

Audubon Commission and Audubon Nature  
Institute

# **Purchase Cards and Expense Reimbursements Audit**

Final Report • December 18, 2019



**OIG** NEW ORLEANS OFFICE OF  
INSPECTOR GENERAL



December 18, 2019

Re: Audubon Commission and Audubon Nature Institute Purchase Cards and  
Expense Reimbursements Audit

I certify that the Office of Inspector General personnel assigned to this project are free of personal or other external impairments to independence.

Derry Harper  
*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 employee purchase card transactions and expense reimbursements for the period January 1, 2013 through December 31, 2014. The objectives of the audit were to determine if:

- The Institute's policies governing purchase card transactions complied with best practices and provided adequate controls to ensure all expenses were business related and allowed by law;
- The Institute's policies governing expense reimbursements were in compliance with best practices and provided adequate controls to ensure that all reimbursements 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 Audubon Commission (Commission) was a board within the Executive Branch of the City and was governed by the *Home Rule Charter of the City of New Orleans* (Charter).<sup>1</sup> The Commission was a public entity comprised of 24 board members who were each appointed to a six-year term by the Mayor of the City of New Orleans (City) 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).<sup>2</sup> The Audubon Facilities were and remain public assets held in the name of the Commission.<sup>3</sup> As a public entity, Commission funds were public funds and use of those funds was subject to La. Const. art. VII, Section 14(A) which prohibits the donation of public funds.

The Commission entered into a "Management and Cooperative Endeavor Agreement" (Contract) with the Institute, a private non-profit organization, to

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<sup>1</sup> Home Rule Charter of the City of New Orleans, Art. IV, Chap. 1, Sections 4-102 and Art. V, Chap. 8, Section 5-802.

<sup>2</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5-802.

<sup>3</sup> Home Rule Charter of the City of New Orleans, Art. IX, Chap. 3, Section 9-301(1) stated "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."

manage and to operate the Audubon Facilities<sup>4</sup> “on behalf of”<sup>5</sup> and “for the benefit of the Commission.”<sup>6</sup> In exchange for the services rendered to the Commission, the Institute received an annual \$50,000 management fee.<sup>7</sup> The Contract between the Commission and the Institute was a hybrid of a management agreement and a Cooperative Endeavor Agreement (CEA).

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. The Commission was required to maintain and administer the Operating bank account.<sup>8</sup> The Institute also deposited Commission funds (e.g. property taxes and ticket sales) in the Commission’s Operating bank account. The Institute was not required to obtain prior authorization of 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...”<sup>9</sup> 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.”<sup>10</sup> The Contract also required the Commission to “reimburse the Institute for all expenses that it incurs on behalf of the Commission...”<sup>11</sup> 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 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 financial statements.

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<sup>4</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013.

<sup>5</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.1.

<sup>6</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013.

<sup>7</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 5.

<sup>8</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.4.

<sup>9</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.3.

<sup>10</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.3 and Article 5.

<sup>11</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 5.

As a public body, the Commission was tasked with the specific purpose of conducting business for the City through its management of City-owned properties. The Commission has not separated itself from public entities in that it receives dedicated tax dollars, submits an annual budget to the Mayor and City Council, and is 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, would be subject to the same limitations and requirements constitutionally imposed on any other public funds.

## I. FINDINGS

- The Commission may have violated state and municipal law and prevailing legal authority when it entered into a hybrid contract with the Institute.
- The Institute may have violated the Louisiana Constitution because it used Commission funds to purchase \$33,961 in goods and services and paid \$4,718 in expense reimbursements for expenses that appeared to lack a public purpose. These expenses included various parties and gifts. When projected to the population, the Institute incurred \$209,483 on purchase cards and paid employees \$5,665 in expense reimbursements which lacked a public purpose.
- The Institute may have violated state law because it used at least \$220,898 of Commission funds to urge voters to support the "Vote 'Yes' for Audubon" 2014 millage campaign.
- The Institute did not obtain competitive bids for contracts, totaling \$308,650, which may have violated CAO Policy Memorandum 24(R) and state law.
- The Institute developed and adopted policies governing employee purchase cards and expense reimbursements, and those policies complied with best practices.<sup>12</sup> The Institute's controls over the issuance and cancellation of its purchase cards, as well as its review and approval of transactions, were also implemented and operating effectively.

On October 25, 2019, an Institute representative asserted that Finding # 1 was legally unsupported and disagreed with Finding # 2. In response to Finding # 3, the Institute asserted that it maintained a separate bank account for all 2019 millage expenditures. The Institute disagreed with Finding # 4 and asserted that it obtained quotes for similar events in following years. The Commission and the Institute overlooked that the contract between the Institute and the Commission contained no language or evidence that any transfer of funds was not gratuitous

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<sup>12</sup> Notwithstanding the exceptions noted in Findings 1 through 4.

or that the Commission would reasonably expect to receive a benefit or value equivalent to the amount being transferred thus disregarding the existing requirements of Louisiana law.

## RECOMMENDATIONS

To resolve these findings, the OIG recommends:

- The Commission should enter into a management agreement that includes specified services and fees/costs associated with those services. However, the expenses allowed by the management agreement should comport with the constitutional restrictions on use of public funds and existing case law.
- In lieu of a management agreement, the Commission should enter into a CEA with the Institute containing language and credible evidence that any transfer of funds is not gratuitous and that the Commission reasonably expects to receive a benefit or value equivalent to the amount being transferred. The CEA should fully comply with the *Cabela's Test* and a review of the entirety of the contractual arrangement utilized in *Cabela's*.<sup>13</sup>
- Any management agreement or CEA should comply with Home Rule Charter, Art. IX, Chap. 3, Section 9-314 (cooperative endeavors), Art. IV, Chap. 4, Section 4-401 (Dept. of Law Functions), Art. V, Chap. 8, Section 5-803 (Audubon Commission), City of New Orleans Executive Orders MJL 10-05, LC 18-01, and CAO Policy Memoranda 122(R) and 8(R), and should contain any other standard provisions required by City contracts and existing case law.
- The Institute and the Commission should each maintain separate bank accounts to segregate Commission and Institute funds and use those accounts to pay for each entity's respective expenses. Maintaining separate bank accounts also increases financial transparency and reduces the risk of the Institute spending Commission funds on prohibited donations or other expenditures prohibited by state and/or local laws.
- The Institute should revise its policies to recognize the public nature of Commission funds, including unconstitutional spending pursuant to Louisiana Constitution art. VII, Section 14(A). The Institute should require all employees and subsequent new hires to take an annual training to educate employees on prohibited expenses.
- The Institute should develop policies governing non-professional services, as well as service contracts with substantial materials and supplies components.

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<sup>13</sup> *Bd. of Directors of Indus. Dev. Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Prop. Owners, Citizens of City of Gonzales*, 2005-2298 (La. 9/6/06), 938 So. 2d 11, commonly referred to as "*Cabela's*."

## 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 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* when it defined no other obligations other than those set forth in the management agreement. The Louisiana Constitution permitted CEAs between public and private entities. However, funds spent pursuant to a CEA are public. Under a management fee structure, typically 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 nature of the funds into Institute funds and thus private. However, the inequities in the management fee structure and the ill-defined CEA improperly allowed the Institute to mischaracterize Commission funds as those spent under the terms of the management agreement. The Commission and the Institute have been operating in a manner that fails to recognize the contracting requirements of the State and City. These requirements ensure that best practices for the citizenry are being utilized in a transparent and cost-effective manner. The Commission also disregarded the basic principles of *Cabela's* in its application of a cooperative endeavor agreement.

During the course of the audit, the OIG identified approximately \$435,000 in which the Institute used Commission funds to pay for expenses that may have violated the Louisiana Constitution. The OIG also identified contracts totaling \$308,000 that the Institute did not obtain competitive bids which may have violated state law.<sup>14</sup> As of December 31, 2014, the Commission owed the Institute \$6.5 million despite the fact that the Institute used Commission funds to operate and manage the Audubon Facilities. Additionally, the Institute generated funds by fundraising "on behalf of" the Commission.<sup>15</sup> These findings indicate that the operating structure between the Institute and the Commission is not transparent and suggests that the Institute did not use Commission funds in the most cost-effective manner.

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<sup>14</sup> During 2013 and 2014, the Commission incurred a total of \$112 million in operating expenses (\$56.1 million in 2013 and \$55.9 million in 2014).<sup>14</sup> Of the \$112 million, this audit only includes purchase card transactions and expense reimbursements totaling \$12.7 million.

<sup>15</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013.

## I. FACTUAL AND LEGAL ANALYSIS

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The Audubon Park Commission (APC) was created by State Act for the City of New Orleans in 1914.<sup>16</sup> 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.<sup>17</sup> As of 1954, the City of New Orleans replaced the commission form of government with a Charter.<sup>18</sup>

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.<sup>19</sup> 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 enjoined<sup>20</sup> based, in part, on the rights of local governmental entities protected by La. Const. art. VI, Section 6.<sup>21</sup>

In 1996, the APC changed its name to the Audubon Commission (Commission) to reflect the city-wide presence of the Audubon Facilities.<sup>22</sup> Other sections of the Charter and City Code further delineated the Commission's place in City government. As a board<sup>23</sup> 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] functions as those prescribed in this chapter for officers and

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<sup>16</sup> *City of New Orleans, etc., et al v. The STATE of Louisiana, etc., et al*, 443 So.2d 5621, 565 (La. 1983)(commonly referred to as "City v. State").

<sup>17</sup> *City v. State*, 443 at 565-566, quoting Act 351 of 1948.

<sup>18</sup> *City v. State*, 443 at 566.

<sup>19</sup> *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.)

<sup>20</sup> *City v. State*, 443 at 573 (Since the City of New Orleans owns Audubon Park, Act 485 of 1983, which creates a new Audubon Park Commission as a political subdivision of the state of Louisiana, is an unconstitutional taking of the City's property without just compensation.) LSA-Const. 1974, Art. I, Section 4.

<sup>21</sup> *City v. State*, 443 at 572-573, fn.26.

<sup>22</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5-801.

<sup>23</sup> Home Rule Charter of the City of New Orleans, Art. IX, Chap. 1, Section 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.")

department heads,<sup>24</sup> unless otherwise provided by this Charter or applicable state or municipal law.”<sup>25</sup>

The Commission was charged with administering, operating, and maintaining the Audubon Facilities<sup>26</sup> 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.<sup>27</sup> The Audubon Facilities were public assets held in the name of the Commission.<sup>28</sup>

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. As a board within the Executive Branch governed by the Charter, the Commission’s administration and operations also had to comply with the Charter and state and local laws.<sup>29</sup>

As a public entity, the Commission’s funds were public funds. The Commission was only authorized to use its funds for purposes for which it had the 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)....”<sup>30</sup>

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).<sup>31</sup> The Commission received two dedicated property taxes to use for the operation and maintenance of some Audubon Facilities.<sup>32</sup> Since 1979, the Commission issued a

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<sup>24</sup> Home Rule Charter of the City of New Orleans, Art. IV, Chap. 1, Section 4-107 for discussion of powers and duties of officers and department heads.

<sup>25</sup> Art. IV, Chap. 1, Section §4-108.

<sup>26</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5-802.

<sup>27</sup> Ibid.

<sup>28</sup> Home Rule Charter of the City of New Orleans, Art. IX, Chap. 3, Section 9-301(1) stated “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.”

<sup>29</sup> Home Rule Charter of the City of New Orleans, Art. IV, Chap. 1, Section 4-102.

<sup>30</sup> Home Rule Charter of the City of New Orleans, Art. V. Chap. 8, Section 5-803 (1).

<sup>31</sup> *Audubon Commission Audits of Financial Statements December 31, 2014 and 2013*. April 30, 2015.

<sup>32</sup> 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 2019, the City levied .32 mills for this purpose. On November 4, 1986, voters approved a 35-year property tax commencing in 1987 and ending in 2021.

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. In other words, 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, Section 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.<sup>33</sup>

“The powers, duties, functions, administration, and operation of the Commission” were subject to the “Charter and other applicable state and municipal laws.”<sup>34</sup> As a public entity, the Commission was also required to “comply with all state and municipal public bid laws dealing with the procurement and disposition of property.”<sup>35</sup> City Council Ordinance 020272 permitted the Commission to contract with the Institute pursuant to the Ordinance and the Charter of the City of New Orleans.<sup>36</sup> The Charter of the City of New Orleans required the Commission to comply with municipal law.<sup>37</sup> Pursuant to MJL 10-05 any management agreement by the Commission must comply with City procurement policy. Article VII, Section 14(C) and Home Rule Charter of the City of New Orleans Art. IX, Chapter 3, Section 9-314 permitted a CEA between a City Commission and a private association or corporation. The Commission was required to comply with Section 9-314 to enter into a CEA. Furthermore, the Commission was subject to CAO Policy Memoranda 8(R), 24(R), and 122(R), municipal laws that pertain to procurement and apply to City boards and commissions.

The Institute, a private non-profit organization, managed and operated the Audubon Facilities “on behalf of”<sup>38</sup> and “for the benefit of the Commission”<sup>39</sup> through a Contract.<sup>40</sup> La. Const. art. VII, Section 14(C) permitted the state and its political subdivisions to engage in cooperative endeavors with any public or

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The property tax was dedicated to establish, acquire, construct, maintain, develop, and improve the aquarium and related facilities. In 2019, the City levied 2.99 mills for this purpose.

<sup>33</sup> La. Const. Art. VII, §14(A).

<sup>34</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5-801.

<sup>35</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5-803(4).

