

Audubon Commission and Audubon Nature
Institute

Use of Funds Audit

Final Report • September 15, 2020



OIG NEW ORLEANS OFFICE OF
INSPECTOR GENERAL

Derry Harper Esq., CIG



September 15, 2020

Re: Audubon Commission and Audubon Nature Institute Use of Funds Audit

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

Derry Harper, Esq., CIG
Inspector General

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The Office of Inspector General (OIG) conducted a performance audit of the Audubon Nature Institute's (Institute) use of funds for the period of January 1, 2012, through December 31, 2014. The objectives of the audit were to determine if:

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

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

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

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

² Charter, §5-802.

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

The Commission entered into a “Management and Cooperative Endeavor Agreement” (Contract) with the Institute, a private non-profit organization, to manage and operate the Audubon Facilities,⁴ “on behalf of”⁵ and “for the benefit of the Commission.”⁶ Pursuant to the contract, the Institute was paid an annual fee of \$50,000 in exchange for its services rendered to the Commission.⁷ 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 and other Commission funds (e.g. property taxes and ticket sales) in the Commission’s Operating bank account. The Commission was required to maintain and administer the Operating bank account.⁸ The Institute was not required to obtain prior authorization 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...”⁹ and required the Commission to “pay for the cost and operation of the Audubon Facilities as detailed annually in the budget of the Institute and as approved by the Commission.”¹⁰ The Contract also required the Commission to “reimburse the Institute for all expenses that it incurs on behalf of the Commission...”¹¹ The Institute used the Commission’s Operating bank account to transfer funds to the Commission’s Vendor bank account and the Commission’s Payroll bank account to pay for the operating expenses of the Audubon Facilities. The funds in these three bank accounts were owned by the Commission as evidenced by the Commission’s year-end audited financial statements. Furthermore, property taxes, revenues generated (e.g. ticket sales), and operating expenses incurred (e.g. salaries) from the operation of the Audubon Facilities were

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

⁵ Management/CEA, Art. 4.1.1.

⁶ Management/CEA.

⁷ Management/CEA, Art. 5.

⁸ Management/CEA, Art. 4.1.4.

⁹ Management/CEA, Art. 4.1.3.

¹⁰ Management/CEA, Art. 5.

¹¹ Management/CEA, Art. 5.

also reported as revenues and expenses, respectively, in the Commission's year-end audited financial statements.

The Commission's purpose was to manage the City-owned Audubon Facilities. The Commission was a public entity because it received dedicated tax dollars, submitted an annual budget to the Mayor and City Council, and was subject to provisions of the City Code and the Charter. The Institute received the Commission's public funds and those funds, though being managed by a non-profit corporation, were subject to the same limitations and requirements imposed on all public funds.

I. FINDINGS

- Finding 1: The Commission did not maintain and administer its funds as required by the Home Rule Charter and the Contract. The Commission failed to exercise authority over its bank accounts because all signatories on the Commission's bank accounts were Institute officers or employees.
- Finding 2: The Commission did not approve the Institute's annual operating budget as required by the Contract.
- Finding 3: The Institute may have violated the Louisiana Constitution because it used \$416,261 of Commission funds to pay for lobbying services and did not obtain sufficient documentation to support the services rendered. The Institute did not competitively purchase these services nor did it enter into a written contract with either firm. Furthermore, the Institute paid invoices that did not provide detailed information as to the services rendered.
- Finding 4: The Institute did not seek competitive proposals for professional service contracts, totaling \$416,261, which violated its policy as well as City Executive Order MJL 10-05.
- Finding 5: The Institute may have violated the State of Louisiana Code of Ethics because it paid employees \$579,570 in commissions in addition to their regular salaries for performing duties related to their job.

Finding 6: The Institute did not comply with best practices because it entered into verbal contracts for lobbying services. The Institute also entered into verbal contracts with its employees.

Finding 7: The Institute violated its record retention policy and Public Records Law because it did not maintain copies of signed contracts for at least three years.

Positive Finding 1: The Institute's controls over the initiation, approval, and execution of the purchasing process were designed properly and implemented and operated effectively.¹²

II. RECOMMENDATIONS

To resolve these findings, the OIG recommends:

Recommendation 1: The Commission should add at least one Commission member as an authorized signatory to all bank accounts containing Commission funds.

Recommendation 2: The Commission should approve the Institute's budget each year and perform regular financial performance reviews to determine if amendments to the budget are required. To the extent the Contract contains contradictory language regarding the Commission's approval of the budget, the Commission should amend the language in the Contract.

Recommendation 3: The Institute should require all contractors and vendors to provide sufficient detail as to the services rendered on their submitted invoices so that the Institute can show they received at least equivalent value in exchange for the expenditure or transfer of the Commission's public 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) and Louisiana Constitution art. XI, Section 4. The Institute should require all employees, including management and subsequent new

¹² Notwithstanding the exception noted at Finding 5.

hires, to participate in annual training to educate employees on prohibited expenses. Furthermore, the Institute and the Commission should maintain separate bank accounts to segregate Commission and Institute funds.

Recommendation 4: As the Institute revises its policies, it should communicate these policies to its employees, including management, to ensure policies are understood and implemented.

Recommendation 5: Institute employees, including management and subsequent new hires, should obtain training on the Code of Governmental Ethics and develop a policy to prohibit revenue share agreements. Rather than providing commissions, the Institute should pay each employee a competitive salary commensurate to the employee's abilities and with consideration for the financial condition of the employing entity.

Recommendation 6: The Institute should revise its policy to require formal written contracts for purchasing materials, supplies, and other services.

Recommendation 7: The Institute should require all employees, including management and subsequent new hires, to take a training to educate employees on record retention policies. As the Institute revises its policies, it should provide training to its employees to ensure policies are understood and implemented.

III. CONCLUSION

The Audubon Facilities are City-owned 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 ended with a statement that the relationship between the Commission and the Institute was a cooperative endeavor. The hybrid provisions within the contract failed to satisfy the requirements of *Cabela's*.¹³ The Louisiana Constitution permitted CEAs between public and private entities. However, funds spent pursuant to a CEA are public. Under a management fee structure, a fee and obligations are established, and funds are paid pursuant to the terms of the contract. In that instance, the nature of funds transferred from the Commission to the Institute changed into Institute funds and became private. However, the inequities in the management fee structure and the hybrid Contract improperly allowed the Institute to mischaracterize Commission funds as those spent under the terms of the management agreement. The Commission and the Institute operated in a manner that failed to recognize the contracting requirements of the State and City. These requirements ensure that best practices for the citizenry are utilized in a transparent and cost-effective manner. The Commission also disregarded the basic principles of *Cabela's* in its application of a CEA.

