Payroll recommended that adequate records be maintained to account for leave taken by employees.¹⁰⁶ Without maintaining the PTO forms, Auditors could not determine if PTO was properly charged to employees. The Institute stated that it changed to electronic PTO requests and approvals through the ADP system which the Institute contends resolved the problem.

Figure 11. Pay Voucher Exceptions.

Category	Exceptions	Total
Hourly employees	31	46
Salaried employees	16	44
Total Exceptions	47	90

As shown in Figure 12, supervisors did not approve time for nine (20 percent) of the 46 hourly employees or all (100 percent) of the 44 salaried employees. According to Institute management, this was because supervisors forgot to press the “approve timecard” button after finishing their review. Without this control, management cannot be certain that employees are being paid properly and could result in fraud, waste, and/or abuse.

Figure 12. Timecard Approval Exceptions.

Category	Exceptions	Total
Hourly employees	9	46
Salaried employees	44	44
Total Exceptions	53	90

¹⁰⁵ Auditors inferred with a confidence of 95 percent that the most likely overstatement in the population is \$14,157.

¹⁰⁶ “Payroll.” LLA. https://www.la.gov/auditResources/best-practices/documents/payroll_article.pdf.

Recommendation 4. The Institute should replace or implement new time reporting protocols and communicate time-keeping policies and procedures to its employees to ensure policies are understood and followed.

Update. The Institute asserts this finding was resolved. The Institute recognized the hand scanner was not functioning properly and asserted they replaced it with biometric single finger print timeclocks. The Institute asserted it implemented a new ADP PTO process to request and approve PTO. The Institute scheduled a training for employees to learn the new ADP PTO process. The Institute also asserted that hourly employees' timecards are reviewed by supervisors for completeness and accuracy and that salaried employee timecards are reviewed for exceptions. OIG auditors cannot opine on the design or operating effectiveness of these newly implemented internal controls because we did not perform follow-up testing.

VI. TERMINATION PROCESS

When an employee is terminated, the LLA recommended that entities immediately remove computer network access for that employee.¹⁰⁷

The Institute developed a termination policy which required:

- Supervisors to complete a Payroll Status Change Form and subsequent approval of the departmental Vice President, HR, and EVP. HR then added the completed form to the employee's personnel file.¹⁰⁸
- HR to change the employee's status from active to terminated in ADP to ensure they did not receive any additional pay.
- HR to notify the Information Systems group of the employee's termination. The Information Systems group then removed the employee's computer access.
- Supervisors or HR to collect "all Audubon Nature Institute property and equipment, uniforms, cell phones, nametag, keys, and ID card..." prior to issuing the employee's final check.¹⁰⁹
- Employees to forfeit unused PTO or sick leave upon termination.

Positive Finding 2. The Institute developed and adopted a termination policy compliant with best practices. The Institute's internal controls over the termination process were designed properly and implemented and operating effectively.¹¹⁰

Auditors randomly selected 40 of the 249 employees terminated during 2014 and inspected their employee file. For 100 percent of the employees tested, Payroll Status Change Forms were completed by the supervisor, approved by the departmental Vice President, HR, and the EVP. The Payroll Status Change Forms were included in the employees' personnel file.¹¹¹ HR changed the employee

¹⁰⁷"Checklist of Best Practices in Government." LLA. January 2012. <https://lla.la.gov/documents/best-practices/bpchecklist.doc>.

¹⁰⁸ The Institute used the Payroll Status Change Form to document any personnel or payroll related changes for the employee such as promotions, pay increases, termination, etc.

¹⁰⁹ Audubon Nature Institute Employee Handbook. Revised February 2014.

¹¹⁰ With the exception of Finding 5.

¹¹¹ Auditors inferred with a confidence level of 90 percent and a deviation rate of no more than 4.82 percent that there were no errors in the population.

status from “active” to “terminated” in ADP for all employees tested, and terminated employees did not receive payments for unused PTO. Furthermore, the Institute removed computer access for all terminated employees to ensure that they were unable to access company sensitive programs.

Finding 5. Despite effective internal controls over the termination process, the Institute management could not verify all property was returned upon termination and prior to issuing each employee’s final paycheck.

The Institute’s Employee Handbook stated,

All Audubon Nature Institute property and equipment, uniforms, cell phones, nametag, keys, and ID card must be turned in to your supervisor or Human Resources before your final check will be released.¹¹²

The Institute did not catalog or maintain a listing of property and equipment given to each employee. Without knowing what equipment and property was given to employees, the Institute was unable to ensure employees returned all property and equipment prior to issuing the final check. Furthermore, not collecting all property and equipment from terminated employees increased the potential for unauthorized access to Audubon Facilities which could lead to theft or damage to public property.

Recommendation 5. The Institute should develop a process to catalogue property and equipment provided to Institute employees and to ensure they return all property and equipment prior to the issuance of the employee’s final paycheck.

Update. The Institute asserted this finding was resolved. The Institute stated it tags all portable equipment. The Institute also provided the OIG with an Offboarding Process checklist which included steps for collecting the Commission’s equipment and assets upon an employee’s termination. OIG auditors cannot opine on the design or operating effectiveness of these newly implemented internal controls because we did not perform follow-up testing.

¹¹² Audubon Nature Institute Employee Handbook. Revised February 2014.

VII. CONCLUSION

The Audubon Facilities are City property. Since 1972, Orleans Parish property tax payers provided funding for the acquisition, construction, and capital improvements to various Audubon Facilities. Since 1979, property tax payers have paid the debt associated with acquiring, constructing, and improving various Audubon Facilities.

The hybrid Contract included a \$50,000 management fee. The Institute's responsibilities under the management fee greatly exceeded that payment. The Contract also ended with a declaration that the relationship between the Commission and the Institute was a cooperative endeavor but failed to satisfy the requirements of *Cabela's*. The Louisiana Constitution permitted CEAs between public and private entities. However, funds spent pursuant to a CEA are public. Under a typical management fee structure, a fee and obligations are established, and funds are paid pursuant to the terms of the contract. In that instance, the funds transferred from the Commission to the Institute would change the public nature of the funds into privatized Institute funds. However, the inequities in the management fee structure and the ill-defined Contract improperly allowed the Institute to mischaracterize Commission funds as those spent under the terms of the management agreement thereby permitting unconstitutional gratuities and donations under Louisiana law.

In 2014, the Commission generated \$40.0 million from the operations of the Audubon Facilities and received \$20.8 million of other revenue (e.g. grants, insurance proceeds, and other support/contributions). The Commission also collected \$9.6 million in property taxes in 2014.¹¹³ The Commission and the Institute had an obligation to tax payers to ensure it used property taxes, as well as revenues generated from public assets, in the most cost-effective manner and for the purposes for which the property taxes were levied.

Although the Institute employed its own personnel, the Commission was responsible for the payment of their salaries and benefits. The Commission also reported salaries and benefits expense for Institute employees in its year-end

¹¹³ *Audubon Commission Audits of Financial Statements December 31, 2014 and 2013*. April 30, 2015.

audited financial statements. In 2014, the Commission paid \$24.6 million in salaries and benefits to the Institute's employees.