<sup>36</sup> Ordinance 020272, City of New Orleans, Section 2.

<sup>37</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5-801.

<sup>38</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.1.

<sup>39</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013.

<sup>40</sup> Ibid.

private corporations so long as the cooperative endeavor agreement was for a “public purpose.” In September 2006, the Louisiana Supreme Court ruled that “Subsection (C) ... authorizes cooperative endeavors among the stated entities, but does not serve as an exception to subsection (A).”<sup>41</sup>

Per the Contract, the Institute was required to perform the following management duties:

(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....<sup>42</sup>

In exchange for its services rendered to the Commission, the Commission paid the Institute a \$50,000 annual management fee.<sup>43</sup> The Contract required that:

[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....<sup>44</sup>

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 administered by the Commission....”<sup>45</sup> 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...”<sup>46</sup> and required the Commission to “pay for the cost and operation of the Audubon Facilities as detailed annually in the budget of the

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<sup>41</sup> *Cabela’s*, 05-2298, p. 14, 938 So.2d 11, 20 (citing *City of Port Allen, Louisiana v. Louisiana Mun. Risk Mgmt. Agency, Inc.*, 439 So.2d 399, 402 (La. 1983)).

<sup>42</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.1.

<sup>43</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 5.

<sup>44</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.4.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.3.

Institute and as approved by the Commission.”<sup>47</sup> The Contract also required the Commission to “reimburse the Institute for all expenses that it incurs on behalf of the Commission....”<sup>48</sup> 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. The funds in these three bank accounts were owned by the Commission as evidenced by the Commission’s year-end 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 financial statements.

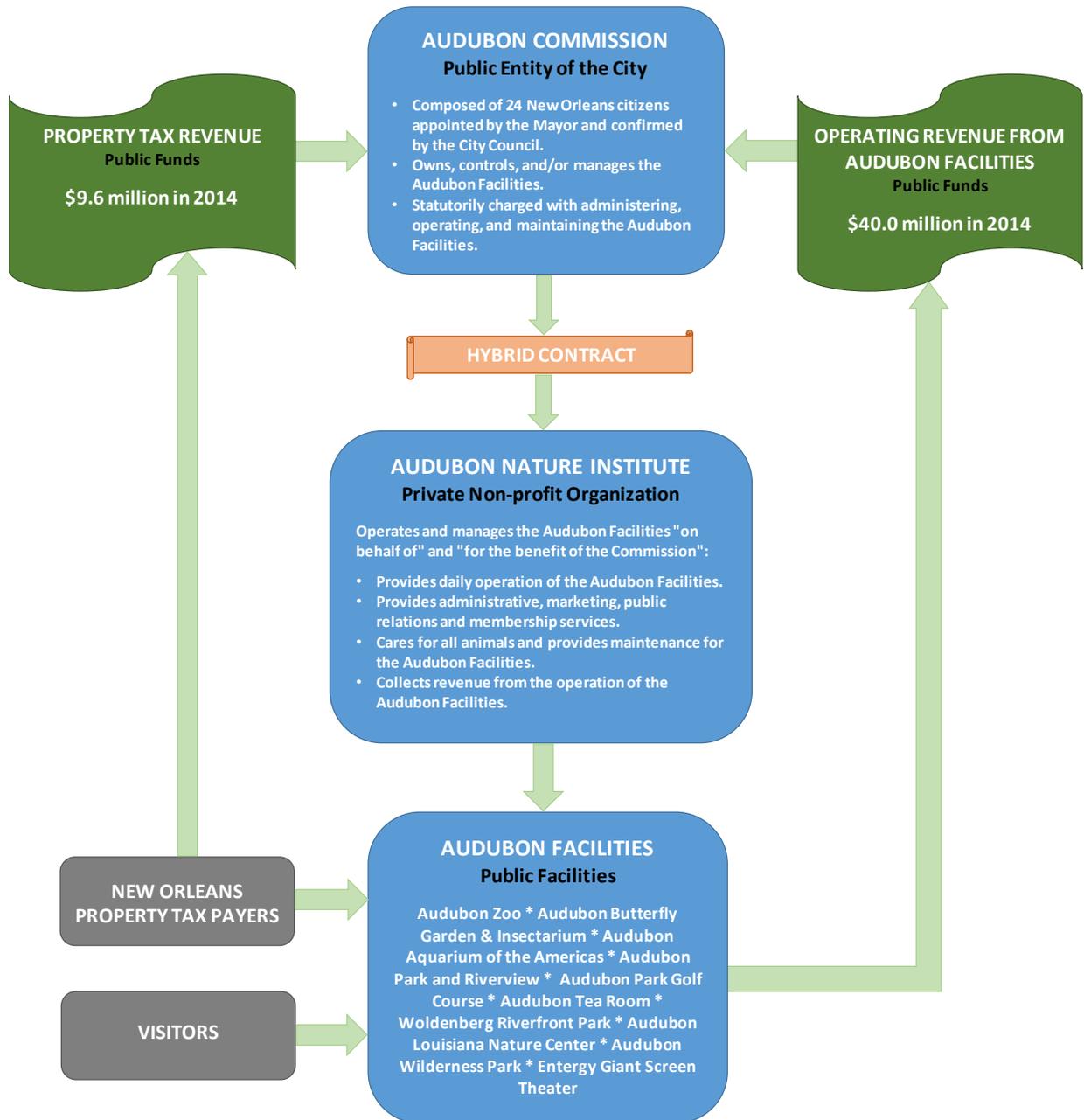
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<sup>47</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.3 and Article 5.

<sup>48</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 5.

Figure 1 illustrates the major funding sources of the Commission and the operating structure between the Commission and the Institute.

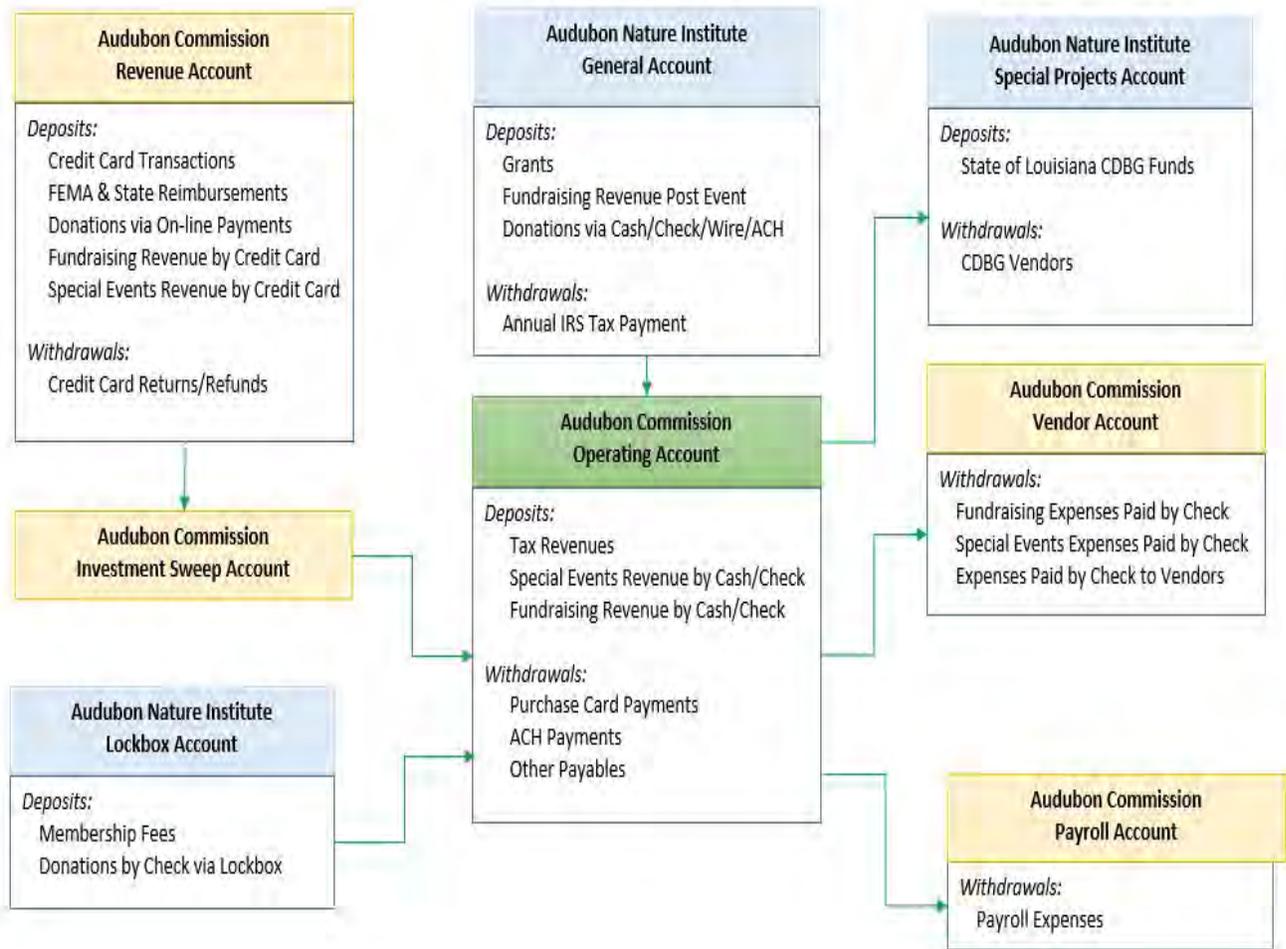
**Figure 1.** Commission and Institute Operating Structure.<sup>49</sup>



<sup>49</sup> Figure 1 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. See Appendix D for further illustration of the major funding sources of the Commission and the operating structure between the Commission and the Institute.

During the audit, the Commission and the Institute contended that the Institute was not subject to the Louisiana Constitution as it pertained to the expenditure of Commission funds because the Commission transferred its funds to the Institute. Figure 2 illustrates the flow of funds between the Commission and the Institute.

**Figure 2.** Flow of Funds between the Commission and the Institute.



## II. EXPENSES PROHIBITED BY THE LOUISIANA CONSTITUTION

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The Commission, as a board within the Executive Branch of the City, was a public entity. The Institute managed and operated the Audubon Facilities “on behalf of”<sup>50</sup> and “for the benefit of the Commission”<sup>51</sup> through the Contract.<sup>52</sup> La. Const. art. VII, Section 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.” The Contract required 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....”<sup>53</sup> To manage and operate the Audubon Facilities, the Institute was authorized “to expend the funds of the Commission....”<sup>54</sup> In exchange for its services rendered to the Commission, the Institute received an annual \$50,000 management fee.<sup>55</sup>

Even though the Institute, a private non-profit, was responsible for managing and operating the Audubon Facilities, it did so with public Commission funds subject to the provisions of the Louisiana Constitution. The Louisiana Constitution Article VII, Section 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.<sup>56</sup>

In January 2006, the Louisiana Attorney General opined that La. Const. art. VII, Section 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).”<sup>57</sup> In September 2006, the Louisiana Supreme Court ruled that “Subsection (C) ... authorizes cooperative endeavors among the stated entities, but does not serve as an exception to subsection (A).”<sup>58</sup>

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<sup>50</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.1.

<sup>51</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 5.

<sup>54</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.3.

<sup>55</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 5.

<sup>56</sup> La. Const. art. VII, Section 14(A).

<sup>57</sup> La. Atty. Gen. Op. No. 05-0367.

<sup>58</sup> *Cabela’s*, 05-2298, p. 14, 938 So.2d 11, 20 (citing *City of Port Allen, Louisiana v. Louisiana Mun. Risk Mgmt. Agency, Inc.*, 439 So.2d 399, 402 (La. 1983)).

In addition to the Louisiana Attorney General opinions cited below, the Louisiana Legislative Auditor provided examples of violations of Article VII, Section 14(A), including:<sup>59</sup>

- Paying bonuses;
- Purchasing flowers or gifts for employees or others; and
- Using public funds for parties.

During the course of the audit, the Commission and the Institute contended that the Institute was not subject to the Louisiana Constitution as it pertained to the expenditure of Commission funds because the Commission transferred its funds to the Institute. However, they could not provide evidence that a transfer of funds occurred.

The Louisiana Attorney General, interpreting *Cabela's* developed a three-pronged test to determine if an expenditure is permissible under Article VII Section 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.<sup>60,61</sup>

**Finding 1: The Commission may have violated state and municipal law and prevailing legal authority when it entered into the hybrid Contract with the Institute.**

In August 2001, the City Council and the Mayor adopted City of New Orleans Ordinance No. 020272, Calendar No. 23,767.<sup>62</sup> The Ordinance, which credited Act 191 of 1914 for the creation of the Commission, authorized the Commission to enter into an agreement with the Institute for the operation, care, control and management of the Audubon Facilities subject to “terms and provisions of any applicable State Acts and the Charter of the City of New Orleans....” Any agreement could be a contract or lease. The Ordinance generally permitted the Commission to determine the terms, conditions and duration of any agreement

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<sup>59</sup> "Checklist of Best Practices in Government," Louisiana Legislative Auditor, January 2012.

<sup>60</sup> La. Atty. Gen. Op. No. 09-0018. These factors incorporate the three-prong test in *Cabela's*.

<sup>61</sup> *Cabela's*.

<sup>62</sup> City of New Orleans Ordinance No. 020272, Calendar No. 23,767 adopted by the Council and the Mayor, August 13, 2001.

and the powers of the Commission provided by the City Charter were not be diminished or restricted. The Ordinance also required the Institute to provide to the Commission, the Mayor and the City annual budgets and financial statements. The Institute was also required to comply with Louisiana Public Bid Law. The Ordinance included no duration and no reference to CEAs.