The OIG's audit identified approximately \$416,261 in which the Institute used Commission funds to pay for expenses that may have violated the Louisiana Constitution. The OIG also identified verbal contracts that authorized the payment of approximately \$579,570 for commissions the Institute paid employees in addition to their regular salaries. This arrangement may have violated the State of Louisiana Code of Ethics. As also noted in the OIG's Audubon Purchase Cards and Expense Reimbursements Audit,¹⁴ the OIG determined that the operating structure supported by the hybrid contract between the Institute and the Commission is flawed, not transparent, and established that the Institute did not use Commission funds in the most cost-effective manner.

¹³ *Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, et al (Cabela's)*, 938 So.2d 11 (La. 9/6/06).

¹⁴ "Audubon Commission and Audubon Nature Institute Purchase Cards and Expense Reimbursements Audit," New Orleans Office of Inspector General, December 18, 2019.

I. FACTUAL AND LEGAL ANALYSIS

The Audubon Park Commission (APC) was created by State Act for the City of New Orleans in 1914.¹⁵ 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.¹⁶ As of 1954, the City of New Orleans replaced the commission form of government with a Home Rule Charter.¹⁷

In 1982, the State attempted to abolish the APC, restructure its board, and recreate the APC as a state agency.¹⁸ After that legislation was declared unconstitutional¹⁹, Act 485 in 1983 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. 56:1761-1766.²⁰ 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 the attempted implementation of Act 485 of 1983 was permanently enjoined²¹ based, in part, on the rights of local governmental entities protected by La. Const. art. VI, §6.²²

In 1996, the APC changed its name to the Audubon Commission to reflect the city-wide presence of the Audubon Facilities.²³ Other sections of the Charter and City Code further delineated the Commission's place in City government. As a board²⁴ listed in Section 4-102 of the Charter, the Commission was treated like other City

¹⁵ *City of New Orleans, etc., et al v. The STATE of Louisiana, etc., et al*, 443 So.2d 562, 565 (La. 1983) (hereafter "*City v. State*").

¹⁶ *City v. State*, 443 at 565-566, quoting Act 351 of 1948.

¹⁷ *City v. State*, 443 at 566.

¹⁸ *City v. State*, 443 at 567.

¹⁹ *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.)

²⁰ *City v. State*, 443 at 567.

²¹ *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.), citing La. Const. art. rt. I, §4.

²² *City v. State*, 443 at 572-573, fn. 26.

²³ Charter, §5-801.

²⁴ Charter, §9-101. ("The term 'board' as used in this Charter shall be construed as applying to boards, commissions, authorities, and other public bodies except the [City] Council.")

boards, and was granted “the same powers and duties with respect to [its] functions as those prescribed in this chapter for officers and department heads,²⁵ unless otherwise provided by this Charter or applicable state or municipal law.”²⁶

The Commission was charged with administering, operating, and maintaining the Audubon Facilities²⁷ 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 City Council ordinance.²⁸ The Audubon Facilities were public assets held in the name of the Commission.²⁹

The Commission was comprised of 24 board members who were each appointed to a six-year term by the City Mayor with the advice and consent of City Council.³⁰ The City was a political subdivision subject to state and local laws. As a board within the Executive Branch governed by the Charter,³¹ the Commission’s administration and operations also had to comply with the Charter and state and local laws.

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)....”³²

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).³³ The

²⁵ Charter, §4-107 (Discussion of powers and duties of officers and department heads.)

²⁶ Charter, §4-108.

²⁷ Charter, §5-802.

²⁸ Charter, §5-802.

²⁹ Charter, §9-301(1)(“All public property held by the City of New Orleans or by any... board of the City of New Orleans at the effective date of this charter... shall be the property of the City.”)

³⁰ New Orleans Code of Ordinances, §106-101.

³¹ Charter, §4-102.

³² Charter, §5-803(1).

³³ *Audubon Commission Audits of Financial Statements December 31, 2014, and 2013*. April 30, 2015.

Commission received two dedicated property taxes to use for the operation and maintenance of some Audubon Facilities.³⁴ Since 1979, the Commission issued a series of bonds to provide financing to acquire, construct, and make capital improvements to Audubon Zoo, Audubon Aquarium of the Americas, and Audubon Butterfly Garden and Insectarium. All bond issuances were secured by, and payable solely from, property tax revenues. In short, New Orleans property tax payers funded the acquisition, construction, and capital improvements to these facilities. For the years ended December 31, 2013 and 2014, the Commission collected \$9.3 million and \$9.6 million in property taxes, respectively. These public funds were subject to La. Const. art. VII, §14(A) which prohibited the donation of public funds. The Constitution stated,

...funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.³⁵

“The powers, duties, functions, administration, and operation of the... Commission” were subject to the “Charter and other applicable state and municipal law[s].”³⁶ 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.”³⁷ City Council Ordinance 020272 permitted the Commission to contract with the Institute pursuant to the Ordinance and the Charter.³⁸ The Charter required the Commission to comply with municipal law.³⁹ Pursuant to Executive Order MJL 10-05, any Commission management agreement must comply with City procurement policy.⁴⁰ La. Const. article VII, §14(C) and the

³⁴ On November 7, 1972, New Orleans voters approved a 50-year property tax commencing in 1973 and ending in 2022. The purpose of the tax was to establish and maintain a zoological garden in Audubon Park. In 2020, the City levied .15 mills for this purpose. On November 4, 1986, voters approved a 35-year property tax commencing in 1987, and ending in 2021.

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

³⁵ La. Const. art. VII, §14(A).

³⁶ Charter, §5-801.

³⁷ Charter, §5-803(4).

³⁸ Ordinance 020272, City of New Orleans, Section 2.

³⁹ Charter, §5-803(4).

⁴⁰ On April 28, 2020, City of New Orleans Mayor Latoya Cantrell issued Executive Order LC 20-01 revoking Executive Order MJL 10-05. Like its predecessor, Executive Order LC 20-01 applied to the Commission for the procurement of all professional services, articulated guidelines and restrictions, and included requirements for city contracting.

City of New Orleans Code of Ordinances Article IX, §9-314(1) permitted a CEA between a City Commission and a private association or corporation. The Commission was required to comply with §9-314 to enter into a CEA. Furthermore, the Commission was subject to CAO Policy Memoranda 8(R), 24(R), and 122(R), municipal policies and/or laws that pertained to procurement and applied to City boards and commissions.⁴¹

The Institute, a private non-profit organization, managed and operated the Audubon Facilities “on behalf of”⁴² and “for the benefit of the Commission”⁴³ through the Contract.⁴⁴ La. Const. art. VII, §14(C) permitted the state and its political subdivisions to engage in cooperative endeavors with any public or private corporations so long as the 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).”⁴⁵

The contract required the Institute 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....⁴⁶

⁴¹ On May 25, 2018, City of New Orleans Mayor Latoya Cantrell issued Executive Order LC 18-01. This Executive Order vested in a city procurement officer the authority and responsibility to draft written procedures governing procurement and management of supplies and services, among other things, over city procurements. The procedures are transmitted to the CAO for enactment as policy memoranda.