The Institute developed and adopted policies governing new hires, payroll processing, and terminations complying with best practices. However, the OIG noted the following findings:

- The Institute may have violated the Constitution when it used Commission funds to pay \$447,695 in bonuses and on-call pay to employees.
- The Institute's executive compensation may have violated La. Const. art. VII, §14(A) because the compensation was not comparable to other similar sized organizations and, therefore, may have been gratuitous in nature.
- Although, the executives' compensation was paid in accordance with the terms of employment contracts, the executives' fringe benefit payments alone may have violated La. Const. art. VII, §14(A) because no additional performance or duties were required of the executives to receive the additional compensation.
- Although the Institute developed a policy aligned with best practices, Institute employees did not comply with the policy because hourly employees did not utilize the time reporting procedures; PTO information for salaried employees was not maintained; and Institute supervisors did not approve hourly and/or salaried employees' time.
- Despite effective internal controls over the termination process, Institute management could not verify all Institute property was returned upon termination and prior to issuing the employee's final paycheck.

To resolve these findings, the OIG recommends:

- The Institute should revise its policies to recognize the public nature of Commission funds, including unconstitutional spending pursuant to La. Const. art. VII, §14(A) and develop restrictions for the compensation of on-call employees. Additionally, the Institute should require all managers, employees, and subsequent new hires to take annual training to educate all employees on prohibited expenses.
- The Compensation Committee should revise its policy to include an annual review and full board approval of executive compensation. When determining executive compensation, the Compensation Committee should select a peer group with similar assets, revenues, and cost of living criteria to ensure reasonable, comparable executive compensation.

- In addition to Recommendation #1, the Institute should structure the employment contracts so that additional duties and responsibilities are assigned for all additional compensation.
- The Institute should replace or implement new time reporting protocols and communicate time-keeping policies and procedures to its employees to ensure policies are understood and followed.
- The Institute should develop a process to catalogue property and equipment provided to Institute employees and to ensure they return all property and equipment prior to the issuance of the employee's final paycheck.

APPENDIX A. OBJECTIVES, SCOPE, AND METHODOLOGY

The OIG conducted a performance audit of the Institute’s internal controls over the employee new hire, termination, payroll, and executive compensation processes. The objectives of the audit were to determine if:

- The Institute’s policies governing the payroll process, including new hires and terminations, complied with best practices;
- The Institute’s policies governing the payroll process, including new hires and terminations, provided adequate controls to ensure all payroll expenses were business-related and allowed by law; and
- The Institute complied with its policies, as well as applicable laws and/or best practices, as it pertained to the expenditure of Commission funds.

The scope period for the audit included all employees hired, employed, and terminated from January 1, 2014 through December 31, 2014. The scope period for the executive compensation testing was January 1, 2012, through December 31, 2014.

To accomplish the audit objectives, auditors:

1. Inquired of managers and other individuals to gain an understanding of the legal structure of the Commission and the Institute and the operational structure between the two entities. Auditors also obtained and reviewed the following documents:
 - a. *Management and Cooperative Endeavor Agreement between the Audubon Commission and the Audubon Nature Institute*, dated October 24, 2013, and January 26, 2011;
 - b. Audubon Commission and Audubon Nature Institute financial statement audits for the years ended December 31, 2012 – December 31, 2014;
 - c. *Audubon Commission Handbook*;
 - d. Legal authority, including but not limited to:
 - Louisiana Constitution;
 - Louisiana Revised Statutes; and
 - New Orleans City Charter;
 - e. Various Louisiana Attorney General Opinions;
 - f. Various Audubon Nature Institute policies and procedures, including those governing the payroll process, employee new hires and terminations, and executive contracts; and

- g. Various other documentation.
- 2. Conducted interviews with the Institute’s HR and payroll personnel and other managers to gain an understanding of the processes and internal controls over:
 - a. Employee new hire and termination processing,
 - b. Payroll processing; and
 - c. Executive compensation.

For employee payroll, new hire and termination testing, the auditors randomly sampled each population for testing using the methodology shown in Figure 13 below.

Figure 13. Sampling Methodology.

Population	Confidence Level	Tolerable Error	Expected Error	Sample Size
New Hires	90%	10%	5-7%	90
Payroll	95%	5%	1%	90
Terminations	90%	10%	5-7%	40

The auditors performed the following procedures:

- 3. Randomly selected 90 of the 262 employees hired during the scope period to determine if the Institute complied with its new-hire policy. Because the sample was randomly selected, auditors projected the results to the population.
- 4. Randomly selected 90 of the 18,437 payroll vouchers included in the 2014 payroll registers to determine if each employee’s time was calculated properly. Because the sample was randomly selected, auditors projected the results to the population.
- 5. Examined 90 payroll vouchers to determine if each employee’s timecard was reviewed and approved in accordance with the Institute’s policy.¹¹⁴ Because specific samples of hourly and salaried employees were not able to be randomly sampled, these results were not projected to the population.
- 6. Randomly selected 40 of the 249 employees terminated during 2014 to determine if the Institute complied with its termination policy. Because the

¹¹⁴ Total payroll for 2014 was \$20,672,727. The total payroll amount for the 90 vouchers sampled was \$154,907.

sample was randomly selected, auditors projected the results to the entire population.

7. Determined if amounts paid to managers and employees complied with the Louisiana Constitution.
8. Obtained the executive compensation policies and *The Audubon Nature Institute Executive Compensation Assessment* to determine if the compensation was calculated properly and paid in accordance with the contractual terms.
9. Performed a benchmarking analysis of the HTAC study to determine if the assessment used entities with similar budget size and the same or similar geographic regions as recommended by best practices.

Auditors assessed the reliability of computer-processed data by interviewing officials knowledgeable about the data, comparing data to source documents for reliability, and reviewing selected system controls. Auditors determined that the data were sufficiently reliable for the purposes of this report.

Auditors used the following criteria for this performance audit:

- Louisiana Constitution;
- Louisiana Attorney General Opinions;
- Louisiana Legislative Auditor Best Practices;
- Committee of Sponsoring Organizations of the Treadway Commission, Internal Control – Integrated Framework;
- National Council of Nonprofits, Executive Compensation; and
- The Audubon Nature Institute’s policies governing personnel, payroll, and executive compensation.

AUDITING STANDARDS

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.¹¹⁵

¹¹⁵ *Government Auditing Standards, Chapter 7.30*; U.S. Government Accountability Office, 2011.

Auditors also conducted this performance audit in accordance with the Principles and Standards for Offices of Inspector General.¹¹⁶

DELAY OF REPORT RELEASE

The timely issuance of the report, when the subject permits, is an important reporting goal for auditors. In accordance with GAGAS, auditors should report any significant constraints imposed on the audit approach, including excessive delays.¹¹⁷ During the course of the audit, the Commission and the Institute contended the Institute was not subject to the Louisiana Constitution as it pertains to the expenditure of Commission funds and requested a Louisiana Attorney General (AG) opinion on the matter. Pursuant to their request, the OIG agreed to allow the Commission and the Institute to seek an AG opinion. In October 2017, the Commission/Institute and the OIG requested separate opinions from the AG. In anticipation of an AG opinion, the OIG temporarily suspended the audit. By July 2018, the AG had not issued an opinion. The OIG met with the Institute and determined to proceed without the AG opinions. Auditors communicated the findings of this report to the Commission and the Institute on April 15, 2020, to obtain management’s assessment of why the findings occurred. The Commission and the Institute provided the OIG with their assessment on May 29, 2020.