The Contract entered into by the Commission and the Institute was entitled a "Management and Cooperative Endeavor Agreement." This Contract also referred to Act 191 of 1914 for the creation of the Commission and its recognition in the Charter in Section 5-801, *et seq.* Because the Contract between the Commission and the Institute was a hybrid of a management agreement and a CEA, the OIG could not determine if Commission funds were spent under the terms of a management agreement or CEA. The terms of the Contract permitted the Institute to obfuscate the use of Commission funds. The contractual language supporting the management agreement included the Institute's extensive obligations in return for a \$50,000 fee. The Contract references two CEA provisions which together did not comply with *Cabela's*. While some elements of the *Cabela's* test were met, compliance with the third *Cabela's* factor could not be determined because of the hybrid nature of the Contract. According to the Contract, the relationship between the Commission and the Institute "has resulted in tremendous benefits to each organization, as well as benefitting the facilities owned by the Commission and operated by the Institute."<sup>63</sup> There were no provisions in the Contract stating or demonstrating how additional Commission funds would be transferred to the Institute or that the Commission would, as a result, receive additional benefits.<sup>64</sup>

According to Article IX, Chapter 3, Section 9-914(3) and CAO Policy Memorandum 8(R), cooperative endeavor agreements for longer than one year must be advertised/published and approved by City Council before being executed.<sup>65</sup> The OIG noted that the Contract was executed on October 24, 2013, and was neither advertised for public comment nor approved by City Council.

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<sup>63</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. p.3: "Whereas, the Commission and the Institute agree that it is to their mutual benefit to enter into this agreement."

<sup>64</sup> "In the absence of any other evidence, these statements, standing alone, would be insufficient to allow us to conclude a non-gratuitous intent on the parts of the State and the City. Taken as parts of the Agreement and related documents as a whole, however, they provide insight into the intent of the parties, and reveal that neither the State nor the City intend to enter into a gratuitous contract with *Cabela's* and *Carlisle*." *Cabela's* at 24.

<sup>65</sup> "Professional Services Contracts Instructions." Attachment to City of New Orleans, Chief Administrative Office, Policy Memorandum No. 8(R) revised as of September 24, 2014. The attachment was revised as of May 7, 1999.

CAO Policy Memorandum 8(R) also required specific and standard language in the contract. For example, the OIG noted the Contract did not include standard and required provisions in City contracts such as the audit and inspection clause, incorporation into subcontracts, convicted felon statement, non-solicitation statement, prohibition of financial interest in agreement, prohibition on political activity, and living wage and disadvantaged business enterprise requirements.

**Finding 2: The Institute may have violated the Louisiana Constitution because it used Commission funds to purchase \$33,961 in goods and services and paid \$4,718 in expense reimbursements for expenses that appeared to lack a public purpose. When projected to the population, the Institute incurred \$209,483 on purchase cards and paid employees \$5,665 in expense reimbursements which lacked a public purpose.**

The Institute issued approximately 220 purchase cards of which 35 were departmental cards.<sup>66</sup> Between January 1, 2013, and December 31, 2014, Institute employees incurred \$12.8 million in expenses on purchase cards, and the Institute reimbursed its employees \$108,814 for expenses. All expenses were paid using Commission funds because they were paid directly from the Commission's Operating or Vendor bank accounts.

**Purchase Cards.** Auditors tested 393 purchase card transactions, totaling \$800,807, and noted (13) thirteen questionable purchase card transactions, totaling \$33,961.

These exceptions, when projected to the \$12.8 million purchase card population, resulted in a projected error of \$209,483. Refer to Figure 3.

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<sup>66</sup> Departmental cards are issued in the name of a particular department, not an individual.

**Figure 3. Purchase Card Projection.**

	<b>Population 1: Contractual &amp; Professional Service Contracts</b>	<b>Population 2: Travel Related, Recognition, Entertainment &amp; Miscellaneous</b>	<b>Population 3: All Other Expense Types</b>	<b>Total</b>
<b>Description</b>	<b>Amount</b>			
Dollar amount of misstatement in the sample	\$0	\$31,628	\$2,333	\$33,961
Dollar amount of total purchase card transactions tested in the sample	\$440,732	\$113,667	\$246,408	\$800,807
Purchase card population	\$860,270	\$885,675	\$11,023,615	\$12,769,560
Projected misstatement	\$0 <sup>67</sup>	\$86,998 <sup>68</sup>	\$122,485 <sup>69</sup>	\$209,483

The Louisiana Attorney General consistently opined that public funds cannot be used to pay for luncheons, banquets, parties or employee gifts because such expenses constitute a donation of public funds and are expressly prohibited by the Louisiana Constitution.<sup>70</sup>

Although the Institute implemented procedures to ensure each transaction was reviewed and approved prior to payment, the following expenses in Figure 4 lacked a public purpose.

<sup>67</sup> Based on this sample, auditors inferred with a confidence of 95 percent that the most likely total error is zero dollars in Population 1.

<sup>68</sup> Based on this sample, auditors inferred with a confidence of 95 percent that the most likely total error is \$86,998 in Population 2 and the total error in the population does not exceed \$125,373.

<sup>69</sup> Based on this sample, auditors inferred with a confidence of 95 percent that the most likely total error is \$122,485 in Population 3 and the total error in the population does not exceed \$569,101.

<sup>70</sup> La. Attorney General Opinion No. 03-0387 stated, "...in general, the payment or reimbursement for food, drink, or the expenses associated with luncheons, banquets, parties or similar functions, from public funds, is improper under La. Const. Art. VII, Sec. 14." La. Attorney General Opinion No. 00-0039 opined that public funds may not be used to "...purchase gifts for ... employees because such purchase would be tantamount to a donation of public funds which is expressly prohibited by the Louisiana Constitution."

**Figure 4.** Prohibited Donations Incurred on Purchase Cards.

<b>Amount</b>	<b>Expense Description</b>	<b>Vendor</b>
\$ 24,690	Audubon employee holiday party - partial payment	Mardi Gras World
\$ 2,333	Po-boys for zoo employee recognition tailgate party	Parkway Bakery
\$ 1,882	Food for Audubon employee Saints tailgate	Parkway Bakery
\$ 1,560	Scales and Ales tickets for facilities staff	Audubon Zoo
\$ 823	Prizes for employee holiday party - iPad / laptop / tablet	Wal-Mart
\$ 670	Employee recognition tailgate party	Plum Street Snoballs
\$ 660	Prizes for employee holiday party - Two HD televisions	Newegg.com
\$ 636	Party for volunteers	DJ Music By Request
\$ 319	Prizes for employee holiday party - iPad Mini	Target
\$ 141	Volunteer recognition - Audubon Free Day	Sam's Club
\$ 139	AZA welcome bags for Inspectors	Wal-Mart
\$ 58	Intern luncheon	Honeybaked Ham
\$ 50	Gift cards for State of the Zoonion prizes	Rouses Market
<b>\$ 33,961</b>	<b>Total Prohibited Donations on Purchase Cards</b>	

The Louisiana Attorney General opined on the issue of whether or not the Louisiana Constitution prohibited public funds from being used to purchase meals and other forms of recognition for volunteers, stating:

...it is the reasonableness of the expenditure under the circumstances, which controls. Thus, serving coffee or soft drinks, and perhaps a moderately priced lunch or snacks, to [volunteers] attending an all day workshop would appear reasonable. Serving reasonable meals to volunteer[s] ... attending lunch time meetings scheduled to accommodate them at a time when they are not otherwise required to be in attendance at their places of regular employment would also seem reasonable. Serving meals at brief meetings, particularly meetings that could be scheduled at times other than meal times would appear to be unreasonable.... [W]e are constrained to advise that public funds cannot be utilized to purchase food for, or defray the cost of, a [volunteers'] banquet.<sup>71</sup>

Therefore, meals served to volunteers during workshops and trainings may be permitted provided the meals are moderately priced and served at a time when the volunteers would not otherwise be in attendance. Any other types of meals purchased for volunteers with Commission funds would likely be prohibited by the Louisiana Constitution. The Institute may have violated the Louisiana Constitution when it used Commission funds to pay for volunteer parties, such as hiring a disc jockey.

<sup>71</sup> La. Atty. Gen. Op. No. 03-0157.

**Expense Reimbursements.** Auditors tested 99 expense reimbursements, totaling \$64,577. The reimbursements tested included 100 percent of the reimbursements to the Institute’s executive employees. The 20 reimbursements to executive employees totaled \$18,198 during the scope period and auditors noted no questionable expenses. Additionally, auditors randomly sampled 79 reimbursements to non-executive employees during the scope period, totaling \$46,379. Auditors noted seven questionable expenses, totaling \$4,718.<sup>72</sup> These seven exceptions, when projected to the employee expense reimbursement population of \$90,616, resulted in a projected error of \$5,665. Refer to Figure 5 for details.

**Figure 5.** Expense Reimbursement Projection.

Description	Population 1: Executive Reimbursements	Population 2: Employee Reimbursements	Total
Dollar amount of misstatement noted in the sample	\$ 0	\$ 4,718	\$ 4,718
Dollar amount of total expense reimbursements tested in the sample	\$ 18,198	\$ 46,379	\$ 64,577
Expense reimbursement Population	\$ 18,198	\$90,616	\$ 108,814
Projected misstatement	\$0 <sup>73</sup>	\$5,665 <sup>74</sup>	\$5,665

In four instances, Institute employees received reimbursements, totaling \$4,566, per verbal agreements as part of their job offers. The following agreements should have been documented in those employees’ job offers to evidence that the reimbursements were part of the contract for employment and not a bonus, which was prohibited by the Louisiana Constitution:

- An employee was reimbursed \$1,200 for agreed-upon moving expenses; and
- An employee received three reimbursements, totaling \$3,366, for COBRA expenses.

<sup>72</sup> In addition to the four exceptions discussed in the report, auditors also noted three minor questionable reimbursements, totaling \$152. The questionable reimbursements were for supplies for a holiday party, an airline seat upgrade, and a magazine.

<sup>73</sup> Because auditors sampled 100 percent of Population 1, they could infer with a confidence of 100 percent that the total error in the population was zero dollars.

<sup>74</sup> Based on this sample, auditors inferred with a confidence of 95 percent that the most likely total error was \$5,665 in Population 2 and the total error in the population did not exceed \$9,278.

The Louisiana Attorney General opined that public funds may be used to reimburse employees for expenses, such as moving costs,

... if the moving expenses were a part of the contract of employment. When such expenses are not part of the bargained for price of employment, they must be viewed as a bonus payment. Such a payment would be in violation of Article VII, Section 14 of the 1974 Louisiana Constitution.<sup>75</sup>

The Louisiana Attorney General also opined that public funds may be used to reimburse employees for the cost of insurance premiums, such as COBRA, but cautioned,

... although a political subdivision may pay the cost of insurance premiums for its employees, the agreement or contract of insurance must be in place before the payments are authorized, and past payments may not be reimbursed.... Unless and until there is an agreement or contract to pay these premiums on behalf of the employees, there is no obligation on the part of the political subdivision to make the payment; therefore the reimbursement would constitute an unconstitutional donation of public funds.<sup>76</sup>

The Commission and the Institute contended that the questioned reimbursements,

... were conditions of job offers made to recruit highly qualified and specialized employees and were neither gratuitous nor violative of La. Const. Art. VII, §14(A). La. Attorney General Opinion No. 81-13 cited by the Inspector General states that public funds may be used to reimburse employees for moving expenses if the moving expenses were part of the contract of employment—it does not require a written contract for employment.

Auditors agreed that a written contract was not required, but the Institute established a practice of documenting these types of agreements in other employees' job offers. Therefore, auditors could not conclude that these reimbursements were in fact part of the contract of employment and not a bonus prohibited by the Louisiana Constitution.

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<sup>75</sup> La. Atty. Gen. Op. No. 81-13.

<sup>76</sup> La. Atty. Gen. Op. No. 10-0164.

**Recommendation 1: The Commission should enter into a management agreement that includes an appropriate management fee for services provided or enter into a CEA with the Institute that comports with constitutional and municipal requirements.** Any future contract between the Commission and the Institute should be either a management agreement with specified services and fees/costs associated with those services or a CEA. A clearly defined contract, which is properly procured in accordance with municipal laws, will promote transparency and arms-length transactions between the Commission and the Institute.

If the Commission chooses to operate under a management agreement, it should determine a flat management fee which would pay for any and all services/expenses incurred by the Institute. The Commission could use the annual budget as a tool to determine a reasonable management fee. The Institute would be fiscally responsible to operate within the established budget because it would absorb any budget deficits.

If the Commission opted to enter into a CEA with the Institute, at a minimum, the CEA must:

1. Clearly identify the public purpose for the expenditure or transfer that comports with the governmental purpose that the Commission has the legal authority to pursue;
2. Clearly describe how the Commission expects to receive at least an equivalent value in exchange for the expenditure or transfer of public funds; and
3. Outline the reciprocal obligations between the parties to ensure any transfer of funds does not appear to be gratuitous.

All expenses incurred under a CEA must comport with the constitutional restrictions on use of public funds.

As is required in all City contracts, the Commission and the Institute should include standard and required provisions in the new management agreement or CEA, including the audit and inspection clause, incorporation into subcontracts, convicted felon statement, non-solicitation statement, prohibition of financial interest in agreement, prohibition on political activity, and living wage and disadvantaged business enterprise requirements.