⁴² Management/CEA, October 24, 2013, Art. 4.1.1.

⁴³ Management/CEA.

⁴⁴ Management/CEA.

⁴⁵ *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)).

⁴⁶ Management/CEA, Art. 4.1.1.

In exchange for its services rendered to the Commission, the Commission paid the Institute a \$50,000 annual management fee.⁴⁷ 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....⁴⁸

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...."⁴⁹ 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..."⁵⁰ 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."⁵¹ The Contract also required the Commission to "reimburse the Institute for all expenses that it incurs on behalf of the Commission...."⁵² 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 audited financial statements. Property taxes, revenues generated (e.g. ticket sales), and operating expenses incurred (e.g. salaries) from the operation of the Audubon Facilities were also reported as revenues and expenses, respectively, in the Commission's year-end audited financial statements. Figure 1 illustrates the major funding sources of the Commission and the operating structure between the Commission and the Institute.

⁴⁷ Management/CEA, Art. 5.

⁴⁸ Management/CEA, Art. 4.1.4.

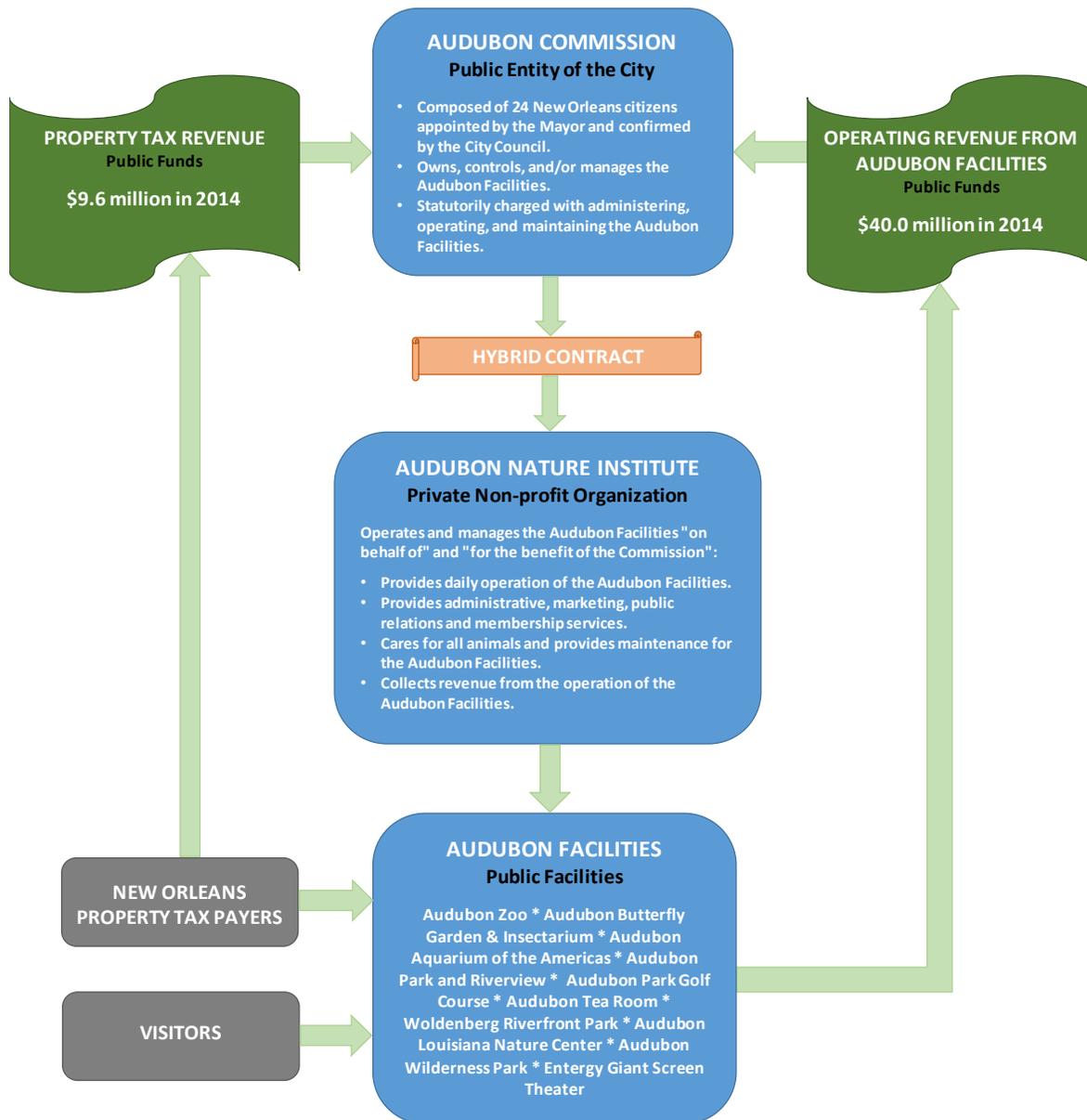
⁴⁹ Management/CEA, Art. 4.1.4.

⁵⁰ Management/CEA, Art. 4.1.3.

⁵¹ Management/CEA, Art. 5.

⁵² Management/CEA, Art. 5.

Figure 1. Commission and Institute Operating Structure.⁵³



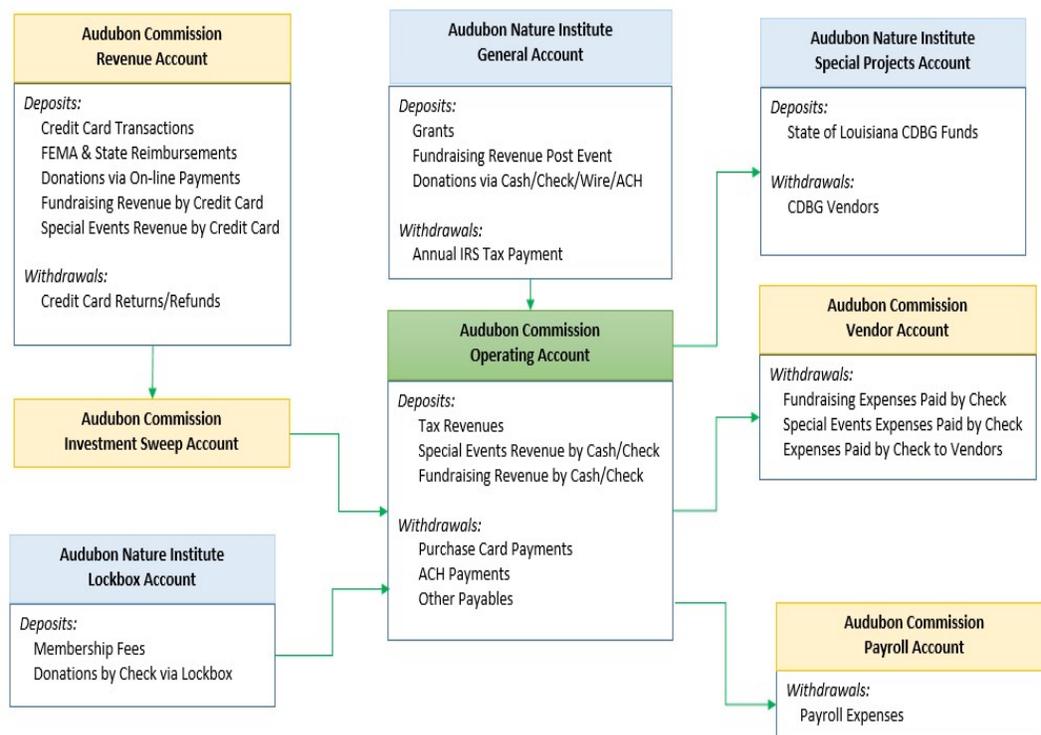
⁵³ Figure 1 is a revised version of a Nola.com graphic that appeared in the article “How Audubon’s Public-private Structure Enabled the Fly Fiasco.” Robert McClendon. Nola.com, June 6, 2016. See Appendix C for further illustration of the major funding sources of the Commission and the operating structure between the Commission and the Institute.