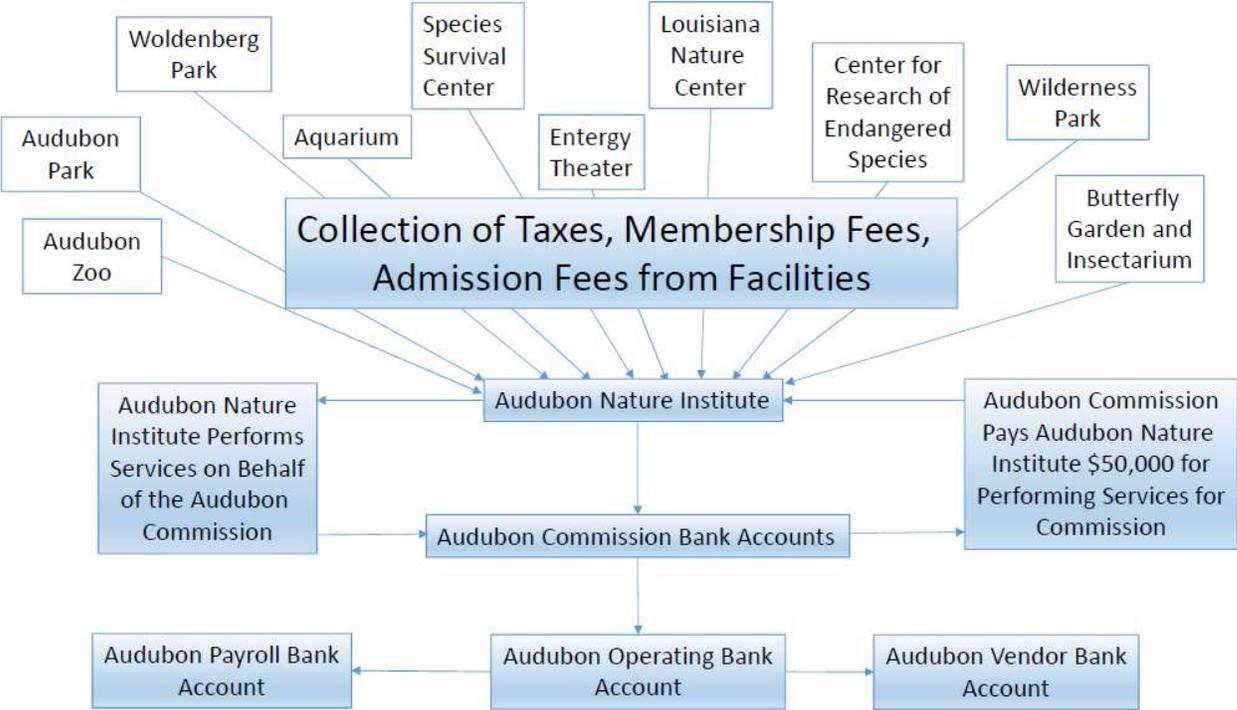
LEGAL AUTHORITY

The authority to perform this audit is established in La. R.S. 33:9613 and in City Code Sec. §2-1120 of the City of New Orleans.

¹¹⁶ “Quality Standards for Audits by Offices of Inspector General,” *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2014).

¹¹⁷ *Government Auditing Standards, Chapter 7.11*; U.S. Government Accountability Office, 2011.

APPENDIX B. AUDUBON FACILITIES FLOW OF FUNDING



OFFICIAL COMMENTS FROM THE COMMISSION AND THE INSTITUTE

City Code Section 2-1120(8)(b) provides that a person or entity who is the subject of a report shall have 30 days to submit a written explanation or rebuttal of the findings before the report is finalized, and that such timely submitted written explanation or rebuttal shall be attached to the finalized report.

A draft report was distributed on September 18, 2020, to the entities who were the subject of the audit so that they would have an opportunity to comment on the report prior to its public release. The Commission and the Institute provided a joint response on October 19, 2020. These comments are attached.

In accordance with GAGAS,¹¹⁸ the OIG evaluated the joint comments and determined it was necessary to respond because some of comments were inconsistent or conflicted with the findings, conclusions, and/or the recommendations in the draft report. The OIG also disagreed with some of the joint comments. Conversely, the OIG determined it was appropriate to modify the report to include changes implemented by the Institute and the Commission. The OIG also updated the report to include some intangible qualities that the Institute considered when determining the executives' compensation.

OIG Comment on the Commission and the Institute's (Audubon) Joint Response:

Finding 1.

Audubon stated, "In order for this finding to have any validity one must assume that the payments by the Commission of these bonuses are gratuitous donation and as such violate La. Const. art VII § 14(A) **which they do not.**" (Emphasis added.)¹¹⁹

The OIG did not assume that bonuses were gratuitous and as such violated the Constitution. The OIG conducted an extensive legal analysis as it pertained to the

¹¹⁸ When the audited entity's comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditors' recommendations, the auditors should evaluate the validity of the audited entity's comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement. Conversely, the auditors should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence. *Government Auditing Standards, Chapter 7.37*; U.S. Government Accountability Office, 2011.

¹¹⁹ Audubon Response at 3.

applicability of the Louisiana Constitution to the Commission and the Institute. That analysis was included in the “Factual and Legal Analysis” section of the report. Additionally, throughout each finding, the OIG referenced *Cabela’s*, the Louisiana Attorney General’s three prong test, various supporting Louisiana Attorney General opinions, and Louisiana caselaw. This analysis supports our conclusion that “the Institute may have violated the Constitution because it used Commission funds to pay \$447,695 in bonuses and on-call pay to employees.”

Despite Audubon’s assertion these transactions do not violate the Constitution, Audubon acknowledged they:

started the process of evaluating alternatives for bonus structures and will be implementing a revised means of segregating funds generated by the Nature Institute for Nature Institute employee-related operational expenses, including establishing a separate bank account for such expenditures, rather than a separate accounting code. ***This finding is being resolved.***¹²⁰ (Emphasis in original).

Audubon’s assertion that these transactions do not violate the La. Const. conflict with their statement that the finding is being resolved. If these transactions did not violate the Constitution, there would be no need for Audubon to resolve the finding.

Finding 2.