Any management agreement or CEA should comply with any applicable state and/or municipal laws, regulations, executive orders, CAO Policy Memoranda, and prevailing case law.

**Recommendation 2: The Institute should maintain separate bank accounts to segregate Commission and Institute funds. The Institute should revise its policies to recognize the public nature of Commission funds, including unconstitutional spending pursuant to Louisiana Constitution art. VII, Section 14(A).**

The Institute and the Commission should maintain separate bank accounts with their respective funds. The Institute should use the appropriate bank account(s) to pay for each entity's respective expenses. Maintaining separate bank accounts also increases financial transparency and reduces the risk of the Institute spending Commission funds on prohibited donations or other expenses prohibited by State and/or local laws. Maintaining Institute funds separately from Commission funds may permit purchases that would otherwise be prohibited, such as a holiday party for Institute employees, so long as such purchases are paid with Institute funds.

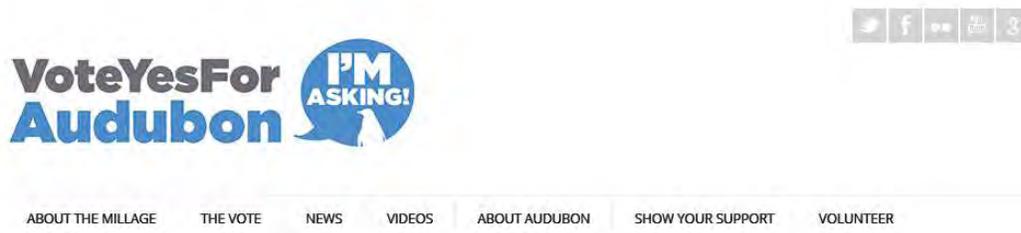
Because the Commission and the Institute incorrectly concluded the Institute was not subject to the Constitution as it pertained to the expenditure of Commission funds, the Institute did not incorporate language in its policy that prohibited donations. The Institute should revise its policies to include language on prohibited donations and the three-prong test set forth in *Cabela*. Incorporating this information into the Institute's policies memorializes the information in an easily accessible format and gives employees a permanent reference guide. To distinguish between bonuses and the bargained for price of employment, the Institute should also revise its policy to require written documentation for employment contracts. The Institute's inconsistent practice of documenting employment contracts resulted in prohibited donations.

The Institute issued approximately 220 purchase cards to its employees. The Institute did not provide training to educate its employees on prohibited donations; and, therefore employees did not know they may have incurred prohibited expenses. In conjunction with the policy changes, and to ensure that all employees with purchasing authority are aware of the types of expenditures prohibited by the Constitution, the Institute should develop a training program to educate current and future 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 employees and be required as part of the orientation process for new employees.

### III. VOTE “YES” FOR AUDUBON CAMPAIGN

In March 2014, New Orleans voters voted against a millage that would have raised property taxes to subsidize operations at the Audubon Zoo, the Audubon Aquarium, and the Audubon Insectarium for the next 50 years. Prior to the March 15, 2014 vote, the Institute launched its “Vote ‘Yes’ for Audubon” campaign, which urged voters to vote for the millage. Figure 6 shows a cached screenshot from the Vote “Yes” for Audubon official website.<sup>77</sup>

**Figure 6.** “Vote ‘Yes’ for Audubon” Official Website Logo.



**Finding 3: The Institute may have violated state law when it used at least \$220,898 of Commission funds to campaign for voters to support the “Vote ‘Yes’ for Audubon” 2014 millage campaign. The Institute also may have violated state law when it filed untimely campaign finance reports.**

During testing, auditors noted that the Institute spent \$12,575 of Commission funds to urge electors to vote for the 2014 millage.<sup>78</sup> The Institute may have violated La. Const. art. XI, Section 4, which stated,

No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated to a candidate or political organization.

The Institute reported spending at least \$291,619 on the “Vote ‘Yes’ for Audubon” campaign to the Louisiana Board of Ethics. These expenses included an official website, t-shirts, signage, phone calls, direct mailings, and television and radio advertisements, which urged voters to “Vote ‘Yes’ for Audubon.” The Institute used Commission funds to pay for at least \$220,898 (76 percent) of the reported

<sup>77</sup> The Institute’s official millage website, [voteyesforaudubon.com](http://voteyesforaudubon.com), was deactivated after the March 15, 2014 millage vote.

<sup>78</sup> Auditors noted one of the 393 purchase card transactions tested was an \$11,985 advertising expense to urge voters to support the millage. Additionally, two of the 99 reimbursements tested, totaling \$590, were for “Vote Yes” materials.

campaign expenses.<sup>79</sup> Because the Institute used Commission funds to urge the public to vote for the millage, these “Vote ‘Yes’ for Audubon” campaign expenses may have violated the Louisiana Constitution.

The Louisiana Attorney General has consistently opined that public resources cannot be used to support a millage on a public ballot, stating “[An organization] may not use public resources for printing material to lobby for or against the proposed tax measure....”<sup>80</sup>

The Commission and the Institute contended,

It is the Institute’s responsibility under the CEA to fundraise on behalf of the Commission, and the expenses related to the 2014 millage were incurred by the Institute.

The Institute manages a bank account in the name of the Commission, and utilizes account codes to delineate the source and use of the money in that bank account. The Institute receives funds into the Commission bank account and writes checks out of the Commission bank account. If the source of the funds is Institute fundraising, the revenue is coded to the Institute. If those funds are used for fundraising, be it for Zoo to Do or a millage campaign, the expense is also coded to the Institute and matched against the funds raised by the Institute.

...[F]or the 2019 millage campaign, all funds used to support that campaign were Nature Institute funds, raised by the Nature Institute and maintained in a separate Nature Institute bank account.

In exchange for \$50,000 paid by the Commission, 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 by the Contract and the City to be “maintained and administered by the Commission....”<sup>81</sup> The Institute used the Commission’s Operating bank account to transfer funds to the Commission’s Vendor 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 financial statements**. The Institute paid for campaign expenses directly from the Commission’s bank accounts. The Institute recorded millage expenses in its financial

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<sup>79</sup> Auditors traced 76 percent of the campaign expenses to the purchase card statements or the check register, all of which were paid using Commission funds from the Commission’s Operating or Vendor bank accounts.

<sup>80</sup> La. Atty. Gen. Op. No. 16-0054.

<sup>81</sup> *Management and Cooperative Endeavor Agreement Between the Audubon Commission and the Audubon Nature Institute, Inc.* October 24, 2013. Article 4.1.4.

statements, but the Institute also recorded a liability to the Commission for those expenses. In other words, the accounting entries relied on by the Commission and the Institute indicated the Institute would “pay back” the Commission for the campaign expenses the Commission paid on behalf of the Institute. If the funds were Institute funds, there would be no need for the Institute to “pay back” the Commission.<sup>82</sup>

The Institute may have violated state law because it did not file required campaign finance reports with the Board of Ethics timely.<sup>83</sup> State law required the Institute to file reports with the Louisiana Board of Ethics for all expenditures incurred for the 2014 millage campaign.

La. R.S. 18:1486(A)(1) required,

Any person, including a political committee, who receives and accepts any contribution, loan, or transfer of funds, or makes any expenditure in support of or in opposition to a proposition or question submitted to the voters shall be required to file reports of such contributions and expenditures.

La. R.S. 18:1486(C)(1) stated,

The reports required ... shall be filed not later than the thirtieth day prior to the election, which shall be complete through the fortieth day prior to the election, not later than the tenth day prior to the election, which shall be complete through the twentieth day prior to the election....

The Institute failed to file campaign finance reports with the Louisiana Board of Ethics by the required deadline. Two of the expenditure reports were required to be filed 30 days and 10 days prior to the March 15, 2014 millage vote, but the Institute did not file any reports until April 17, 2014.

The purpose of filing the finance reports was to provide information to the public prior to the millage vote, regarding who provided the Institute with funds for the “Vote ‘Yes’ for Audubon” campaign and how those funds were spent. Because the reports were not filed until after the millage vote, the Institute failed to adequately inform voters of the amount of Commission funds it used to finance the “Vote ‘Yes’ for Audubon” campaign.

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<sup>82</sup> Despite the Institute using Commission funds to maintain and operate the Audubon Facilities, the Commission reported a liability to the Institute totaling \$6.5 million as of December 31, 2014. As of December 31, 2018, that liability decreased to \$2.3 million.

<sup>83</sup> The Institute’s payment of late-filing penalties was previously reported by The Times-Picayune: McClendon, Robert. “Audubon Institute spends \$271,000 on failed campaign; \$2,440 for late-filing penalties.” *Nola.com*, April 18, 2014. Accessed August 22, 2017. [https://www.nola.com/news/politics/article\\_aec852ad-90d5-5255-9ba8-2b3b97803211.html](https://www.nola.com/news/politics/article_aec852ad-90d5-5255-9ba8-2b3b97803211.html).

La. R.S. 18:1505.4(A)(1) required,

Any candidate, the treasurer or chairman of a political committee, or any other person ... who knowingly fails to file or who knowingly fails to timely file any such reports as are required by [state law] may be assessed a civil penalty ... for each day until such report is filed.

As a result of filing the 2014 reports after their respective deadlines, the Institute paid filing penalties of \$2,200. The filing penalties were paid with Commission funds from the Commission Vendor bank account, which was not compliant with Louisiana law or controlling case law.

**Recommendation 3: In addition to Recommendation 2, the Institute should revise its policies to prohibit expenses that do not comply with Louisiana Constitution Article XI, Section 4. The Institute should monitor deadlines to ensure it reports all campaign contributions received and expenses incurred by the deadlines established by state law.**

The Commission was required to “comply with all state and municipal public bid laws dealing with the procurement and disposition of property” (i.e. Public Bid Law).<sup>84</sup> CAO Policy Memoranda 8(R), 24(R), and 122(R) were municipal laws that pertained to procurement and apply to City boards and commissions. The purpose of Louisiana Public Bid Law was to ensure that public entities received the lowest price when purchasing materials and supplies or procuring public works projects with public funds. Louisiana Public Bid Law did not apply to professional or non-professional service contracts; however, the State of Louisiana and the City of New Orleans established policies governing procurement of these services to ensure all services were cost-effective. The Institute used Commission funds (i.e. public funds) to pay for the operation of the Audubon Facilities.

**Finding 4: The Institute did not obtain competitive bids for contracts, totaling \$308,650, which may have violated CAO Policy Memorandum 24(R) or state law.**

Auditors noted purchase card payments for contracts with two vendors, which CAO Policy Memorandum 24(R) required the Institute to obtain bids or quotes. The Institute failed to obtain bids or quotes for those contracts totaling \$308,650 during the scope period.<sup>85</sup> The contracts were as follows:

- The Institute spent \$278,860 for search engine optimization services provided by Search Influence.
- The Institute spent \$29,790 on a contract with Mardi Gras World for a 2014 holiday party for Institute employees.

The Institute’s policy may have violated CAO Policy Memorandum 24(R) requiring competitive bids for non-professional service contracts. The Institute used Commission funds, totaling \$278,860, during the period tested for search engine optimization services provided by a single company. The City’s policy stated “[p]rocurring officials will prepare and issue written bid invitations in all movables and non-professional services procurements valued \$20,000 or more per year.”<sup>86</sup>

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<sup>84</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5-803 (4).

<sup>85</sup> Auditors noted 50 exceptions out of 393 purchase card transactions tested for contracts with two vendors, totaling \$237,950, which required the Institute to obtain bids or quotes. Forty-nine of the transactions tested, totaling \$213,260, were for search engine optimization services provided by Search Influence and one transaction tested was a \$24,690 payment to Mardi Gras World for a 2014 holiday party for Institute employees. Total purchase card payments for contracts with the two vendors totaled \$308,650 during the scope period.

<sup>86</sup> City of New Orleans, Chief Administrative Office, Policy Memorandum No. 24(R) revised as of March 28, 2008 stated policies and procedures to obtain non-professional services. CAO Policy Memorandum 24(R), Section 5(D)(1)(b). CAO Policy Memorandum No. 24(R) was amended on September 3, 2019, and replaced this older version.

The Institute's policy required quotes or bids for contracts for procuring professional services.<sup>87</sup> However, the Institute did not have policies governing procurement of non-professional services, which could result in it receiving services that are not cost-effective. The Commission should adhere to state and municipal procurement policies as required by the Charter.<sup>88</sup>

The Commission and the Institute contended,

Search Influence provided online advertising, Google Text, Facebook ads and social media services. The services provided to the Institute by Search Influence do not meet the definition of a professional service under the Institute's procurement policy and were simply not subject to the requirements of a competitive selection process.

The Institute may have violated Louisiana Public Bid Law and its own policy when it did not obtain competitive bids for a contract that had a substantial materials and supplies component. Even if the Institute had obtained competitive bids for the contract in question, the OIG contends the contract also may have violated the Louisiana Constitution's prohibition of donations as discussed in Finding 2. The Institute entered into a contract with Mardi Gras World to provide a venue, food, beverages, and related services for a 2014 holiday party for Institute employees. The contract totaled \$29,790. The Institute's policy and public bid law were applicable because the food and beverage component of the holiday party contract was \$25,500 or 86 percent of the total contract.

According to the Institute's policy, "[t]he Audubon Nature Institute follows the Louisiana public bid law, Title 38:2212. By law, we must adhere to the following requirements .... Procurement of Materials, Equipment & Supplies ... \$10,000 - \$29,999 ... [require] Three (3) telephone or faxed bids...."<sup>89</sup>

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<sup>87</sup> The Institute's policy required professional services over \$15,000 to be competitively purchased through a request for proposal process. The process was outlined in City of New Orleans Executive Order MJL 10-05, which applied to the Audubon Commission. The Executive Order defined professional services as "those that include work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to attorneys, doctors, dentists, nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, appraisers, business consultants, investment advisors, and claims adjusters."