II. BANK ACCOUNTS

As a board within the Executive Branch of the City, the Commission, was a public entity. According to the Home Rule Charter, “[t]he powers, duties, functions, administration, and operation of the [Audubon] Commission shall be ... to administer, operate, and maintain [the Audubon Facilities] and other educational, cultural and recreational facilities, and to perform such other duties as are provided by applicable law....”⁵⁴

Commission funds were deposited into various bank accounts. As shown in Figure 2, most funds ultimately flowed through the Commission’s Operating bank account. The Commission asserted ownership over all cash in its bank accounts because it reported those funds as an asset in its audited financial statements. Therefore, all funds deposited in the Commission’s bank accounts become public funds regardless of whether the initial source was public or private.

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



⁵⁴ Charter, §5-801. Amended through November 4, 2014.

Finding 1: The Commission did not maintain and administer its funds as required by the Home Rule Charter and the Contract. The Commission failed to exercise authority over its bank accounts because all signatories on the Commission’s bank accounts were Institute officers or employees.

The Charter defined Commission funds as all 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...”⁵⁵ According to the Charter, those funds “shall be administered solely by the Commission in accordance with the procedures specified in this section.”⁵⁶

The Contract required:

[a]ll monies from the operation of the Audubon Facilities, and all tax revenues, shall be collected by the Institute on behalf of the Commission and deposited, on a daily basis, in an account maintained and administered by the Commission in accordance with applicable law and pursuant to Section 4.1.3....^{57,58,59}

Auditors noted that Institute employees were the only authorized signatories on all Commission bank accounts. Additionally, the Institute and the Commission acknowledged that “[t]he Commission does not exercise any direction over the [bank] account and all signatories to the [bank] account are ANI officers or employees.” None of the 24 Commission members have signature authority of the designated funds; therefore, the Commission has no direct oversight or access to their funds. The lack of access and appropriate oversight increases the inherent risk of fraud, theft, or mismanagement of funds.

⁵⁵ Charter, §5-803(1).

⁵⁶ Charter, §5-803(1).

⁵⁷ Management/CEA. Art. 4.1.4.

⁵⁸ Black’s Law Dictionary defines “maintain” as “[to] care for...for purposes of operational productivity or appearance.”

⁵⁹ Black’s Law Dictionary defines “administer” as “[to] manage (work or money) for a business or organization.”

Institute employees were solely responsible for transferring funds from one bank account to another and for dispersing funds to vendors and employees. The Institute also approved the transfers and prepared the journal entries related to those transfers. For example, the Institute received a \$1,000,000 loan from the Audubon Nature Institute Foundation (Foundation).⁶⁰ However, the Institute used Commission funds to repay the \$1,000,000 loan to the Foundation. The Institute then reduced its receivable from the Commission. Auditors reviewed the Commission's board meeting minutes and noted that the Commission did not approve the \$1,000,000 loan repayment.

The Contract also required:

The Institute shall maintain separate accounts, books and records for the operation of the Audubon Facilities and agrees that all of its records of any nature or kind whatsoever (except the personnel files of its employees) shall be open and available to the Commission or its duly authorized representative for inspection. These records are available only to the Commission for inspection and shall only apply to those matters involving the expenditure of Commission funds.⁶¹

Instead of maintaining separate bank accounts, the Institute used one "Due To/Due From" account and did not have one specifically for the Commission and one for the Foundation. The structure of the "Due To/Due From" accounting system created a lack of transparency and could result in Commission funds being used for expenditures prohibited by law. As noted throughout this report, the Institute may have used Commission funds for expenditures prohibited by state laws.

Institute managers asserted they and the Commission complied with the Contract because "[t]he Commission has authorized the Institute to maintain and administer the bank accounts and to make expenditures in accordance with the budget submitted by the Institute to the Commission."

⁶⁰ The Audubon Nature Institute Foundation is a 501(c)3 support organization whose mission is to manage and increase the Audubon Nature Institute endowment while it provides additional operating revenues for Audubon's facilities. The Board consists of eight members, of which one is the Chairman of the Audubon Nature Institute Board. The other seven members are elected by the Board Membership for a three-year term.

⁶¹ Management/CEA. Art. 4.1.7.

Recommendation 1: The Commission should add at least one Commission member as an authorized signatory to all bank accounts containing Commission funds.

Each November, the Institute presented its proposed operating budget for the next fiscal year to the Joint Audubon Executive and Finance Committees. The Contract stated “[t]he Institute shall submit its operating budget annually to the Commission.... The Institute may submit an amended budget as it deems necessary....”⁶² The Contract also 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.”⁶³

Finding 2: The Commission did not approve the Institute’s annual operating budget as required by the Contract.

Auditors reviewed the Commission’s meeting minutes for each month during the scope period and noted the Commission did not approve the Institute’s annual operating budget for the years ending December 31, 2012 through December 31, 2014. Auditors noted the Joint Audubon Executive and Finance Committees approved the motion to submit the budget to the Institute’s Board of Directors for approval, and the Institute approved the budget each year.

Furthermore, the Louisiana Legislative Auditor recommended the following:

The board is responsible for adopting budgets and amending budgets on a timely basis.... The board is responsible for adopting budgets in an open meeting before the end of the prior fiscal year.⁶⁴

According to the Committee of Sponsoring Organizations of the Treadway Commission (COSO), “[t]he board is responsible for overseeing the system of internal control... [and should] have a working knowledge of the entity’s activities

⁶² Management/CEA. Art. 4.1.3.

⁶³ Management/CEA. Art. 5.