Audubon claims finding two is “well outside the jurisdiction of the OIG.” The OIG is specifically granted authority to:

engage in the following specific functions: (a) Audit, evaluate, investigate, and inspect the activities, records, and individuals with contracts, subcontracts, procurements, grants, agreements, and other programmatic and financial arrangements undertaken by city government and any other function, activity, process, or operation conducted by city government... [and] (d) Initiate such

¹²⁰ Audubon Response at 3.

investigations, audits, inspections, and performance reviews of city government as the inspector general deems appropriate.¹²¹

La. R.S. 33:9613(D) and (E) confers OIG jurisdiction over City component entities. Audubon's assertion that this finding is outside of the OIG's jurisdiction ignores the plain language of the law. Furthermore, prior to receiving this finding, neither the Institute nor the Commission objected to the OIG's jurisdiction over its operations. The OIG also notes that benchmarking and comparative analysis is an accepted audit methodology as determined by Generally Accepted Government Auditing Standards.¹²²

Audubon also stated "it is highly questionable that the OIG is using public funds and resources to make recommendations to a private non-profit board on alleged best practices."¹²³ The OIG is granted authority to "issue reports and recommend remedial actions to be taken by the city council, the office of the mayor, or municipal departments or agency heads to overcome or correct operating or maintenance deficiencies and inefficiencies identified by the office of inspector general."¹²⁴ The OIG is also required to report its findings and recommendations to the public.^{125,126} In performing this audit, the OIG operated pursuant to the law and Generally Accepted Government Auditing Standards.

¹²¹ City Code Section 2-1120(10).

¹²² *Government Auditing Standards, Chapter A6.05d*; U.S. Government Accountability Office, 2011. "The audit objectives might focus on comparisons or benchmarking between various government functions or agencies. These types of audits are especially useful for analyzing the outcomes of various public policy decisions. In these cases, auditors may perform analyses, such as comparative statistics of different jurisdictions or changes in performance over time, where it would be impractical to verify the detailed data underlying the statistics. Clear disclosure as to what extent the comparative information or statistics were evaluated or corroborated will likely be necessary to place the evidence in context for report users."

¹²³ Audubon Response at 4.

¹²⁴ City Code Section 2-1120(10)(h).

¹²⁵ City Code Section 2-1120 (8): *Reporting the results of Inspector General findings.* (a) Upon completion of any audit, evaluation or investigation, the Office of Inspector General shall report the results of its findings and any recommendations to the ethics review board.

¹²⁶ *Government Auditing Standards, Chapter 7.44a*; U.S. Government Accountability Office, 2011. Audit organizations in government entities should distribute audit reports to those charged with governance, to the appropriate audited entity officials, and to the appropriate oversight bodies or organizations requiring or arranging for the audits. As appropriate, auditors should also distribute copies of the reports to other officials who have legal oversight authority or who may be responsible for acting on audit findings and recommendations, and to others authorized to receive such reports.

Audubon also stated,

The OIG's *opinion* (not fact based on evidence or legal requirement) regarding executive compensation carries no weight and serves no purpose other than to sensationalize the issue of executive compensation at Audubon. Somehow the OIG unilaterally determines the standards for executive compensation while ignoring the expertise of those board members who participated in the process. The OIG seems to ignore the longevity and success of the executive team and the competitiveness of the marketplace." (Emphasis in original).¹²⁷

Audubon then alleged "the OIG simply doesn't like it."¹²⁸

The OIG complied with Generally Accepted Government Auditing Standards in all three Audubon audits. As we informed the Institute and the Commission, it is an auditor's responsibility – not the auditee's – to identify the appropriate criteria.¹²⁹ Audubon's allegation that the OIG is "sensationaliz[ing]" executive compensation or "ignoring the expertise of board members" is misleading because the OIG relied on the HTAC Report – the same compensation analysis used by the Institute's Compensation Committee.¹³⁰ The HTAC Report used "'market comparability data' from the comparable talent market...." Like the HTAC Report, the OIG used the revenue and asset data the HTAC identified of the recommended peer group. HTAC determined relevant peer groups by starting with a pool of over 100 organizations reported in Guidestar and screened those organizations' criteria including:

- Concentration on Zoo and Zoological Societies that were more than stand-alone entities but included research and educational centers;
- Emphasis on wildlife preservation and protection and related public policy and advocacy;

¹²⁷ Audubon Response at 4.

¹²⁸ *Id.*

¹²⁹ *Government Auditing Standards, Chapter 6.37*; U.S. Government Accountability Office, 2011. Auditors should identify criteria. Criteria represent the laws, regulations, contracts, grant agreements, standards, specific requirements, measures, expected performance, defined business practices, and benchmarks against which performance is compared or evaluated...."

¹³⁰ HTAC Report.

- Significant impact on their city’s culture and economy, which included non-zoological organizations;
- National focus with world class and top-rated zoological parks; and
- Comparable metrics including number of employees, revenue, and assets with the goal of having the metrics fall in a range of one half to twice the size of Audubon, excluding income/losses from investments because almost all portfolios lost significant value in 2009.¹³¹

This process resulted in a peer group of 16 comparable organizations.¹³² Because the HTAC failed to consider cost of living, a widely accepted statistical adjustment, the OIG adjusted the HTAC data to reflect cost of living.

Audubon claims the Compensation Committee considered six bullet items at page 4 in its response. The OIG considered the first four bullet items because they were included in the HTAC report. The OIG also considered, and rejected, the Association of Zoos and Aquariums Compensation studies listed by the Institute in its 5th bullet. Although the 109-page report contained various statistical information, no salary information was included for the only entity comparable to Audubon. Therefore, this study did not provide useful information to the OIG and would not have been significantly informing to the Compensation Committee. The last reference the Institute mentioned – the Review of Charity Navigator’s Nonprofit Executive Compensation Comparison – was never provided to the OIG for consideration; therefore, the OIG cannot opine how this information would have objectively impacted its audit. The Institute stated it was “**imperative to recognize that the Audubon Nature Institute Board is not limited to considering peer comparable data in setting compensation.**”¹³³ (Emphasis in original). Audubon mentioned intangibles as other criteria the OIG should consider. All executive management in the 16 organizations bring with them a bucket of intangibles; executive compensation by its very nature includes these qualities. Some of those intangibles, however, are generally included in the HTAC report and giving them additional consideration to add to the executive compensation would be duplicative. Likewise, to grant compensation for criteria already considered in the data used by the study the Institute relied upon engages in the same type of gratuitous compensation award as that determined in Finding 3 of this report.

¹³¹ HTAC Report at 6.

¹³² *Id.*

¹³³ Audubon Response at 5.