<sup>88</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5:801, *et seq.*

<sup>89</sup> ANI Purchasing Guidelines and Procedures. Revised as of April 25, 2014.

The Commission was required to comply with all state and municipal public bid laws dealing with proper procurement.<sup>90</sup> Louisiana Public Bid Law for purchases of materials or supplies stated,

...purchases of ten thousand dollars or more, but less than thirty thousand dollars, shall be made by obtaining not less than three telephone or facsimile quotations.<sup>91</sup>

The Louisiana Attorney General opined on similar contracts where the purchase of food and beverage materials was the predominant component of the contract:

[C]ontracts for services are not subject to the requirements of the Public Bid Law.... Nevertheless, if a contract has a substantial materials and supplies component compared to its services component, it is our opinion that the Public Bid Law would be applicable.<sup>92</sup>

Because materials constituted the majority of the contract, the Institute was required to obtain three or more quotes for the event to comply with Louisiana Public Bid Law. As a result, the Institute may not have received the lowest price for materials and supplies.

The Commission and the Institute contended,

The Institute respectfully disagrees with the OIG's classification of this agreement as a contract for materials and supplies subject to the Institute's procurement policies regarding materials and supplies. While we disagree with the characterization of the expenditure by the OIG, Audubon strives to always employ best practices and the Institute has obtained quotes for any similar events in the years following this audit.

**Recommendation 4: The Institute should revise its Purchasing Guidelines and Procedures to include policies governing non-professional services, as well as service contracts with substantial materials and supplies components that are compliant with CAO Policy Memorandum 24(R) and state law.**

The Louisiana Legislative Auditor best practices for contracted services recommended "...a competitive atmosphere would ensure that fees paid for services are cost-effective."<sup>93</sup> The Institute should establish dollar thresholds for

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<sup>90</sup> Home Rule Charter of the City of New Orleans, Art. V, Chap. 8, Section 5:801, *et seq.*

<sup>91</sup> La. R.S. 38:2212.1(A)(1)(b).

<sup>92</sup> La. Atty. Gen. Op. No. 07-0278.

<sup>93</sup> "Checklist of Best Practices in Government," Louisiana Legislative Auditor, January 2012.

obtaining quotes or bids for non-professional service contracts that are compliant with CAO Policy Memorandum 24(R). The Institute should incorporate the dollar thresholds into its procurement policy to ensure that Commission funds are used in the most cost-effective manner.

The Institute should develop a policy that requires purchasing agents to compare the materials and supplies components to the service components in the Commission's contracts to ensure that the Institute competitively bids contracts in accordance with Public Bid Law.

## V. PURCHASE CARDS AND REIMBURSEMENTS POLICIES AND CONTROLS

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The Louisiana Legislative Auditor recommended that entities adopt written policies for purchase card transactions and business expense reimbursements. The Louisiana Legislative Auditor recommended the following:<sup>94</sup>

- For purchase cards, cardholders should submit “itemized/detailed receipts and other appropriate documentation for all credit card charges appearing on the monthly statement.... [T]he business purpose [should be] clearly documented for all charges appearing on the credit card statements, including names of persons participating....”
- For business expense reimbursements, employees should prepare “standardized expense reports for reimbursement ... [that] include all appropriate documentation (itemized receipts, registration forms, conference brochures, mileage logs, et cetera) supporting the business nature of the expenditures.”

Auditors used these guidelines as general “best practices” to determine if the Institute’s policies for purchase card transactions and expense reimbursements were adequate and controls were implemented and operating effectively.

**Positive Finding: The Institute developed and adopted policies governing employee purchase card transactions and expense reimbursements, and those policies complied with best practices.<sup>95</sup> The Institute’s controls over the issuance and cancellation of its purchases cards as well as its review and approval of transactions were designed properly and implemented and operating effectively.**

**Purchase Cards.** Auditors sampled 393 purchase card transactions and noted that the Institute complied with its Purchasing Guidelines and Procedures policy, which required cardholders to:<sup>96</sup>

- “[R]ead and sign the employee purchasing card agreement. By signing the agreement, the employee affirms that he/she has read and is familiar with the rules, regulations, and procedures as stated in the Audubon Nature Institute cardholder’s guide.”

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<sup>94</sup> "Checklist of Best Practices in Government." Louisiana Legislative Auditor. January 2012.

<sup>95</sup> Notwithstanding the exceptions noted in Findings 1 through 4.

<sup>96</sup> ANI Purchasing Guidelines and Procedures. Revised as of April 25, 2014.

- Sign an “online expense report ... as proof of reconciliation and then forwarded to his/her supervisor for approval.”
- “[R]etain transaction receipts for all purchases.... These receipts will be used to reconcile monthly statements and be part of the documentation used for the payment process.”
- Provide an explanation for each expense that “...clearly describes the purchase.”
- Use their purchase cards for “official Audubon business only and the purchase of personal goods or services is prohibited.”

Auditors found no exceptions and noted that in all instances:

- Cardholders signed the employee purchasing card agreement.<sup>97</sup>
- Cardholders and their supervisors reviewed and approved each transaction on the monthly purchase card statement.
- Cardholders submitted the required support, such as the original receipt or invoice.
- Cardholders provided a written explanation of the expense.
- Cardholders did not incur purchases that were forbidden by the Institute’s policy.

Auditors also found that all purchases were incurred on an employee’s purchase card during employment, and the Institute deactivated all purchase cards for terminated cardholders.

**Expense Reimbursements.** The Institute’s Travel/Business Expenses policy required the following:<sup>98</sup>

- A check requisition, approved by a supervisor, must be submitted for all requests for reimbursement. For reimbursements for travel and business meal expenses, “a check requisition along with a Travel/Business Expense report must be submitted to Accounts Payable.... Both the employee and his/her supervisor must sign the report and check requisition form.”<sup>99</sup>

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<sup>97</sup> Auditors randomly sampled nine of the 23 cardholders hired during the scope period to determine if they had signed the cardholder agreement in accordance with the Institute’s policy.

<sup>98</sup> Audubon Nature Institute Travel/Business Expenses. Revised as of June 6, 2008.

<sup>99</sup> In addition to the check requisition, Institute employees completed a separate “Travel/Business Expense Report” to document mileage reimbursement calculations, substantiate business meals and separately list expenses incurred while in travel status (e.g. airfare, hotels, meals, etc.).

- “Original receipts must be attached to the report.”
- Employees “must submit the itemized receipt ... in order to be reimbursed for the expense.”
- “The business meal substantiation portion of the expense report must be filled out in order to be reimbursed for meals.”
- “Employees are specifically prohibited, and may be subject to disciplinary action, from charging any personal, non-business related travel expenses to Audubon.”

Auditors tested all 20 reimbursements to executive employees and sampled 79 reimbursements to all other Institute employees during the scope period and noted no exceptions for the following:

- Institute employees’ requests for reimbursement were documented on the proper reports and approved by a supervisor in accordance with policy.
- Institute employees submitted the receipt or invoice for all expenses for which they received reimbursement.
- Institute employees documented the names of persons participating in business meals and the business purpose of the meal.
- Institute employees were only reimbursed for business expenses allowed by the Institute’s policy.

When required, Institute employees submitted itemized receipts for all 79 reimbursements; however, Auditors noted executive employees did not submit itemized receipts in four instances, totaling \$534.

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* when it defined no other obligations other than those set forth in the management agreement. The Louisiana Constitution permitted CEAs between public and private entities. However, funds spent pursuant to a CEA are public. Under a management fee structure, typically 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 nature of the funds into Institute funds and thus private. However, the inequities in the management fee structure and the ill-defined CEA improperly allowed the Institute to mischaracterize Commission funds as those spent under the terms of the management agreement. The Commission and the Institute have been operating in a manner that fails to recognize the contracting requirements of the State and City. These requirements ensure that best practices for the citizenry are being utilized in a transparent and cost-effective manner. The Commission also disregarded the basic principles of *Cabela's* in its application of a cooperative endeavor agreement.

Auditors noted the Institute developed and adopted policies governing employee purchase cards and expense reimbursements, and those policies complied with best practices.<sup>100</sup> The Institute's controls over the issuance and cancellation of its purchase cards, as well as its review and approval of transactions, were also implemented and operating effectively. Despite effective controls related to purchase cards and expense reimbursements, the Institute may not have used public funds for the purposes allowed. Auditors found the following:

- The Commission may have violated state and municipal law and prevailing legal authority when it entered into a hybrid contract with the Institute.
- The Institute may have violated the Louisiana Constitution because it used public funds to purchase \$33,961 in goods and services and paid \$4,718 in expense reimbursements for expenses that appeared lack a public purpose. When projected to the population, the Institute

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<sup>100</sup> Notwithstanding the exceptions noted in Findings 1 through 4.

incurred \$209,483 on purchase cards and paid employees \$5,665 in expense reimbursements which may have lacked a public purpose.

- The Institute may have violated state law when it used at least \$220,898 of Commission funds to campaign voters to support the “Vote ‘Yes’ for Audubon” 2014 millage campaign. The Institute also may have violated state law when it filed campaign finance reports untimely.
- The Institute did not obtain competitive bids for contracts, totaling \$308,650, which may have violated CAO Policy Memorandum 24(R) or state law.

To resolve these findings, the OIG recommends:

- The Commission should enter into a management agreement that includes specified services and fees/costs associated with those services. However, the expenses allowed by the management agreement should comport with the constitutional restrictions on use of public funds and existing case law.
- In lieu of a management agreement, the Commission should enter into a CEA with the Institute containing language and credible evidence that any transfer of funds is not gratuitous and that the Commission reasonably expects to receive a benefit or value equivalent to the amount being transferred. The CEA should fully comply with the *Cabela’s Test* and a review of the entirety of the contractual arrangement utilized in *Cabela’s*.<sup>101</sup>
- Any management agreement or CEA should comply with Home Rule Charter, Art. IX, Chap. 3, Section 9-314 (cooperative endeavors), Art. IV, Chap. 4, Section 4-401 (Dept. of Law Functions), Art. V, Chap. 8, Section 5-803 (Audubon Commission), City of New Orleans Executive Orders MJL 10-05, LC 18-01, and CAO Policy Memoranda 122(R) and 8(R), and should contain any other standard provisions required by City contracts and existing case law.
- The Institute and the Commission should each maintain separate bank accounts to segregate Commission and Institute funds and use those accounts to pay for each entity’s respective expenses. Maintaining separate bank accounts also increases financial transparency and reduces the risk of the Institute spending Commission funds on prohibited donations or other expenditures prohibited by state and/or local laws.
- The Institute should revise its policies to recognize the public nature of Commission funds, including unconstitutional spending pursuant to Louisiana Constitution art. VII, Section 14(A).

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<sup>101</sup> *Bd. of Directors of Indus. Dev. Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Prop. Owners, Citizens of City of Gonzales*, 2005-2298 (La. 9/6/06), 938 So. 2d 11, commonly referred to as “*Cabela’s*.”

- The Institute should require all employees and subsequent new hires to take an annual training to educate employees on prohibited expenses.
- The Institute should develop policies governing non-professional services, as well as service contracts with substantial materials and supplies components.

## APPENDIX A. OBJECTIVES, SCOPE, AND METHODOLOGY

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The OIG conducted a performance audit of the Institute’s internal controls over employee purchase card transactions and expense reimbursements. The objectives of the audit were to determine if:

- The Institute’s policies governing purchase card transactions were in compliance with best practices and provided adequate controls to ensure all expenses were business-related and allowed by law;
- The Institute’s policies governing expense reimbursements were in compliance with best practices and provided adequate controls to ensure that all reimbursements 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 of the audit included all employee purchase card transactions and expense reimbursements incurred during the period of January 1, 2013 through December 31, 2014.

To accomplish the objectives, auditors performed the following procedures:

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:
    1. Louisiana Constitution;
    2. Louisiana Revised Statutes; and
    3. New Orleans City Charter and Ordinances;
  - e. Various Louisiana Attorney General Opinions;
  - f. Various Institute policies and procedures, including those governing employee purchase card transactions and expense reimbursements; and
  - g. Various other documentation.
2. Conducted interviews with the Institute’s managers to gain an understanding of the processes and controls over:

- a. Purchase card issuance and termination; and
- b. Review and approval of employee purchase card transactions and expense reimbursements.

For purchase card testing, auditors performed the following procedures:

3. Segregated all purchase card transactions incurred during the scope period into three populations based on the nature of the expense as shown in Figure 7 below.<sup>102</sup>

**Figure 7.** Purchase Card Populations.<sup>103</sup>

Population	Risk Assessment	Expense Type	Population Total
1	High	Contract & Professional Services	\$860,270
2	High	Travel Related, Recognition, Entertainment & Miscellaneous	\$885,675
3	Low	All Other Expense Types	\$11,023,615
Total Purchase Card Transactions Incurred 1/1/2013 – 12/31/2014			\$12,769,560

4. Randomly sampled each population for testing using the methodology shown in Figure 8 below. Because the sample was randomly selected, auditors projected the results to the entire population of purchase card transactions for the period tested.