⁶⁴ “Budget Policy and Procedures.” Louisiana Legislative Auditor. October 10, 2014.

and environment....”⁶⁵ COSO further states, budgeting “promote[s] control over the unit’s activities.”⁶⁶

Auditors noted that, in 2013, the Commission authorized the Institute’s Chief Executive Officer (CEO) to transfer “[u]p to \$5 million of aquarium tax millage...to the Audubon Commission.”⁶⁷ However, the actual amount transferred was \$5,102,497, approximately \$102,000 over the Commission’s approved amount.

The Commission was required to pay the costs associated with the operation of the Audubon Facilities, and it had an obligation to ensure the Institute spent the Commission’s funds in accordance with its purpose and within its authority. However, the Commission may not be providing adequate oversight over the Institute as it pertains to the expenditure of Commission funds. As noted throughout this report, the Institute may have violated the Louisiana Constitution because it used Commission funds to purchase goods and services that were prohibited by the Louisiana Constitution. Auditors also noted significant variances between the budgeted operating expenses and the actual expenses as shown in Figure 3 below. However, the Commission did not require the Institute to amend the budget. According to the audited financial statements, the operating expenses averaged \$54.8 million dollars each year during the scope period.⁶⁸

⁶⁵ “Internal Control - Integrated Framework.” Appendices. Section B. Roles and Responsibilities. *Committee of Sponsoring Organizations of the Treadway Commission*, May 2013.

⁶⁶ “Internal Control - Integrated Framework.” Appendices. Section B. Roles and Responsibilities. *Committee of Sponsoring Organizations of the Treadway Commission*, May 2013.

⁶⁷ Audubon Nature Institute’s Board meeting minutes, October 24, 2012.

⁶⁸ *Audubon Commission Audits of Financial Statements December 31, 2014, and 2013*. April 30, 2015.

Figure 3. Institute Budget to Actual Comparisons.

2012 (in thousands)				
	Budget	Actual	Variance	%
Total Operating Revenues	\$37,450	\$38,427	\$977	2.6%
Total Operating Expenses	\$43,506	\$52,578	\$(9,072)	-20.9%
Total Operating Losses	\$(6,056)	\$(14,151)	\$(8,095)	
2013 (in thousands)				
	Budget	Actual	Variance	%
Total Operating Revenues	\$38,598	\$39,892	\$1,294	3.4%
Total Operating Expenses	\$46,400	\$56,131	\$(9,731)	-21.0%
Total Operating Losses	\$(7,802)	\$(16,239)	\$(8,437)	
2014 (in thousands)				
	Budget	Actual	Variance	%
Total Operating Revenues	\$39,956	\$39,961	\$5	0.0%
Total Operating Expenses	\$48,849	\$55,940	\$(7,091)	-14.5%
Total Operating Losses	\$(8,893)	\$(15,979)	\$(7,086)	

The Contract 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.**” (Emphasis added)⁶⁹ Despite the language in the Contract, Institute managers asserted there was no requirement for the Commission to approve the annual budget. They stated,

We are of the opinion that the [Contract] does not require Commission approval of the budget but gives the Commission the option to approve the budget. Article 4.2 of the [Contract] provides the obligations and duties of the Commission. Notably, there is no obligation or requirement for the Commission to approve the budget by motion or otherwise. The obligations and duties of [the Institute] are contained in Article 4.1. In regards to the budget, [the Institute] is only required to **submit** the budget to the Commission.... [However, Institute management] decided that going forward they will obtain formal approval of the budget from the Commission even though it is not specifically required by the [Contract].

⁶⁹ Management/CEA. Art. 5.

Through further discussions with the Institute managers, they also conceded the language in the Contract was contradictory as it pertained to Commission approval of the budget.

Recommendation 2: The Commission should approve the Institute’s budget each year and perform regular financial performance reviews to determine if amendments to the budget are required. To the extent the Contract contains contradictory language regarding the Commission’s approval of the budget, the Commission should amend the language in the Contract.

The Commission should take a more proactive role in the financial management of the Institute to provide adequate governance over the Institute, as required by the Charter,⁷⁰ and to ensure efficient and lawful use of Commission funds.

To ensure public funds are spent properly, the Commission should:

1. Approve the Institute’s annual budget;
2. Monitor the Institute’s revenues and expenses throughout the year; and
3. Require and approve amendments to the budget when necessary.

Update: The Commission partially adopted and implemented the recommendation. As of July 13, 2017, the Commission approved the Institute’s budget each year. The Commission and the Institute did not revise the Contract.

According to the Institute,

The Audubon Nature Institute presents an annual operating budget to the full Commission in an open public meeting, typically in November of the year preceding the budget year being presented. The Commission has full opportunity to comment, request amendments, and question the Nature Institute. Further, for at least the past two years, the full Commission has reviewed and approved the operation budget by resolution.

⁷⁰ Section 5-802 of the Charter requires the Commission to “administer, operate, and maintain” the Audubon facilities.

The OIG reviewed Commission meeting minutes and confirmed that the Commission reviewed and approved the operating budget and any amendments. This finding is resolved.

IV. EXPENSES PROHIBITED BY THE LOUISIANA CONSTITUTION

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”⁷¹ and “for the benefit of the Commission”⁷² through the Contract. 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...”⁷³ To manage and operate the Audubon Facilities, the Institute was authorized “to expend the funds of the Commission...”⁷⁴ In exchange for its services rendered to the Commission, the Institute received an annual \$50,000 management fee.⁷⁵

Even though the Institute was responsible for managing and operating the Audubon Facilities, it did so with Commission funds, and Commission funds were subject to the Louisiana Constitution. The La. Const. art. VII, §14(A) prohibited the donation of public funds. The Constitution stated,

...funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.⁷⁶

La. Const. art. VII, §14(C) permitted the state and its political subdivisions to engage in cooperative endeavors with any public or private corporations so long as the cooperative endeavor agreement was for a “public purpose.” In January 2006, the Louisiana Attorney General opined that La. Const. art. VII, §14(C) “is not an exception to the general prohibition against donating public funds... [and] the mere fact that some... expenditures were made part of an executed cooperative endeavor agreement does not relieve the [entity] from complying with Article 7, Section 14 (A).”⁷⁷ In September 2006, the Louisiana Supreme Court ruled that

⁷¹ Management/CEA. Art. 4.1.1.

⁷² Management/CEA.

⁷³ Management/CEA. Art. 5.

⁷⁴ Management/CEA. Art. 4.1.3.

⁷⁵ Management/CEA. Art. 5.

⁷⁶ La. Const. art. VII, §14(A).

⁷⁷ La. Atty. Gen. Op. No. 05-0367 at 1.

“Subsection (C)... authorizes cooperative endeavors among the stated entities, but does not serve as an exception to subsection (A).”⁷⁸

Finding 3: The Institute may have violated the Louisiana Constitution because it used \$416,261 of Commission funds to pay for lobbying services and did not obtain sufficient documentation to support the services rendered. The Institute did not competitively purchase these services nor did it enter into a written contract with either firm. Furthermore, the Institute paid invoices that did not provide detailed information as to the services rendered.