For instance, a quick public search for similarly situated executives revealed Joe Handy, the somewhat newly hired CEO of the Georgia Aquarium, one of the organizations in the HTAC peer group, began with the aquarium as part of the opening team in 2005 and was with the aquarium for ten years before being named president. He also spent nine years with the American Museum of Natural History in New York City and assisted in opening the Rose Center for Earth and Space. He is a committee member of the International Association of Amusement Parks and Attractions; serves on the Baker Street Advisory Board which helps make critical decisions about the area's development; and is active in the Association of Zoos and Aquariums and the Central Atlanta Progress Advisory Board. His organization generates approximately \$8.1 million in local and state tax revenues yearly. Mr. Handy was paid \$347,000 in compensation in 2017¹³⁴ and \$378,693 in compensation in 2018.¹³⁵

Tom Stalf, CEO of the Columbus Zoological Association, Inc. (Columbus Zoo), also an organization in the HTAC, began as a "zookeeper" in 1991 and, in 2020, operates the Columbus Zoo and Aquarium, The Wilds, Zoombezi Bay and Safari Golf Club with a \$105 million budget and 2,500 employees.¹³⁶ As a comparison, during the audit period, the HTAC report stated Audubon generated \$55 million and employed approximately 1,000 employees. As Columbus Zoo CEO, Mr. Stalf served as the Chair of the Association of Zoos and Aquariums (AZA) Wildlife Conservation Committee and is a Board member of the Dian Fossey Gorilla Fund International and the International Elephant Foundation. One of the intangibles Audubon wanted the OIG to recognize was Mr. Forman's "[l]eadership in the community and professional organizations..." which Mr. Stalf also had. In 2012, Mr. Stalf was paid \$218,582 in compensation;¹³⁷ in 2013, Mr. Stalf was paid

¹³⁴https://projects.propublica.org/nonprofits/display_990/582574918/02_2019_prefixes_58-59%2F582574918_201712_990_2019021416096652 at 18. (Mr. Handy also received \$25,335 in "other compensation.")

¹³⁵https://projects.propublica.org/nonprofits/display_990/582574918/01_2020_prefixes_58-59%2F582574918_201812_990_2020013117093950 at 18. (Mr. Handy also made \$26,856 in "other compensation.")

¹³⁶Spotlight on Columbus Business, Tom Stalf: Columbus Zoo and Aquarium. <https://wnci.iheart.com/featured/spotlight-on-columbus-business/content/2019-08-21-tom-stalf-columbus-zoo-and-aquarium/#:~:text=As%20President%20and%20CEO%2C%20Tom,for%20wildlife%20and%20wild%20places>. August 21, 2019.

¹³⁷https://projects.propublica.org/nonprofits/display_990/314390844/2013_12_EO%2F31-4390844_990_201212 at 15. (Mr. Stalf also received \$16,700 in "other compensation.")

\$275,601 in compensation;¹³⁸ in 2014, Mr. Stalf was paid \$317,322 in compensation;¹³⁹ in 2017, Mr. Stalf was paid \$455,598 in compensation;¹⁴⁰ in 2018, Mr. Stalf was paid \$386,671.¹⁴¹ Jack Hanna, the well-known Director Emeritus of the Columbus Zoo, received compensation of \$288,068 in 2012,¹⁴² \$288,066 in 2013,¹⁴³ \$305,941 in 2014,¹⁴⁴ \$575,440 in 2017¹⁴⁵ and \$569,528 in 2018.¹⁴⁶

In 2015, a property tax levy provided 25 percent of the Columbus Zoo's annual revenue, or about \$18 million a year. Those funds are used for animal health, nutrition and staff; facility maintenance, improvements and replacements; and local education and animal programs. By comparison, during the audit period, the Commission's property tax collections for the years ended December 31, 2013 and 2014, were \$9.3 million and \$9.6 million, respectively.¹⁴⁷

Both CEO's have longevity in the industry if not the organization itself, compete in the same market, and operate with the benefit of property taxes and fundraising, tangible factors for which Audubon wants to receive credit. Nevertheless, both similarly situated CEOs, in today's market, make considerably less in

¹³⁸https://projects.propublica.org/nonprofits/display_990/314390844/2014_12_EO%2F31-4390844_990_201312 at 15. (Mr. Stalf also made \$17,500 in "other compensation.")

¹³⁹https://projects.propublica.org/nonprofits/display_990/314390844/2016_02_EO%2F31-4390844_990_201412 at 15. (Mr. Stalf also made \$17,600 in "other compensation.")

¹⁴⁰https://projects.propublica.org/nonprofits/display_990/314390844/10_2018_prefixes_31-34%2F314390844_201712_990_2018101915811730 at 17. (Mr. Stalf also received \$71,760 in "other compensation.")

¹⁴¹https://990s.foundationcenter.org/990_pdf_archive/314/314390844/314390844_201812_990.pdf at 17. (Mr. Stalf also received \$81,171 in "other compensation.")

¹⁴²https://projects.propublica.org/nonprofits/display_990/314390844/2013_12_EO%2F31-4390844_990_201212 at 15 (Mr. Hanna also made \$13,000 in "other compensation.")

¹⁴³https://projects.propublica.org/nonprofits/display_990/314390844/2014_12_EO%2F31-4390844_990_201312 at 15. (Mr. Hanna also made \$12,000 in "other compensation.")

¹⁴⁴https://projects.propublica.org/nonprofits/display_990/314390844/2016_02_EO%2F31-4390844_990_201412 at 15. (Mr. Hanna also made \$12,500 in "other compensation.")

¹⁴⁵https://projects.propublica.org/nonprofits/display_990/314390844/10_2018_prefixes_31-34%2F314390844_201712_990_2018101915811730 at 17. (Mr. Hanna also made \$56,548 in "other compensation.")

¹⁴⁶https://990s.foundationcenter.org/990_pdf_archive/314/314390844/314390844_201812_990.pdf at 17. (Mr. Hanna also received \$58,902 in "other compensation.")

¹⁴⁷ Audubon Commission and Audubon Nature Institute Use of Funds Audit at 13. New Orleans Office of Inspector General. September 15, 2020.

http://www.nolaoig.gov/index.php?option=com_mtree&task=att_download&link_id=201&cf_id=37

compensation than did Mr. Forman in 2012-2014 yet had comparable histories, pedigrees and leadership positions in community and professional organizations.

During the “Exit Conference” held on October 14, 2020, the Institute CEO raised the issue of Sewerage and Water Board of New Orleans (S&WB) Executive Director Ghassan Korban’s salary. He asked why his salary was being scrutinized when Mr. Korban’s salary was not. The OIG selects audit subjects pursuant to a Risk Assessment. Audubon was selected because (among other things) it was the City’s third largest component entity. The OIG conducted a Payroll Audit of Audubon’s entire payroll process which included executive compensation. The OIG received information which included, but was not limited to, Audubon executive salaries.

However, because of the Institute CEO’s expressed concerns, we provide the following information. The S&WB is vital to the City because it must provide clean and safe drinking water to everyone in New Orleans; remove waste water; and drain away storm water. From a financial perspective, for the year ending December 31, 2018, the S&WB had \$3.44 billion in assets. This consisted of approximately 41.5 percent of City’s \$8.29 billion in assets. By comparison, the Audubon Commission had \$189.1 million in assets which consists of 2.3 percent of the City’s assets.

For the year ending December 31, 2018, the S&WB generated \$205.5 million in charges for services compared to the Institute, which generated \$45.2 million on the Commissions’ behalf. Ghassan Korban earned \$300,250 (salary, retirement, and benefits) for the year ended December 31, 2019 – the first full year as Executive Director. By comparison, Ron Forman earned \$703,522 in 2014. Note, the OIG does not have total compensation for 2019 because Mr. Forman’s contract does not specify the amount of contributions to his 457f plan and 2019 was outside of the audit period.