**Figure 8.** Purchase Card Sampling Methodology.

Population	Confidence Level	Tolerable Error	Expected Error	Sample Size
1	95%	5%	2%	150
2	95%	5%	2%	153
3	95%	5%	1%	90
Total Sample Size				393

5. Obtained and/or inspected various supporting documentation (e.g. invoices, bank statements, online expense reports, etc.) for each sampled expense to determine if each expense was properly approved, supported by receipts and/or invoices, provided a description that agreed to the support provided, and complied with the Institute’s policies, state and/or local laws.
6. Obtained and/or inspected various supporting documentation (e.g. purchase card statements, payroll reports, etc.) for cardholders during the scope period to determine if expenses were incurred by Institute employees.

<sup>102</sup> Each population was determined based on the auditor’s assessment of risk for each expense type.

<sup>103</sup> See Appendix B for a detail of the expense types in each population.

7. Randomly sampled 9 of the 23 cardholders hired during the scope period to determine if they signed the cardholder agreement in accordance with the Institute's policy.

For expense reimbursement testing, auditors performed the following procedures:

8. Segregated all employee expense reimbursements made during the scope period into two populations:

Population 1: Reimbursements to the Institute's executive employees. There were 20 reimbursements to executive employees, totaling \$18,198.

Population 2: Reimbursements to all other Institute employees. There were 423 reimbursements to all other employees, totaling \$90,616.

Auditors selected reimbursements for testing using the methodology noted below:

- a. Selected 20 (100 percent) reimbursements to the Institute's executive employees, totaling \$18,198; and
  - b. Randomly selected 79 reimbursements to all other Institute employees, totaling \$46,379.<sup>104</sup> Because the sample was randomly selected, auditors projected the results to the entire population of employee reimbursements for the period tested.
9. Obtained and/or inspected various supporting documentation (e.g. invoices, expense reports, etc.) for each sampled reimbursement to determine if reimbursements were approved, documented, and supported in accordance with the Institute's policies. Auditors also determined if the expense was business-related and/or complied with state and local laws.

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 complete and reliable for the purposes of this report.

Auditors used the following criteria for this performance audit:

- Louisiana Constitution;
- Louisiana Revised Statutes;
- New Orleans City Charter and Ordinances;
- CAO Policy Memoranda;

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<sup>104</sup> Auditors used a 95% confidence interval, 5% tolerable misstatement and 1% expected error to randomly selecting a sample from the population of reimbursements to all other Institute employees.

- Louisiana Attorney General Opinions;
- Louisiana Legislative Auditor Best Practices; and
- The Institute’s policies governing purchase card transactions and expense reimbursements.

### 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.<sup>105</sup>

This performance audit was also conducted in accordance with the *Principles and Standards for Offices of Inspector General*.<sup>106</sup>

### 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.<sup>107</sup> Auditors initially communicated the findings of the report to the Commission and the Institute on June 16, 2017, to obtain management’s assessment of why the findings occurred. The Commission and the Institute contended that 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 Attorney General (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. The OIG again requested that the Institute and Commission provide their assessment of why the findings occurred. The Commission and the Institute provided the OIG with their assessment on September 21, 2018. Because of the complexity of the operations between the Commission and Institute, the OIG determined it was necessary to procure outside counsel to provide a final legal review. The procurement process to hire outside counsel lasted approximately eight months and was finalized in May 2019. On October 25, 2019, an Institute

<sup>105</sup> *Government Auditing Standards, Chapter 7.30*; U.S. Government Accountability Office, 2011.

<sup>106</sup> “Quality Standards for Audits by Offices of Inspector General,” *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2014).

<sup>107</sup> *Government Auditing Standards, Chapter 7.11*; U.S. Government Accountability Office, 2011.

representative asserted that the Institute maintained a separate bank account for all 2019 millage expenditures but otherwise has not made any changes to its operations.

### **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.

### **COOPERATION**

The Commission and the Institute were fully cooperative during the course of the audit. We commend them for the positive finding, and we thank them for their continued efforts to improve operations.

## APPENDIX B. PURCHASE CARD POPULATIONS

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### Population 1: Contractual & Professional Service

Account Name	Total
Construction	18,206
Contract Service Payroll	3,199
Contractual Payments	4,927
Contractual Services	240,422
Professional Services	593,516
<b>Total Population 2:</b>	<b>\$860,270</b>

### Population 2: Travel Related, Recognition, Entertainment & Miscellaneous

Account Name	Total
Awards	507
Business Meals	84,718
Client Entertainment	667
Conference Registration	154,003
Donor Relations	16,054
Employee Meals	19,841
Lodging	204,503
Miscellaneous Expenses	132,030
Morale & Recreation	7,031
Recognition	71,506
Tickets	24,184
Transportation	170,631
<b>Total Population 2:</b>	<b>\$885,675</b>

### Population 3: All Other Expense Types

All Other Accounts not identified below:

**Total Population 3:** **\$11,023,615**

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**Total Purchase Card Transactions:** **\$12,769,560**

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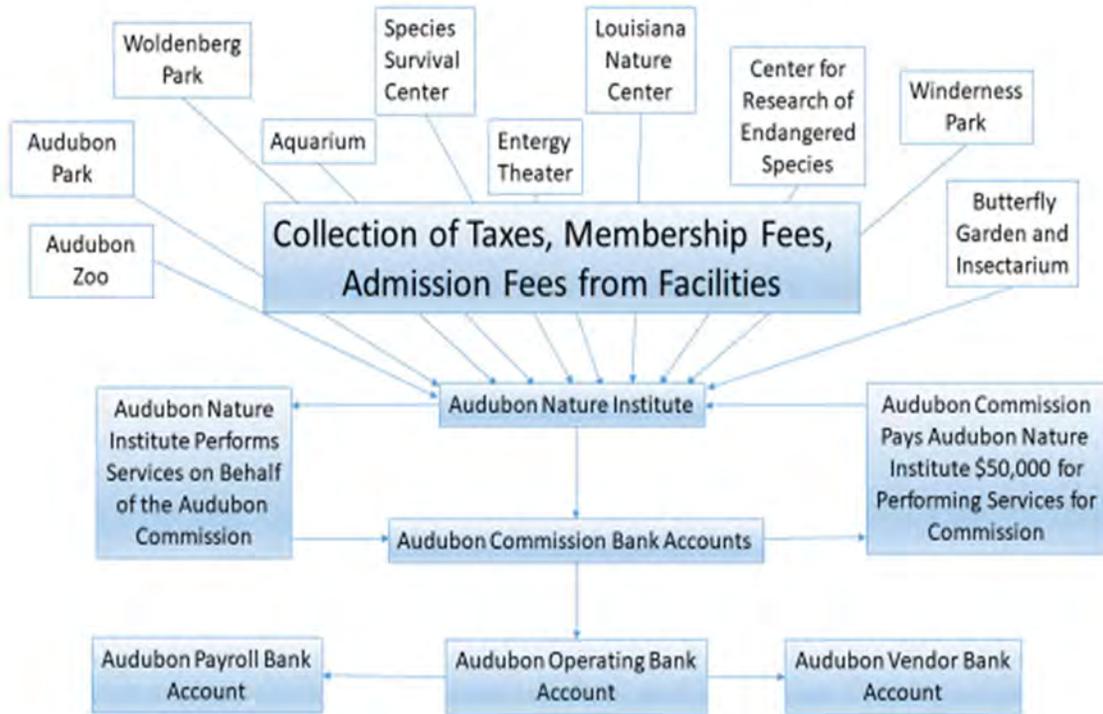
**APPENDIX C. MILLAGE EXPENSES SUBMITTED TO THE LOUISIANA BOARD OF ETHICS<sup>108</sup>**

Recipient Name	Expenditure Description	Expenditure Date	Expenditure Amount
GO DADDY	Domain Name	12/23/2013	\$99
GREEN PASTURES UNLIMITED LLC	Community Relations	1/16/2014	\$3,500
GREEN PASTURES UNLIMITED LLC	Community Relations	12/26/2013	\$3,500
PURPLE MONKEY DESIGN	T-shirt Design	12/30/2013	\$160
SEARCH INFLUENCE LLC	Website Development	1/13/2014	\$1,200
GREEN PASTURES UNLIMITED LLC	Community Relations	12/26/2013	\$3,500
TEAMER STRATEGY GROUP	Community Relations	1/16/2014	\$4,000
TEAMER STRATEGY GROUP	Community Relations	1/16/2014	\$2,000
BDPC LLC	Community Relations	2/6/2014	\$5,000
GREEN PASTURES UNLIMITED LLC	Community Relations	2/13/2014	\$3,500
FEDEX	Copies	2/13/2014	\$320
TEAMER STRATEGY GROUP	Community Relations	2/13/2014	\$2,000
THE NEW ORLEANS TRIBUNE	Newspaper Advertisement	3/6/2014	\$1,153
WWL-TV	Television advertisements	3/11/2014	\$11,985
PRINTERS WHOLESALE GROUP INC.	Direct Mail Piece	3/14/2014	\$23,362
WDSU-TV	Television advertisements	3/11/2014	\$5,028
MAGELLEAN STRATEGIES GROUP BR LLC	Survey	3/13/2014	\$5,900
MARK ROSENBOHM	Graphic Design	3/13/2014	\$520
PRINTERS WHOLESALE GROUP INC.	Sign Printing	3/11/2014	\$47,114
SALT CREEK	T-shirts	3/17/2014	\$4,230
CIRCULAR CONSULTING LLC	Community Relations	3/20/2014	\$5,000
GREEN PASTURES UNLIMITED LLC	Community Relations	3/20/2014	\$3,500
BDPC LLC	Call Program	4/3/2014	\$17,055
THE BRYLSKI COMPANY	E-mail Blasts	4/3/2014	\$450
POLICAMP INC.	E-mail Blasts	4/3/2014	\$700
PETER MAYER	Post production	4/3/2014	\$450
PETER MAYER	On-line Banners	4/3/2014	\$2,194
B3 CONSULTING LLC	Community Relations	4/10/2014	\$5,000
GNO COMMUNICATIONS	Web Banner Promotion	4/10/2014	\$500
BAKWELL MEDIA OF LA LLC	Radio Advertisements	4/3/2014	\$325
WKBU-FM	Radio Advertisements	4/3/2014	\$908
KMEZ-FM/CUMULUS BROADCASTING	Radio Advertisements	4/3/2014	\$792
WLMG-FM/ENTERCOM	Radio Advertisements	4/3/2014	\$1,814
WNOE-FM	Radio Advertisements	4/3/2014	\$1,131

<sup>108</sup> The expenses were exported from the campaign finance reports the Institute submitted to the Louisiana Board of Ethics for expenditures in support of the 2014 millage campaign: <http://ethics.la.gov/CampaignFinanceSearch/ViewScannedFiler.aspx?FilerID=301579>.

Recipient Name	Expenditure Description	Expenditure Date	Expenditure Amount
WWL-AM ENTERCOM NEW ORLEANS LLC	Radio Advertisements	4/3/2014	\$3,580
WYLD-FM	Radio Advertisements	4/3/2014	\$1,528
GAMBIT COMMUNICATIONS INC.	Advertisement	4/3/2014	\$1,040
THE ADVOCATE	Advertisements	4/3/2014	\$706
THE ADVOCATE	Advertisements	4/3/2014	\$706
DATA NEWS WEEKLY	Advertisements	4/3/2014	\$532
TIMES PICAYUNE PUBLISHING CORP.	Advertisements	4/3/2014	\$3,761
TIMES PICAYUNE PUBLISHING CORP.	Advertisements	4/3/2014	\$3,404
THE LOUISIANA WEEKLY PUBLISHING CORP.	Advertisements	4/3/2014	\$725
GAMBIT COMMUNICATIONS INC.	Advertisements	4/3/2014	\$600
WWL-TV.COM	Advertisements	4/3/2014	\$2,188
NEW ORLEANS NET LLC	Advertisements	4/3/2014	\$2,647
WDSU-TV	Advertisements	4/3/2014	\$887
WWL-TV	Advertisements	4/3/2014	\$2,115
WGNO-TV	Advertisements	4/3/2014	\$1,655
WNOL-TV	Advertisements	4/3/2014	\$650
WVUE-TV	Advertisements	4/3/2014	\$7,600
WGNO-TV	Advertisements	4/3/2014	\$2,235
WNOL-TV	Advertisements	4/3/2014	\$1,380
WVUE-TV	Advertisements	4/3/2014	\$10,275
COX MEDIA INC.	Advertisements	4/3/2014	\$3,578
COX MEDIA INC.	Advertisements	4/3/2014	\$7,174
SABISTON CONSULTANTS	Professional Services	3/10/2014	\$37,296
DATA NEWS WEEKLY	Advertisement	4/4/2014	\$3,960
FACEBOOK	Social Media Advertisement	3/10/2014	\$291
PETER MAYER	Design Layout On-line Banners	4/3/2014	\$904
PETER MAYER	TV and Radio Production	4/3/2014	\$1,694
SABISTON CONSULTANTS	Strategic Advice and counsel	5/1/2014	\$7,500
SABISTON CONSULTANTS	Umbrellas for press conference	5/1/2014	\$157
SABISTON CONSULTANTS	Gas, parking and printing.	5/1/2014	\$57
SABISTON CONSULTANTS	Parking and printing.	5/1/2014	\$39
POLICAMP INC.	Consulting for public advocacy	5/1/2014	\$2,585
TEAMER STRATEGY GROUP	Consulting for public advocacy	5/8/2014	\$2,000
STATE TREASURER	Fees for Millage Reports	5/1/2014	\$2,440
DATA NEWS WEEKLY	Advertisement	4/24/2014	\$3,960
NO HAMBURGER AND SEAFOOD COMPANY	Volunteer Appreciation Party	4/24/2014	\$1,842
PETER MAYER	Millage On-line Banners	4/24/2014	\$38
		<b>Total:</b>	<b>\$291,619</b>

## APPENDIX D. AUDUBON FACILITIES FLOW OF FUNDING



## OFFICIAL COMMENTS FROM THE COMMISSION AND THE INSTITUTE

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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.