Auditors tested 73 transactions, totaling \$1,423,286, from the development and fundraising population of \$3,875,847. The auditors determined nine of the 73 development and fundraising expenses tested, totaling \$72,062, were for two verbal contracts to the following lobbying firms: (1) Spradley and Spradley and (2) Van Scoyoc Associates.⁷⁹ From January 1, 2012, through December 31, 2014, the Institute spent \$416,261 for services rendered by these lobbying firms. The OIG noted Spradley & Spradley provided the Institute with lobbying services since 1990, and Van Scoyoc Associates represented the Institute from 1991 to 2015.

As noted in Finding 4, the Institute did not seek competitive proposals to define the specific services to be rendered. As noted in Finding 6, the Institute did not enter into a formal, written contract that described the services rendered to the Institute. During the audit, the Institute provided the OIG with monthly and quarterly invoices submitted by each lobbying firm. Each invoice provided a generic description of the services rendered. Spradley and Spradley described their services on their invoices only as “Professional services”. Van Scoyoc Associates described their services on their invoices only as “RETAINER FOR THE [period]....” Refer to Appendix D for an example of one invoice from each lobbying firm. The invoices did not contain dates, hours, and/or the nature of services provided. The OIG inquired of the Institute to obtain a further understanding of

⁷⁸ *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)).

⁷⁹ During testing auditors noted seven payments to Spradley and Spradley, totaling \$42,000, and two payments to Van Scoyoc Associates, totaling \$30,062. Auditors were able to isolate the exceptions to the two contracts. Therefore, auditors tested 100 percent of these contracts instead of projecting the errors to population.

the services rendered. The Institute replied the services were “for lobbying, including appropriations and monitoring legislative actions that may impact Audubon.” The Institute also referred us “...to their website for a full list of services: <http://spradleyandspradley.com/services.html>.” The OIG reviewed the website and noted Spradley and Spradley provided a variety of services including “direct lobbying of the legislative and executive branches of government.”

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

[I]n order for an expenditure or transfer of public funds to be permissible under Art. VII, Sec. 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.⁸⁰

After the exit conference on August 19, 2020, the Institute provided the OIG with email correspondence between the Institute and the two lobbying firms. The correspondence was provided to the OIG to justify the \$416,261 in expenditures and to describe the nature of the services provided by the lobbying firms. The emails provided to the OIG did not provide sufficient context or fully indicate the extent of the services provided. Because there was no contract, no detailed invoices, and no time records indicating dates, hours, and/or services performed, the Institute may have violated La. Const. art. VII, §14(A). The Institute cannot show they received at least equivalent value (\$416,261) in exchange for the expenditure or transfer of the Commission’s public funds.

The Louisiana Constitution also prohibited the use of public funds to seek influence of a politician or public official on an issue. Art. XI, §4 of the Louisiana Constitution stated:

⁸⁰ La. Atty. Gen. Op. No. 09-0018.

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.⁸¹

From January 1, 2012, through December 31, 2014, the Institute spent \$416,261 for services rendered by these lobbying firms. As noted above, the emails provided to the OIG did not provide sufficient context or fully indicate the extent of the services provided. The Institute also requested one of the lobbyists, formerly employed by Van Scoyoc Associates, to provide a letter, dated August 26, 2020, to describe the services rendered more than five years earlier. However, in the Institute's newly received evidence, the lobbyist acknowledged, "As a contract government affairs representative for the Audubon Nature Institute I **advocated for Audubon with the Legislative** and Executive **Branches** of the Federal government." (Emphasis added.) The lobbyist acknowledged her advocacy a second time by stating, "The legislative and administrative issues **I advocated for the Institute**, including, but not limited to, specific appropriations for facilities and research programs..." (Emphasis added.) Refer to Appendix D for a copy of the referenced letter. The Louisiana Attorney General concludes that advocacy is unconstitutional. The Institute failed to acknowledge the "advocacy" in their response to our report. See the Institute's response at the end of this report.

Because the Institute did not seek competitive proposals, enter into a contract, receive detailed invoices and/or time records indicating dates, hours, and/or services performed, the OIG cannot determine how much, or if any, of the \$416,261 was spent on prohibited lobbying activities as defined by the Constitution.

The Institute used Commission funds to pay for all \$416,261 on the two contracts because the expenses were either paid directly from the Commission's Operating or Vendor bank accounts. The funds in these bank accounts were **owned** by the Commission and were reported as the **Commission's cash** in the **Commission's year-end audited financial statements**. The Institute paid for lobbying expenses directly from the Commission's bank accounts. The Institute recorded lobbying expenses in its financial statements, but the Institute also recorded a liability to the Commission for those expenses. In other words, the accounting entries relied on by

⁸¹ La. Const. art. XI, §4.

the Commission and the Institute indicated the Institute would “pay back” the Commission for the lobbying the Commission paid on behalf of the Institute.

The Louisiana Attorney General has consistently opined that public resources cannot be used to advocate, urge, lobby or provide public relations to promote a particular position.^{82,83} As such, these expenses may have violated the Louisiana Constitution. The Louisiana Attorney General stated:

...the line between legality and illegality is that between advocacy of only one side of the public issue through use of public funds and the neutral statement of facts pertinent to all sides of an issue and presented without bias. “Public relations” includes, but is not limited to, lobbying, which is advocacy directed toward government rather than the public at large.⁸⁴ (Emphasis in original).

In citing *Godwin v. East Baton Rouge Parish School Board, et al.*, 372 So. 2d 1060 (La. App. 1st Cir. 1979), the Attorney General also stated:

...for the expenditure of public funds to qualify for the public information exception to the prohibition of Art. IX, Sec. 4, the information compiled and communicated through the use of public funds must be free from the presence of all advocacy and argument. It cannot be selective in its presentation and contextualization of information and thereby present only one side of the issue. “Public information” may be also defined generally as that which Art. IX, Sec. 4 authorizes in election campaigns to be

⁸² La. R.S. §24:51(4) stated, “‘Lobbying’ or ‘to lobby’ means any of the following: (a) Any direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation. (b) Any preparation or research specifically intended, at the time it is performed, for use in or in support of any ongoing or planned direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation. (c) Conducting or attending a meeting the purpose of which is to discuss direct communication with a legislator to aid in influencing the passage or defeat of any legislation.

⁸³ Louisiana Revised Statute §24:51(5)(a) stated, “‘Lobbyist’ means either of the following: (i) Any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of such employment or engagement. (ii) Any person who acts in a representative capacity and makes an expenditure. (b) However, ‘lobbyist’ shall not mean any person who does not make any direct act or have any direct communication with a legislator for the purpose of influencing the passage or defeat of any legislation.”