Finding 3.

The Institute stated:

[a]s was the case with respect to Finding No. 2, the conclusion regarding fringe benefits the OIG’s troubling eagerness to opine, without any statutory or jurisprudential support, that Audubon’s conduct ‘may’ violate the state constitution, while nonetheless leaving open the clear possibility that it equally ‘**may not.**’”

(Emphasis in original.) Finding 3 exemplifies the OIG’s willingness to use public funds to guess at issues of constitutionality at the expense of its auditee.¹⁴⁸

The Institute’s response suggests eagerness and guessing by the OIG to arrive at a preordained result through manipulation of facts and law.

The OIG did not “guess” at “issues of constitutionality at the expense of its auditee.”¹⁴⁹ The OIG conducted an extensive legal analysis pertaining to the applicability of the Louisiana Constitution to the Commission and the Institute. That analysis was included in the “Factual and Legal Analysis” section of the report. Additionally, throughout each finding, the OIG referenced *Cabela’s*, the Louisiana Attorney General’s three prong test, and/or various supporting Louisiana Attorney General and Fourth Circuit opinions. The Institute spends the Commission’s public funds. As such, the OIG used the Constitution, specifically provisions governing the use of public funds, as criteria in this audit.

Finally, the OIG is not “eager” for any particular outcome or result. The OIG is required to be objective and report results based on sufficient appropriate evidence.¹⁵⁰ In fact, the OIG reported multiple positive findings in this and the other Audubon audits.

¹⁴⁸ Audubon Response at 7.

¹⁴⁹ *Id.*

¹⁵⁰ *Government Auditing Standards, Chapter A7.02b*; U.S. Government Accountability Office, 2011.

Audubon Commission/Audubon Nature Institute Response

Office of the Inspector General Payroll Audit

I. Executive Summary

Well over five years ago, Audubon participated in three audits by the Office of the Inspector General (“OIG”) and fully cooperated with all requests for information and documents, understanding the importance of complete transparency and accountability to the public.

The third audit entitled “Payroll” Audit pertains to Audubon’s payroll practices from over eight years ago-- 2012-2014. In the Payroll Audit, the OIG did not find a single instance of fraud, abuse, or impropriety in Audubon’s operations. In fact, the OIG highlighted in the report that Audubon has adequate controls in place that were designed properly and are implemented effectively.

Audubon has reviewed the OIG’s findings and observations with respect to payroll. While we are always open to feedback for improvement, Audubon strongly disagrees with the subjective and inflammatory opinions provided by the OIG regarding executive compensation and observes that several of the findings related to procedures in place over eight years ago have been resolved.

It is noteworthy that significant portions of this third audit repeat conclusions reached in the first and second audits, raising the important issue of whether these audits could have been completed as one, saving significant time and resources for both Audubon and the OIG.

With respect to the OIG’s repetitive legal opinion that the contract governing the partnership between the Audubon Commission (“Commission”) and the Audubon Nature Institute (“Nature Institute”) (collectively, “Audubon”) *may* not comply with the Louisiana Constitution, we again disagree. The Cooperative Endeavor Agreement (“CEA”) governing the respective obligations of the parties is fully compliant with the Louisiana Constitution and the independent authority granted to the Commission by Louisiana State Act 191 of 1914. Moreover, the CEA complies with all applicable local and state law.

We have reviewed and considered the operational findings presented by the OIG and have already started the process of evaluating alternatives such as implementing a revised means of segregating funds generated by the Nature Institute. We are also reviewing the CEA to determine if additional best practices can be implemented.

While Audubon has fully cooperated with the OIG for the last five years and welcomes opportunities to improve, the audits unfortunately come at a time when Audubon has incredibly pressing matters to address and very limited resources. Audubon is projecting revenue losses of over \$20 million for 2020 and an operating deficit of over \$15 million. Audubon has laid off over 75% of its staff and is engaging in essential operations only at this time including the care and feeding of thousands of animals whose significant needs continue during the pandemic. As we

have expressed at every meeting with the Office of the Inspector General, Audubon is always open to ways in which it can improve and will consider the OIG's observations accordingly.

I. OIG Constitutional Position

Audubon continues to raise that the OIG has misapplied La. Const. art. VII § 14(A) and its relationship to the *Cabelas'* case. The OIG cites La. Const. art VII § 14(A) for the proposition that the Agreement between the Audubon Commission and the Audubon Nature Institute is a gratuitous donation from the public agency to the nonprofit when the Agreement in fact says just the opposite. If the Agreement did not provide for strict obligations on the part of the Audubon Nature Institute, there may be some validity to a donation. But just the opposite is true. The agreement is onerous and requires a fulfillment of obligations and cannot be interpreted as a donation.

The Constitution prohibits "...donations...". If there is no donation there is no violation of the Constitution. The term donation, as used in La. Const. art. VII, § 14(A), is plain and unambiguous. The generally understood meaning of a donation is an act whereby one gratuitously gives something to another. The term donation contemplates giving something away. The constitutional provision at issue seeks to prohibit a gratuitous alienation of public property.

In the *Cabelas'* case the Court was faced with a factual interpretation of public financing of private improvements to determine if La. Const. art VII § 14(A) was violated. But the facts of that case are unrelated to the issues presented here. The OIG fails to understand the sequencing in the analysis of a potential Constitutional violation. The first test is was there a "**donation**". If no donation the analysis stops. If there is a donation then the issue can then be determined under the exculpatory Section C of that article which permits Cooperative Endeavor Agreements. The generally understood meaning of the term donation correlates with gratuitous donations as defined by the Civil Code, and the constitution's use of the term envisions a gratuitous intent. There is no gratuitous intent by the Commission—in fact the Commission's intent is for the Nature Institute to manage and operate all aspects of all ten of its facilities.

The OIG also fails to recognize the independent nature of the Audubon Commission as provided by its originating legislation, Act 191 of 1914. The original legislation created an independent agency outside of the day to day structure of the City of New Orleans. The current City Charter perpetuated that status when it stated that the Commission was "continued in existence... with the same powers, duties, and functions enjoyed by the Commission previously. It specifically mentioned as provided in "State" law which was Act 191 of 1914. See Section 5-801 and particularly Section 5-803 which provided only limited structuring of the Commission as a part of the City. By providing limited obligations of the Commission it excluded it a department of the City subject to other obligations within the Charter.

Further the OIG completely ignores the authority granted to the Audubon Commission to enter into the very contract which the OIG says is unconstitutional. The Agreement absolutely complies with the publicly adopted Ordinance which provides the Nature Institute authority to operate the Audubon facilities. The agreement does exactly that.

II. Executive Compensation

Finding 1:

The Institute *may* have violated the Louisiana Constitution because it used Commission funds to pay \$447,695 in bonuses and on-call pay to employees.