An Internal Review Copy of this report was distributed on November 1, 2019 to the entities who were the subject of the audit in order that they would have an opportunity to comment on the report prior to the public release of this Final Report. Comments were received from the Commission and the Institute on December 5, 2019; these comments are attached.

*Audubon Commission/Audubon Nature Institute Response*

*Office of the Inspector General Purchasing Card Audit*

**I. Executive Summary.**

Close to five years ago, the Office of the Inspector General (“OIG”), initiated its scheduled audit of the Audubon Nature Institute’s use of purchasing cards. Audubon welcomed the OIG’s review and fully cooperated with all of the OIG’s requests for information and documents, understanding the importance of complete transparency and accountability to the public on this important issue. To that end, Audubon provided more than 1,500 documents to the OIG. The OIG was given access to Audubon’s bank accounts, budgets, expense codes, and reviewed three years’ worth of Audubon’s transactions, which includes 90,000 transactions worth \$90 million. Cooperation between Audubon and the OIG’s team was pivotal to this important review and we commend the staff of both Audubon and the OIG for diligently working together to complete the audit.

After this comprehensive review, Audubon is pleased that the OIG’s review did not identify a single instance of fraud, waste, abuse or impropriety within the Audubon operations. In fact, the OIG highlights that Audubon complied with all internal purchasing policies and had adequate controls in place to prevent fraud or misuse. The Inspector General has made operational recommendations, and Audubon appreciates the opportunity to highlight its best practices as well as implement changes as we continue to improve to best serve the needs of the Audubon facilities.

With respect to the OIG’s 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 respectfully 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. The CEA between the parties has been reviewed by numerous lawyers and many financial auditors and is modeled after similar agreements between public entities and private nonprofits in support of zoos, aquariums and museums across the country. Moreover, the CEA complies with all applicable local and state law.

Consistent with the CEA, the Nature Institute provides a budget to the Commission every year in an open public meeting for review, comment and approval, as well as provides its budget to the City of New Orleans. The Nature Institute complies with Public Bid Law and maintains robust purchasing policies to ensure that all funds expended by the Nature Institute for the benefit of the Commission facilities are done so with transparency and as cost effective as possible.

The partnership between the Commission and Nature Institute was created in the 1970s and dates to when the Nature Institute was organized as the Friends of Audubon Zoo. This management structure is standard practice for zoos and aquariums across the country, providing benefit to the public facilities in the form of fundraising and expertise in animal welfare and natural habitat preservation. Collectively, the Commission and the Nature Institute have been leaders in education, conservation, wildlife preservation and drivers of economic growth in New Orleans and the State of Louisiana. Zoos, aquariums, and museums across the nation have adopted the private-public partnership structure as the most practical method of operating efficiently, enhancing public assets through effective fundraising and contributing to the betterment of public assets. 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.

In furtherance of the management and operation of the Commission facilities, the Nature Institute employs over 900 dedicated full and part-time staff, is entrusted with the care of over 1,700 animals at the Audubon Zoo, over 350 of which are threatened, 3225 animals at the Audubon Aquarium of the Americas, and countless insects and butterflies at the Audubon Butterfly Garden and Insectarium. Further, the Nature Institute is responsible for the preservation of endangered animals being saved from extinction at the Freeport-McMoRan Audubon Species Survival Center. The Nature Institute also stewards Commission public spaces spanning over 1800 acres throughout the city of New Orleans and over 4000 trees.

Neither the Commission nor the Nature Institute receives a general fund appropriation from the City of New Orleans. Resulting from a vote of the people, the Commission has received approximately \$11 million annually from an Orleans Parish property tax. The millage funds that support operations previously represented 8% of Audubon's operating revenue, with the remainder

of millage funds supporting bond debt service and capital maintenance and improvements at the facilities. **All property tax funds received by the Commission are used consistent with their purpose, and at no time did the OIG find that millage funds were used for anything other than their intended purpose.** Importantly, the Nature Institute operates and manages Commission facilities *for the benefit of the Commission facilities*. Monies generated by the Nature Institute (as authorized by the Commission) through ticket sales, concessions, retail, event sales, and fundraising are used to cover the budgeted expense costs associated with operating the facilities and to cover capital and maintenance needs at the facilities. Notably, fundraising by the Nature Institute has contributed over \$40 million since 2012 to the expenses associated with operating, maintaining and improving the Commission facilities.

In sum, we are pleased that the results of the OIG’s audit reflect Audubon’s commitment to transparency, efficiency, and accountability in its expenditures. While Audubon does not agree with the OIG’s position regarding the CEA, Audubon always strives to employ best practices in public and nonprofit management. 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. We are working with our audit team to ensure that we are operating pursuant to best practices in non-profit management. As stated previously, this audit was a collaborative effort between Audubon and the OIG and we are pleased that the audit resulted in operational opportunities for improvement.

## **II. Positive Finding.**

After review and audit of thousands of documents, and reviewing hundreds of purchasing card transactions, the OIG found that the Audubon Nature Institute:

“...[D]eveloped and adopted policies governing employee purchase card transactions and expense reimbursements, and those policies complied with best practices. The Institute’s controls over the issuance and cancellation of its purchases [sic] cards as well as its review and approval of transactions were designed properly and implemented and operating effectively.”

Audubon is pleased with this finding and reiterates that it always strives to employ best practices.

### **III. Finding #1 Response.**

#### **A. Creation of the Audubon Commission by the Louisiana Legislature and Recognition by the City of New Orleans.**

In support of its legal position with respect to the Agreement between the Commission and the Nature Institute, Audubon considers the origins of the Commission and the independence with which it has been vested since its establishment. Louisiana Act 191 of 1914 ("Act 191") created the independent Audubon Park Commission to manage and control Audubon Park in New Orleans as a place for "*public recreation*" and "*public resort and pleasure.*" In 1986, Act 191 was amended by Act 309 of 1986 ("Act 309") to expand the authority of the Audubon Park Commission to operate beyond just Audubon Park. Act 309 gave the Audubon Park Commission the power to "establish, acquire, construct, operate, repair, maintain, control, develop, and improve an aquarium and related facilities within the city of New Orleans and may supervise and control these facilities for *public recreation* and use as a *place of public resort and pleasure.*" (emphasis added).

The City of New Orleans later recognized the Audubon Park Commission's continued existence as an independent entity under Act 191, as amended, when it incorporated the Audubon Park Commission – renamed the Audubon Commission – in the city's Home Rule Charter effective January 1, 1996:<sup>1</sup>

The Audubon Park Commission shall hereinafter be known as the Audubon Commission and shall be *continued in existence* from January 1, 1996, the effective date of this amendment, with the *same powers, duties, and functions as enjoyed by the Commission previously.*<sup>2</sup> The powers, duties, functions, administration, and operation of the Commission shall be as provided for in this chapter of the Charter and other applicable state and municipal law.

Home Rule Charter § 5-801 (emphasis added).

Nothing about the City's recognition of the Commission eliminated its independence. In fact, this provision of the Charter is remarkably like one which the Louisiana Supreme Court found to establish the independence of the Sewage and Water Board in *Roberts v. Sewerage & Water Bd.*

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<sup>1</sup> Prior to January 1, 1996, the Audubon Park Commission was not included as part of the New Orleans Home Rule Charter.

<sup>2</sup> "[C]ontinue in existence" is a reference to Louisiana Acts 191 of 1914 and Act 309 of 1986 as these were the only enabling legislation in existence at the time. Further, the omission of the composition of the Board of the Audubon Commission from the Home Rule Charter evidences the City's intent to continue to follow the provisions of Act 191.

*of New Orleans*, 634 So. 2d 341, 347 (La. 1994).<sup>3</sup> Like Act 309, the Home Rule Charter recognizes the Audubon Commission’s power “to administer, operate, and maintain” not only Audubon Park, but all of the other facilities administered by the Audubon Commission, including “the Aquarium of the Americas, Woldenberg Riverfront Park, the Species Survival Center, the Louisiana Nature Center and other educational, cultural and recreational facilities, and to perform such other duties as are provided by applicable law...” Home Rule Charter § 5-802.

The Audubon Commission operates independently of the day-to-day administrative procedures of the City of New Orleans as provided by the Charter. Specifically, Section 5-803 provides that the Audubon Commission’s funds which have not been appropriated by the City Council **shall be administered solely by the Commission** (note Audubon receives no City appropriation).

Any capital or operating funds appropriated by the City Council to the Commission in accordance with the provisions of this Charter shall be administered by the Commission subject to all provisions of the Charter applicable to such appropriations. **All 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** in accordance with the procedures specified in this section. Home Rule Charter § 5-803(1). (Emphasis added).

In short, the Commission was created by the state legislature with plenary power over the parks and related facilities under its control. The Commission is an “autonomous, self-governing legal entity,” recognized by the Home Rule Charter, but independent of the City with respect to the operation and management of the Audubon facilities, and administration of funds generated.

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<sup>3</sup> Indeed, the Supreme Court explicitly rejected the suggestion that the SWB’s status as an unattached board eliminated its independence in footnote 1 of its opinion, stating that “[t]he dissenting opinions point out that the Home Rule Charter of the City of New Orleans refers to the SWB as an “unattached board.” Article 5. However, the dissenting opinions fail to note that the charter also provides that “[t]he powers, duties and functions of the Sewerage and Water Board are provided by law.” Section 5–302. Those powers, duties and functions are set out and defined by La. R.S. 33:4071 et seq., which clearly establish the independence of the SWB with respect to the management of its business or function of providing sewerage, water and drainage services to consumers in Orleans and other parishes.”

## **B. The Audubon Nature Institute**

The Audubon Nature Institute (“Nature Institute”) is a private not-for-profit 501(c)(3) corporation that operates and manages all facilities on behalf of the Audubon Commission. With the construction of an initial aviary and the Odenheimer Aquarium inside Audubon Park (the Zoo facility is inside the Park property) in 1924, Audubon Zoo was created. But by the 1950’s public support and funding for the Zoo had all but disappeared. In the late 1960’s a group of citizens rallied to save it and formed The Friends of the Zoo, which became a non-profit in 1975. As such, Audubon Nature Institute’s purpose and mission of educating the community about nature, natural habitats and wildlife conservation has been intrinsically linked to the Audubon Commission facilities for decades.

The Audubon Nature Institute also ensures that Audubon wildlife conservation facilities are properly accredited and meet the rigorous standards required for accreditation by The Association of Zoos and Aquariums. The Association of Zoos and Aquariums (AZA) is dedicated to the advancement of zoos and aquariums in the areas of conservation, education, science and recreation. As part of AZA’s mandatory accreditation process, AZA members like Audubon Nature Institute meet robust professional standards for animal welfare, veterinary care, wildlife conservation, scientific research, education, expert staffing and safety. AZA-accredited zoos and aquariums—such as Audubon Zoo and Audubon Aquarium of the Americas—are leaders in the protection of endangered species.

## **C. The Relationship between the Audubon Commission and the Audubon Nature Institute, Inc.**

Historically, the Audubon Commission entered into numerous separate agreements with the Audubon Nature Institute for the operation and management of the various facilities legislatively entrusted to Audubon Commission:<sup>4</sup>

- Nov. 3, 1988 Agreement to operate Audubon Zoo;
- Nov. 11, 1988 Agreement to operate the Aquarium and Riverfront Park;
- Jan. 1, 1991 Agreement to operate Aquarium, Riverfront Park, and Audubon Zoo;
- Aug. 1, 1992 Agreement to operate the Audubon Park and Zoo;

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<sup>4</sup> All these agreements are virtually identical to the current Management Agreement at issue in the Audit Report.

- April 3, 1992 Agreement to operate the Audubon Aquarium of the Americas and Riverfront Park;
- Feb. 15, 1993 Agreement to operate the Species Survival and Research Center and Wilderness Park;
- July 15, 1998 Agreement to operate the Audubon Park and Zoo;
- July 15, 1998 Agreement to operate the Audubon Aquarium of the Americas and Riverfront Park;
- July 15, 1998 Agreement to operate the Freeport McMoRan Audubon Species Survival Center;
- July 15, 1998 Agreement to operate the Audubon Louisiana Nature and Science Center.

On July 5, 2001, the New Orleans City Council passed Ordinance No. 020272, Calendar No. 23,767 which consolidated various agreements between the Audubon Commission and the Nature Institute. The Ordinance authorizes the Commission to enter into an agreement with the Nature Institute “for the operation, care, control and management of Audubon Park, Audubon Zoo, Entergy IMAX Theatre, Waldenberg Riverfront Park, Audubon Aquarium of the Americas, Audubon Center for Research of Endangered Species, Freeport McMoRan Audubon Species Survival Center, Audubon Louisiana Nature Center, Audubon Insectarium and other Audubon Facilities.” The Ordinance also provided that “any agreement authorized by this Ordinance may be a contract or lease.” A cooperative endeavor agreement is a contract.

The Audubon Commission and the Nature Institute then entered into various management agreements and related extensions for the operation of the Commission Facilities, as defined in the agreements. The most recent Management and Cooperative Endeavor Agreement between the Audubon Commission and the Audubon Nature Institute, Inc. is dated October 24, 2013 (“the Management Agreement” or “Agreement”) and is substantially the same as the previous management agreements. The Agreement memorializes the public purpose associated with a non-profit organization managing public facilities and delineates the management obligations imposed on the Nature Institute.