⁸⁴ La. Attorney General Opinion No. 90-126A.

supported by public funds: ...factual information relative to a proposition appearing on an election ballot [which] encompasses all empirical data required by the public to intelligently decide whether to vote for or against the issue.... Such information [must be] purely factual and suggest no position for or against and make it clear that the data is published and disseminated solely and only for informational purposes. Godwin, supra, at 1064. (Emphasis added.)⁸⁵

Refer to Figure 4 for Commission funds spent on the two lobbying contracts during the scope period.

Figure 4. Lobbying Expenses Paid Using Commission Funds.

Vendor	2012	2013	2014	Total
Spradley & Spradley	\$73,258	\$72,852	\$72,950	\$219,060
Van Scoyoc Associates	75,478	61,156	60,567	197,201
Total Payments	\$148,736	\$134,008	\$133,517	\$416,261

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 contended that “[t]he City of New Orleans and varying city agencies employ lobbyists to assist with legislative affairs at the state legislature.” The Institute also provided a website to the Louisiana Ethics Administration Program Lobbying Portal to show that governmental entities engaged in lobbying. The OIG reviewed the list and noted there were governmental entities engaged in lobbying. However, the OIG cannot determine the source of the funds used by those entities. If those municipal entities listed used private funds, the lobbying would not violate the Constitution. Also, the 421-page listing including lobbying activities did not describe the object of the lobbying. It cannot be determined whether any of the entities listed in the portal lobbied in conformity with La. Const. art. XI, §4. Neither the documentation provided by the Institute supporting the expenditures nor the public reports filed by the Institute’s lobbying firms

⁸⁵ La. Attorney General Opinion No. 90-126A.

suggested the lobbying firm was disseminating factual information relative to a proposition appearing on an election ballot – a permitted activity. In fact, the invoices to Spradley & Spradley and Van Scoyoc Associates were vague and only described “Professional services” and “RETAINER FOR THE [period]...,” respectively.

Recommendation 3: The Institute should require all contractors and vendors to provide sufficient detail as to the services rendered on their submitted invoices so that the Institute can show they received at least equivalent value in exchange for the expenditure or transfer of the Commission’s public 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) and Louisiana Constitution art. XI, Section 4. The Institute should require all employees, including management and subsequent new hires, to participate in annual training to educate employees on prohibited expenses. Furthermore, the Institute and the Commission should maintain separate bank accounts to segregate Commission and Institute funds.

Instead of relying on emails and generic invoices to support expenditures, the Institute should require all professional service vendors and contractors to provide sufficient detail of the services rendered on their invoices prior to authorizing payment. Sufficient detail includes, but is not limited to, the dates of service and the nature of services provided. This also ensures the Institute can show they received at least equivalent value in exchange for the expenditure or transfer of the Commission’s public funds.

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

The Institute did not provide training to educate its employees on prohibited donations. 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.

V. PROFESSIONAL SERVICE CONTRACTS

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).⁸⁶ CAO Policy Memoranda 8(R), 24(R), and 122(R) were municipal policies and/or laws that pertained to procurement and applied 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.⁸⁷

However, the City of New Orleans issued Executive Order MJL 10-05 to establish competitive selection procedures for the procurement and award of professional service contracts which was in effect during the audit scope period.^{88,89}

The Institute also developed a policy for procuring professional services. The Institute's procurement policy stated, "Professional Services is not subject to the bid law but is required by this policy to be competitively purchased through an RFP [request for proposal] or RFQ [request for qualification] process if over \$15,000."⁹⁰

The Institute's policy was compliant with professional service requirements established by Executive Order MJL 10-05, which stated the following,

⁸⁶ Charter, §5-803(4).

⁸⁷ The Institute's Purchasing Guidelines and Procedures defined professional services as, “those [services] 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 architects, accountants, attorneys, engineers, doctors, dentists, nurses, veterinarians, land surveyors, landscape architects, actuaries, appraisers, business consultants, investment advisers, and claims adjusters. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word 'professional' implies professed attainments in special knowledge as distinguished from mere skill.”

⁸⁸ On April 28, 2020, City of New Orleans Mayor Latoya Cantrell issued Executive Order LC 20-01 revoking Executive Order MJL 10-05. Like its predecessor, Executive Order LC 20-01 applied to the Commission for the procurement of all professional services, articulated guidelines and restrictions, and included requirements for city contracting.

⁸⁹ On May 25, 2018, City of New Orleans Mayor Latoya Cantrell issued Executive Order LC 18-01. This Executive Order vested in a city procurement officer the authority and responsibility to draft written procedures governing procurement and management of supplies and services, among other things, over city procurements. The procedures are transmitted to the CAO for enactment as policy memoranda.

⁹⁰ ANI Purchasing Guidelines and Procedures. Revised as of April 25, 2014.

“Departments, agencies, boards, commissions, public benefit corporations, or other entities of the Executive Branch of city government must attempt to obtain at least three proposals from qualified contractors. If fewer than three proposals are received, the CPO [Chief Procurement Officer] should require additional advertisement, unless the CPO explains in a written justification why additional advertisement is not likely to produce additional submissions.”

Finding 4: The Institute did not seek competitive proposals for professional service contracts, totaling \$416,261, which violated its policy as well as City Executive Order MJL 10-05. Note: The expenses also may have violated the Louisiana Constitution. (Refer to Finding 3).

The Institute’s professional service contracts with Spradley and Spradley and Van Scoyoc Associates, previously discussed in Finding 3, both exceeded \$15,000. The Institute did not competitively seek proposals for the contracts through an RFP or RFQ process as required by the Institute’s policy. Instead, the Institute entered into verbal contracts with Spradley and Spradley and Van Scoyoc Associates for lobbying services, which totaled \$416,261 during the scope period. Because the Institute entered into verbal contracts rather than seeking competitive proposals as required by policy, the Institute did not ensure that the services were cost-effective. Through discussions with Institute employees, they did not appear to be aware of the Institute’s policy regarding professional service contracts.

According to the Institute:

[L]obbying services have been provided by Spradley & Spradley since 1990. The purchasing policy of Audubon has evolved over time and in 2010 a revised policy was approved by the Board requiring competitive selection of professional service providers.

Recommendation 4: As the Institute revises its policies, it should communicate these policies to its employees, including management, to ensure that policies are understood and implemented.

Update: According to the Institute, “Audubon has had a written contract with Spradley & Spradley since October 2017. When the contract expires, Audubon plans to issue a request for proposals for lobbying services.”

This recommendation is pending implementation.

VI. REVENUE SHARE AGREEMENTS

The Institute used Commission funds to pay employees’ salaries. In addition to those salaries, the Institute entered into verbal revenue share agreements with four of its employees. The verbal revenue share agreements were as follows:

- Employee one was a golf pro who received 80 percent of Audubon Park Golf Course Pro Shop revenues from golf equipment rentals and concessions sales.
- Employee two was a tennis pro who received 100 percent of his tennis lesson fees and 10 percent of the other instructors’ lesson fees.
- Employees three and four were Institute tennis instructors who each received 70 percent of their tennis lesson fees.