Response:

In order for this finding to have any validity one must assume that the payments by the Commission of these bonuses are a gratuitous donation and as such violate La. Const. art VII § 14(A) which they do not. Finding 1 addresses payroll expenses incurred for performance bonuses paid to Audubon Nature Institute employees. The over 900 (pre-Covid-19) full and part-time dedicated employees who steward Commission property, care for endangered and threatened animals, and manage and operate Commission facilities are Audubon Nature Institute employees, not public employees. Audubon notes that 604 Audubon employees received the performance bonus, and no executive received a performance bonus.

Audubon has reviewed this operational finding and has already started the process of evaluating alternatives for bonus structures and will be implementing a revised means of segregating funds generated by the Nature Institute for Nature Institute employee-related operational expenses, including establishing a separate bank account for such expenditures, rather than a separate accounting code. ***This finding is being resolved.***

Audubon has updated its on-call pay policies since the OIG audit and we are identifying supporting documentation at this time. As the OIG is aware, in response to the COVID-19 global pandemic and the devastating economic impact on Audubon, we have had to lay off or furlough over 500 employees. Remaining employees are performing all essential functions of the organization and priorities remain sustaining the viability of Audubon and the public facilities it supports. Audubon has already started the process of implementing a revised means of segregating funds generated by the Nature Institute for Nature Institute employee-related operational expenses, including on-call pay for those employees required to be on-call for emergency purposes. We will provide the OIG with additional information as it becomes available. ***This finding is being resolved.***

Finding 2:

The Institute's executive compensation *may* have violated La. Const. art VII § 14(A) because compensation was not comparable to other similar sized organizations and, therefore, *may* have been gratuitous in nature.

Response:

There is no dispute that the Audubon Nature Institute implemented a policy for evaluating and setting executive compensation and followed that policy. There is also no evidence that Audubon's executive compensation isn't completely earned, and therefore, not gratuitous.

First, this finding falls well outside the jurisdiction of the OIG. It is highly questionable that the OIG is using public funds and resources to make recommendations to a private non-profit board on alleged best practices. The OIG's *opinion* (not fact based on evidence or legal requirement) regarding executive compensation carries no weight and serves no purpose other than to sensationalize the issue of executive compensation at Audubon. Somehow the OIG unilaterally determines the standards for executive compensation while ignoring the expertise of those board members who participated in the process. The OIG seems to ignore the longevity and success of the executive team and the competitiveness of the marketplace.

Further, the OIG has acknowledged that Audubon has a written policy on executive compensation and has found *no instance* where this policy was not followed. As such, it appears that although the OIG acknowledges that the Nature Institute Board followed its policy on executive compensation and conducted a complete comparative analysis to peer organization on which to base executive compensation—the OIG simply doesn't like it.

The Audubon Nature Institute maintains a robust policy on Executive Compensation and has fully complied with that policy. The compensation packages of the Chief Executive Officer and the Executive Vice President were determined by guidance provided by the IRS and nonprofit best practices, which sets forth a process for evaluating the total compensation packages of executives by obtaining valid comparable market data for comparable positions in for-profit and tax-exempt organizations and then reviewing individuals and market data and documenting a decision on a presumption of reasonable compensation.

The Compensation Committee of the Audubon Nature Institute considered:

- Comparison of leading zoos and aquariums executive compensation from comparable positions in peer market groups
- Independent consultant studies that concentrate on comparable Zoo and Zoological Societies with an emphasis on wildlife preservation and protection
- Independent consultant studies on non-zoological organizations that have a significant impact on their city's culture and economy
- Independent consultant studies on peer group comparable metrics such as number of employees, revenue, budget and assets

- Association of Zoos and Aquariums Compensation studies
- Review of Charity Navigator's nonprofit Executive Compensation Comparison

After a thorough review of comparable market data, the Compensation Committee recommended an executive compensation package to the Audubon Nature Institute Board's Executive Committee who approved a personal services agreement with the executives. This process is fully reflected in minutes of the Compensation Committee and the Executive Committee. This personal services agreement also sets forth the expectations and duties of the executives.

The Compensation Committee of the Board of the Audubon Nature Institute performs the necessary work to review and set salaries of executive leadership. Over the last four decades, the Compensation Committee has conducted thorough and professional analyses to set executive compensation packages.

It is imperative to recognize that the Audubon Nature Institute Board is not limited to considering peer comparable data in setting compensation. It is incumbent upon the Board to also consider intangible criteria to ensure that the organization is attracting and retaining the best talent to lead.

In setting executive compensation, the Nature Institute Board through its Compensation Committee and Executive Committee considered:

- Overall performance
- Length of service
- Experience in Zoo/Aquarium/Park management and operation of ten (10) separate facilities
- Substantial development and fundraising experience and successes
- Competition in the market
- Experience and success in securing state and federal capital funding
- Experience and success in securing conservation partnerships with other zoos and aquariums
- Incentive to continued employment with Audubon
- Leadership in the community and professional organizations including the Association of Zoos and Aquariums

Paramount to its consideration was the performance of Audubon's Chief Executive Officer. In setting compensation, the Board considered the overall success of the organization, due to the leadership of Ron Forman whose accomplishments include:

1. Transformed one of the worst zoos in the country into the 6th Best Zoo in the country, according to USA Today
2. Installed professional management to build a collection of museums dedicated to nature that millions of people have enjoyed, including some of the most underserved communities in our region

3. Opened the view of the Mississippi River to the New Orleans community and visitors in 1990 with the Aquarium of the Americas, the 3rd Best Aquarium in the country according to USA Today
4. Built the first national Insectarium in the United States, exposing the ecology of bugs to children around the world
5. Built the first center in the country that combines saving species with the breeding of endangered animals at the Audubon Species Survival Center and Audubon Center for the Research of Endangered Species. Having taken an old military outpost on the Westbank of New Orleans, this land now houses an historic partnership between the Audubon Nature Institute and the San Diego Zoo and Wild Animal Park
6. Rebuilt and reopened the Louisiana Nature Center in New Orleans East to its wilderness glory, incorporating trails next to the planetarium and newly designed main campus.
7. Established Woldenberg Park next to the French Quarter, a riverfront park enjoyed by millions of residents and visitors every year
8. Reignited Audubon Park through an extensive oak tree conservation and planting program, as well as on the Audubon Park batture, where thousands of children now play organized team sports, including special needs children at Miracle Field.
9. Managed capital projects for Audubon facilities on time and on budget, recruited top critical staff and Board positions, and raised millions of dollars to support all Audubon facilities
10. Served as President of the Association of Zoos and Aquariums, and on the Boards of the American Association of Museums, Chimp Haven and the Urban Conservancy. Civic work includes Chairman of the following: New Orleans Convention & Visitors Bureau, New Orleans Marketing Committee, Louisiana State Museum, New Orleans Chamber of Commerce, and the Louisiana Stadium Exposition District and on the Boards of the following: The Urban League of Greater New Orleans, New Orleans Jazz Orchestra, Tulane President's Council and New Orleans Business Council. He has received Woodrow Wilson Award for Excellence and was named New Orleanian of the Decade by New Orleans Magazine.

The OIG's characterization that the compensation "may have violated the Constitution" is both untrue, and reckless.