Addressing the constitutionality of the Agreement, the Agreement does not envision a gratuitous donation, which is what the Constitution prohibits. The parties recite the fact that their relationship, going back to 1988, “has truly been a cooperative endeavor which has resulted in

tremendous benefits to each organization, as well as benefitting the Audubon Facilities owned by the Commission and operated by the Institute” and that the parties enter into the Agreement for their “mutual benefit.” The Agreement goes on to provide the obligations imposed on the Nature Institute. The Agreement provides that the Nature Institute shall undertake “complete operation, management and control” of the Audubon Facilities.

In exchange for the Nature Institute’s operation, management and control of the Audubon Facilities, the Agreement provides that the Commission pay the Nature Institute an annual management fee of fifty thousand dollars. As discussed in further detail below, the contractual relationship between the Commission and the Nature Institute is not gratuitous.

**D. Response to Inspector General Finding 1.**

The OIG has opined that the Agreement between the Audubon Commission and Nature Institute may violate Article VII, Section 14 of the Louisiana Constitution. We believe this is inconsistent with the plain language of the Agreement and the comprehensive services provided by the Institute to the Commission thereunder. Audubon’s basis for disagreement can be seen after a complete analysis of the Agreement pursuant to *Cabela’s*.

**a. Article VII, Section XIV and *Cabela’s***

Article VII, Section 14 of the Louisiana Constitution provides, in relevant part:

Section 14. (A) **Prohibited Uses.** Except as otherwise provided by this constitution, the 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. Except as otherwise provided in this Section, neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise.

...

(C) **Cooperative Endeavors.** For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.

In *Bd. of Directors of Indus. Dev. Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Prop. Owners, Citizens of City of Gonzales*, 2005-2298 (La. 9/6/06), 938 So.2d 11, (“*Cabela’s*”), the Louisiana Supreme Court stated that La. Const. art. VII, § 14(A) “is violated when public funds or property are gratuitously alienated.” *Cabela’s*, 938 So.2d at 20. Following *Cabela’s*, the Louisiana Attorney General opined that 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:

1. a public purpose for the expenditure or transfer that comports with the governmental purpose the public entity has legal authority to pursue;
2. that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and
3. 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.

**a. Cabela's Analysis**

**i. Does the expenditure comport with a governmental or public purpose for which the public entity has legal authority to pursue?**

The Agreement between the Commission and the Nature Institute clearly meets the first element of the *Cabela's* test which focuses on whether the expenditure by a public entity, in this case the Commission, is for a public purpose and whether the public entity has the authority to pursue said purpose. The purpose of the Agreement between the Commission and the Nature Institute is the management, operation, development, and improvement of the Audubon Facilities which provides, in addition to Audubon Park, other places of public recreation, public resort, pleasure and education throughout the City of New Orleans. Louisiana courts have regularly held that the creation and maintenance of public parks for public use is a valid public purpose. *City of New Orleans v. Condon*, 600 So.2d 78, 80 (La. Ct. App.1992), *writ denied*, 605 So.2d 1130 (La.1992) (holding that the expropriation of land to create a public park/green space is a valid public purpose); *City of New Orleans v. New Orleans Land Co.*, 136 So. 91 (La.1931).

Moreover, the Commission has the legal authority to pursue the public purpose of managing, operating, developing, and improving the Audubon Facilities for public recreation, public resort, pleasure and education throughout the City of New Orleans. First, Act 191, Sections 3 and 10(A) as enacted by Act 309 expressly provide that the Commission was created to preserve and improve Audubon Park and acquire and build an aquarium and related facilities within the city of New Orleans "***for public recreation and use as a place of public resort and pleasure.***" (emphasis added). Furthermore, Section 5-802 of the New Orleans Home Rule Charter expressly states that the purpose of the Commission is to "administer, operate, and maintain facilities administered by the Commission, including Audubon Park, the Aquarium of the Americas, Woldenberg Riverfront Park, the Species Survival Center, the Louisiana Nature Center and other educational, cultural and recreational

facilities, and to perform such other duties as are provided by applicable law...”

Accordingly, it is clear that the Commission has the legal authority to enter into an agreement with the Audubon Nature Institute to manage, operate, develop, and improve the Audubon Facilities for public use as areas of public recreation, education, and enjoyment, as these are directly related to the Commission’s central public mission – to further the use of the Audubon Facilities as a place of public resort, education, and pleasure. Therefore, we believe the first element of the *Cabela’s* test is satisfied.

***ii. Does the expenditure, taken as a whole, appear to be gratuitous?***

The second element of the *Cabela’s* test addresses whether an expenditure, as a whole, appears gratuitous on its face. In addressing this element, the Louisiana Attorney General has focused on the intent of the public entity in spending the public funds and what, if anything, the public entity expects to receive in return for the expenditure. Atty. Gen. Op. No. 10-0122. Here, the Commission has engaged the Nature Institute to undertake numerous obligations. Just a few of these tasks are enumerated below:

1. to manage, operate, develop, and improve the Audubon Facilities;
2. fundraise on behalf of the Audubon Commission;
3. maintain all buildings, exhibits and facilities;
4. care for all animals;
5. provide for the day-to-day operation of the Audubon Facilities;
6. care for all grounds, including trees, roads, lighting and walkways;
7. provide administrative, marketing, public relations and membership services, as required for the proper operation of the facilities;
8. provide educational programs;
9. provide food and beverage service and such other services as may be required to maintain and operate the Audubon Facilities in an efficient, business-like and economical manner;  
and
10. procure and maintain property and liability insurance covering the Audubon Facilities.

To date, the Audubon Facilities include Audubon Park and Riverview, Audubon Zoo, Woldenberg Riverfront Park, Audubon Aquarium of the Americas, Freeport-McMoRan Audubon Species Survival Center, Entergy Giant Screen Theater, Audubon Louisiana Nature Center, Audubon

Center for Research of Endangered Species, Audubon Wilderness Park, and Audubon Butterfly Garden and Insectarium. Each of the Audubon Facilities is unique and complex in its operation and requires careful consideration in hiring and training employees. The Nature Institute employs over 900 full and part time employees and manages over 2600 volunteers.

The Nature Institute is entrusted with the care of over 1,700 animals at the Audubon Zoo, over 350 of which are threatened, 3225 animals at the Audubon Aquarium of the Americas, and countless insects and butterflies at the Audubon Butterfly Garden and Insectarium. Further, the Nature Institute is responsible for the preservation of endangered animals being saved from extinction at the Audubon Center for Research of Endangered Species and the Freeport-McMoRan Audubon Species Survival Center. Caring for the grounds, trees, and other public spaces is an exceptionally onerous task, as the Audubon Facilities span over 1800 acres throughout the city of New Orleans and includes over 4000 trees.

By engaging the Nature Institute to meet all of the obligations associated with operating the Audubon Facilities, the Commission, the City of New Orleans and the general public receive multiple benefits such as beautiful outdoor and indoor spaces for public recreation, education about and maintenance of nature and natural habitats, and increased sales tax revenue for the city, the state and businesses surrounding the Audubon facilities. A walk through any of the Audubon Facilities makes this abundantly clear. Considering the myriad of obligations and liabilities assumed by the Nature Institute and benefit received by the Commission, any expenditures by the Commission are not gratuitous, thereby satisfying the second element of the *Cabela's* test.

**iii. Does the Audubon Commission, a public entity have a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure?**

The third element of the *Cabela's* test focuses on whether the public entity (the Commission) can show that it reasonably expects to receive at least equivalent value in exchange for the funds it expends such that the use of funds is non-gratuitous. Here, it is extremely difficult, if not impossible, to determine the precise value the Commission receives from the Nature Institute. The Nature Institute fulfills its mission through operation and management of the Commission Facilities, and in exchange for that and a \$50,000 management fee, the Nature Institute ensures that all obligations imposed on it by the Commission are met, and that the Audubon properties are maintained as beautiful, educational and impactful public facilities.

Because the Commission receives more value from the Management Agreement than it

expends, the third prong of the *Cabela's* test is satisfied. Therefore, the Management Agreement between the Commission and the Nature Institute does not violate Art. VII, §14 of the Louisiana Constitution.

**b. The Audubon Commission is an autonomous and independent legal entity to whom CAO Policy Memorandum 8(r) does not apply.**

Finally, the OIG contends that Audubon should follow CAO Policy Memoranda, and that the Agreement does not comply with requirements in those policies. As explained above, Audubon has been, since its inception, an independent legal entity that is separate and distinct from the departments of the City of New Orleans. The Commission is free to adopt policies and procedures as it deems appropriate (and as discussed in later Findings, it has) consistent with the Charter and its obligations to operate and manage Commission facilities. As established by Commission's enabling legislation, its recognition in the Home Rule Charter, and the Supreme Court's holding in *Roberts*, the Commission is not a city department. The Commissioners are appointed by the Mayor of New Orleans to carry out the mandate of the Charter. If the voters intended for the Audubon Commission to be treated as a city department, the Charter would reflect that and the need for a separately appointed commission would be unnecessary.

Audubon respectfully disagrees with the OIG's finding regarding the Agreement between the Commission and the Nature Institute.

❖ *Nevertheless, we are reviewing the CEA to determine if additional best practices can be implemented. We are working with our audit team to ensure that we are operating pursuant to best practices in non-profit management.*

**IV. Finding #2 Response.**

Finding #2 relates to two payments to reimburse one new Nature Institute employee for a portion of moving expenses and another Nature Institute employee for a short period of COBRA medical insurance. Both payments were conditions of job offers made to recruit highly qualified and specialized employees and were neither gratuitous nor violative of La. Const. Art. VII, §14(A). La. Attorney General Opinion No. 81-13 cited by the Audit Report states that public funds may be used to reimburse employees for moving expenses if the moving expenses were part of the contract of employment—it does not require a written contract for employment. Additionally, public funds may be used to reimburse employees for the cost of insurance premiums if the agreement was in place before the payments were authorized.

Audubon's position is that both the COBRA reimbursement and the moving expense reimbursement were conditions of employment and agreed upon by the parties prior to the payments being authorized, and therefore in line with the Louisiana Attorney General opinions cited by the Inspector General.

- ❖ *Nevertheless, Audubon strives to employ transparent and efficient best practices and takes this opportunity to ensure that any future reimbursements are part of a written contract for employment.*

Finding #2 also addresses purchase card expenditures made by the Nature Institute in furtherance of the operations of the Commission facilities for expenses related to employee and volunteer appreciation and recognition. The over 900 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 has reviewed this operational finding and has already started the process of evaluating alternatives such as 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—as explained in further detail below.*

## **V. Finding #3 Response**

Finding #3 relates to expenses incurred by the Nature Institute in support of the 2014 millage campaign. To ensure that all funds managed by the Institute are spent according to their purpose and in accordance with the CEA, the Institute utilizes a robust accounting system. The Institute manages a bank account in the name of the Commission and utilizes account codes to delineate the source and use of the money in that bank account. If the source of the funds is Institute fundraising, the revenue is coded to the Institute. If those funds are used for fundraising, be it for Zoo to Do or a millage campaign, the expense is also coded to the Institute and matched against the funds raised by the Institute. The accounting system automatically tracks the funds held in the bank account and it is evident from the accounting records that the Institute supports the Commission.

- ❖ *Audubon strives to always employ best practices and Audubon has resolved this finding. For the 2019 parks millage campaign, all funds used to support the campaign were Nature Institute funds, raised by the Nature Institute and maintained in a separate Nature Institute bank account.*

## **VI. Finding #4 Response.**

Finding #4 contends that the Institute was required to obtain competitive bids or quotes prior to entering into two contracts for services. Nature Institute expenditure made on behalf of the Commission are subject to certain state laws regarding procurement, including the Louisiana Public Bid Law. The Nature Institute has also implemented its own stringent procurement policies, including policies related to procuring professional services. As explained above, Audubon has been, since its inception, an independent legal entity that is separate and distinct from the departments of the City of New Orleans.

Finding #4 contends that a contract between the Nature Institute and Mardi Gras World should have been competitively bid because “materials and supplies” in the form of food materials were provided. While Audubon may disagree with the characterization of this expenditure,

- ❖ *Audubon strives to always employ best practices and has obtained quotes for any similar events in the years following this audit.*

The Nature Institute’s contract with Search Influence is not a public works contract covered by the Louisiana Public Bid Law, nor is it a contract for professional services or materials and supplies. Search Influence provided online advertising, Google Text, Facebook ads and social media services. The services provided to the Nature Institute by Search Influence do not meet the definition of a professional service under the Nature Institute’s procurement policy.

- ❖ *Audubon will continue to review and update its procurement policies to ensure operations are conducted in a cost-effective manner.*

## **VII. Conclusion**

The Audubon Commission and the Audubon Nature Institute are fully committed to transparency, efficiency, and accountability in its expenditures. We are also unwavering in our commitment to adhering to best practices in non-profit management of public facilities. We appreciate the opportunity presented by the OIG to further improve as we continue to fulfill the

mission of maintaining and improving public spaces throughout the City of New Orleans, and engaging the community about the importance of nature, natural habitats and wildlife conservation.

Best regards,

A handwritten signature in black ink that reads "J. Kelly Duncan". The signature is written in a cursive style with a large, sweeping "D" at the end.

J. Kelly Duncan

A handwritten signature in blue ink that reads "Lynes R. Sloss". The signature is written in a cursive style with a large, sweeping "S" at the end.

Lynes R. "Poco" Sloss