Additionally, the statement by the OIG that the executive compensation *may* violate "best practices" is misplaced. Criteria chosen only by the OIG is not a best practice standard. It is only a best practice in the mind of the OIG and not in this instance.

The opinion of the staff of the OIG does not and cannot replace the review and judgment of the non-profit board assigned to setting executive compensation. ***This finding is not based on any objective evidence and should be removed.***

Finding 3:

Although the executives' compensation was paid in accordance with terms of employment contracts, the executives' fringe benefit payments *may* have violated La. Const. art. VII, § 14(A) because no additional performance or duties were required of the executives to receive the additional compensation.

Response:

As was the case with respect to Finding No. 2, the conclusion regarding fringe benefits reflects the OIG's troubling eagerness to opine, without any statutory or jurisprudential support, that Audubon's conduct "*may*" violate the state constitution, while nonetheless leaving open the clear possibility that it equally "**may not.**"

Finding No. 3 exemplifies the OIG's willingness to use public funds to guess at issues of constitutionality at the expense of its auditee. Once again, the OIG does not cite one legal opinion for its wholly subjective determination that fringe benefits included in an executive compensation contract may violate the Constitution. Even worse, this finding ignores the express terms of the contract, which plainly sets forth the duties of the Chief Executive Officer in exchange for ***all compensation.***

Section II of the Agreement for Personal Services states clearly:

The Institute Agrees to: Pay the said L. Ronald Forman the agreed upon sum, detailed below in Section IV, ***as consideration for his performance of all the conditions of the contract.*** (emphasis added)

Section III states that the Chief Executive Officer agrees to:

Administer and operate the Audubon Park, Audubon Zoo, Audubon Aquarium of the Americas, Woldenberg Riverfront Park, Freeport McMoran Audubon Species Survival Center, Entergy IMAX Theatre, Audubon Louisiana Nature Center, Audubon Center for Research of Endangered Species, Audubon Wilderness Park, Audubon Insectarium and other facilities subject to the guidelines and policies established by the Audubon Commission and the Audubon Nature Institute, coordinate....facilities' operations, prepare and administer budgets and carry out liaison with governing authorities, coordinate architects, engineers, landscape architects, and consultants in building programs. The position demand total administrative responsibility for all personnel and development and carrying out of long-term planning recommendations.

Examples of the work shall include but not be limited to:

- The President-Chief Executive Officer shall be the Institute's chief executive officer and shall be responsible for executing the policies and projects of the Institute;
- The President-Chief Executive Officer shall have control over all personnel matters of the Institute;

- The President-Chief Executive Officer shall conduct all negotiations on behalf of the Institute;
- The President-Chief Executive Officer shall administer all fundraising efforts of the Institute;
- The President-Chief Executive Officer shall execute all contracts and agreements on behalf of the Institute.

The Agreement for Personal Services also lists all the skills and abilities required of the Chief Executive Officer.

Section IV *in its entirety* lists the compensation to be paid to the Chief Executive Officer. The description of the compensation makes clear that it is intended to afford the executive the opportunity to purchase life insurance on his own and pay for insurance premiums, which is not provided for by Audubon. The OIG contends that “no additional duties” were required to receive the “additional compensation.” No additional duties were required because the compensation was not “additional”—it was the full agreed upon compensation.

Simply because one element of compensation is described as “fringe” does not in any way change that it is part of the executive’s total compensation being paid in return for full performance by the executive. The OIG’s finding not only ignores the express contract language, it also ignores language from the Louisiana Legislative Auditor which states that compensation includes *everything* an employee or officer receives to compensate him or her for their work, including related benefits such as premiums for insurance and contributions to retirement.

The executives at Audubon were required, by contract, to perform all of the duties set forth in the professional services contracts in exchange for their total compensation. The OIG has not provided any evidence that the executives failed to perform the obligations set forth in the employment agreement. As such, the total compensation was earned and is, in fact, *the opposite of gratuitous*.

While Audubon completely disagrees with any characterization of executive compensation as gratuitous, it is certainly worth noting that the agreement in question was for 2011—nine years ago. The current agreement for personal services between the Institute and the CEO does not contain the language referenced by the OIG.

This finding ignores plain language in the employment contracts and violates the obligation of the OIG to consider objective evidence and should be removed. If not removed, the OIG should acknowledge that this finding has been resolved.

III. New Hire Process

Positive Finding 1—The Institute developed and adopted a new hire policy that complied with COSO’s best practices. The Institute’s internal controls over new hire processing were designed properly and implemented and operating effectively.

Response:

We are pleased that the OIG recognized that Audubon developed and adopted policies governing new hires and those policies complied with best practices.

IV. Payroll Processing

Finding 4:

Although the Institute developed a policy aligned with best practices, the Institute did not comply with the policy because hourly employees did not utilize the time reporting procedures; PTO information for salaried employees was not maintained; and Institute supervisors did not approve hourly and/or salaried employees' time.

Response:

Nonexempt employees' timesheets are now reviewed online by supervisors for completeness and accuracy. Supervisors approve exempt employees' timesheets. Exempt employee timesheet exceptions, e.g., PTO, Leave Without Pay and Jury Duty are approved. Prior to finalizing the bi-weekly payroll, the Payroll Administrator reviews all timesheets for completeness and reasonableness. We will continue to adhere to our policies on time approval and remind supervisors of their obligations.

PTO requests are no longer processed through paper forms. All PTO requests and approvals are now handled online through ADP Workforce Now.

The OIG Payroll Audit pertains to audit years 2012-2014. Several years ago, Audubon replaced the full hand bio-recognition scanners with biometric single fingerprint time clocks. The new clocks are more reliable and less prone to clock in/out issues. On occasion, hourly employees may have had issues with clocking in/out on the full hand bio-recognition scanners, however, all hours worked would have been verified and updated in ADP by the supervisors. ***This finding has been resolved.***

V. Termination Process

Positive Finding 2—The Institute developed and adopted a termination policy compliant with best practices. The Institute's internal controls over the termination process were designed properly and implemented and operating effectively.

Response:

We are pleased that the OIG recognized that Audubon properly adhered to its termination policies.

Finding 5:

Despite effective internal controls over the termination process, the Institute management could not verify all property was returned upon termination and prior to issuing each employees' final paycheck.

Response:

Audubon has maintained an asset policy since 2008. Audubon has used Sage Fixed Asset system to track all capitalized assets since 2010. Audubon barcodes and tags all movable assets over \$10,000 and we inventory annually. This also includes laptops and tablets and all assets regardless of value purchased with federal funds. Audubon also maintains an offboarding policy that ensures all protocols are followed upon termination of an employee.

It is also notable that the OIG already issued a finding that concluded:

Auditors randomly selected 40 employees terminated during calendar year 2014 for testing and noted:

- Payroll Status Change Forms were completed by the supervisor, approved by the departmental Vice President, Human Resources, and COS and included in the personnel file.
- Human Resources changed the employee status from “active” to “terminated” in ADP for all employees tested, and terminated employees did not receive payments for unused PTO.
- The Institute removed computer access for all terminated employees to ensure that terminated employees were unable to access company sensitive programs.

This finding has been resolved.