Finding 5: The Institute may have violated the State of Louisiana Code of Ethics because it paid employees \$579,570 in commissions in addition to their regular salaries for performing duties related to their job.

During the period of January 1, 2012 through December 31, 2014, the four Institute employees received commissions, totaling \$579,570, through verbal revenue share agreements in addition to their regular salaries.⁹¹ Figure 5 shows commissions received by the Institute employees during the scope period.

Figure 5. Commissions Received by Institute Employees.

Employee/Position	2012	2013	2014	Total
Employee 1 - Golf Pro	\$115,881	\$129,805	\$133,387	\$379,073
Employee 2 - Tennis Pro	20,754	49,135	49,881	119,770
Employee 3 - Tennis Instructor	14,426	31,697	27,312	73,435
Employee 4 - Tennis Instructor	1,278	2,057	3,957	7,292
Total Payments	\$152,339	\$212,694	\$214,537	\$579,570

Commission and the Institute stated:

⁹¹ Employee two, Employee three, and Employee four were hired as Institute employees on July 1, 2012. Prior to July 1, 2012, these employees were contract employees. Therefore, the 2012 commissions only included commissions earned from July 1, 2012 through December 31, 2012 for those three employees.

The Institute agrees that it, and its officers, directors and employees shall be subject to the Codes of Ethics of the City of New Orleans and the State of Louisiana.⁹²

The Louisiana Code of Governmental Ethics stated:

No public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position... No public servant shall receive any thing of economic value for any service, the subject matter of which... is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated....⁹³

Additionally, state law prohibited Institute employees from having contractual relationships for anything under the supervision or jurisdiction of the Commission. The Code of Governmental Ethics prohibited public servants from “bid[ing] on or enter[ing] into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.”⁹⁴

The purpose of the Code of Government Ethics is to ensure that public employees are independent and impartial; governmental decisions and policy are made through the proper channel; public office and employment not be used for private gain other than what is allowed by law; and there is public confidence in the integrity of government. To achieve these objectives, public servants must be free of conflicts of interest.⁹⁵ By employing and contracting with these individuals, the Institute potentially created a conflict of interest.⁹⁶ For example, the Institute’s golf pro received 80 percent of Audubon Pro Shop revenues from club rentals and concessions sales which totaled \$379,073 during the scope period. However, during that same period, the Audubon Park Golf Course had a cumulative \$1,839,650 operating loss as shown in Figure 6.

⁹² Management/CEA. Art. 4.

⁹³ La. R.S. 42:1111A.(1).

⁹⁴ La. R.S. 42:1113A.(1)(a).

⁹⁵ La. R.S. 42:1101.B.

⁹⁶ According to Black’s Law Dictionary, a conflict of interest is “[a] term used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them.”

Figure 6. Audubon Park Golf Course Operating Loss 2012 thru 2014.⁹⁷

Audubon Golf Course	2012	2013	2014	Total
Operating Revenues	\$1,714,905	\$1,792,320	\$1,691,577	\$5,198,802
Less: Operating Expenses	2,211,347	2,372,573	2,454,532	7,038,452
Operating Loss	\$(496,442)	\$(580,253)	\$(762,955)	\$(1,839,650)

The Institute was not familiar with these requirements. According to the Institute, “[t]he employee revenue share related to golf and tennis lessons is part of the employees’ duly entitled compensation provided by the employing agency. The practice of having commission as part of the duly entitled compensation existed in 2012 and in 2016, the commission agreements were memorialized in writing.” Despite the Institute’s assertion these agreements were memorialized in writing, no written contracts were provided to the OIG to determine if these revenue share agreements were “part of the employees’ duly entitled compensation provided by the employing agency” in 2012 or any year after. In fact, the Institute asserted these contracts were verbal (as noted in Finding 6).

Recommendation 5: Institute employees, including management and subsequent new hires, should obtain training on the Code of Governmental Ethics and develop a policy to prohibit revenue share agreements. Rather than providing commissions, the Institute should pay each employee a competitive salary commensurate to the employee’s abilities and with consideration for the financial condition of the employing entity.

⁹⁷ Audubon Golf Course operating revenue was not part of the scope of the OIG audit. Auditors obtained operating revenues and expenses from the Commission’s audited financial statements for the years ended December 31, 2013 and December 31, 2014.

The Legislative Auditor’s best practices recommends that “[f]ormal written contracts should be prepared for public works, materials/supplies, and professional services.”⁹⁸ Auditors noted the Institute’s policy did not require formal written contracts for professional services.⁹⁹

Finding 6: The Institute did not comply with best practices because it entered into verbal contracts for lobbying services. The Institute also entered into verbal contracts with its employees.

In addition to entering into a verbal contract with each lobbying firm, the Institute did not obtain detailed invoices or time records indicating dates, hours, and/or services performed. (Refer to Finding 3). Instead, the Institute provided the OIG with email correspondence between the Institute and the lobbying firms to justify the \$416,261 in expenditures and to describe the nature of the services provided by the lobbying firms.

Verbal contracts lack transparency, can complicate litigation, and allow for fraud, waste, and abuse. By entering into verbal contracts, the Institute exposed itself to additional risk because these types of contracts have inherent problems, including (1) recollection of specific terms can be different between the parties; (2) verbal contracts may be more difficult to enforce if one party does not fulfill its obligations; and (3) parties may not receive agreed-upon services. Written contracts memorialize various elements of the agreement, including obligations of each party, payment terms, arbitration clauses, etc. Written agreements can be invaluable when enforcing each party’s obligations.

The Institute failed to address its failure to comply with the Louisiana Legislative Auditor’s Best Practices as they relate to the disfavor of verbal contracts. The Institute did not explain why transparency in written contracts would not benefit its organization’s public purpose.

⁹⁸ “Best Practices - Contracting.” Louisiana Legislative Auditor. April 2019.
<https://www.la.gov/documents/best-practices/Contracting.pdf>

⁹⁹ ANI Purchasing Guidelines and Procedures. Revised as of April 25, 2014.

Recommendation 6: The Institute should revise its policy to require formal written contracts for purchasing materials, supplies, and other services.

VIII. RECORDS RETENTION

The Contract required the Institute to maintain records for the operation of the Audubon Facilities. The Institute developed a comprehensive record retention policy. It stated:

contracts and agreements, including any correspondence and supporting documents [should be retained] for 7 years after all obligations end.... If an item is not included in the Retention Schedule and no period is otherwise specified by law or insurance, the records shall be preserved and maintained for a period of three (3) years from the date on which it was created.¹⁰⁰

Louisiana Revised Statute §44:36 required “...in all instances in which a formal retention schedule has not been executed, such public records shall be preserved and maintained for a period of at least three years from the date on which the public record was made.”

Because the Institute’s Policy was more stringent, the Institute was required to comply with its policy.

Finding 7: The Institute violated its record retention policy and Public Records Law because it did not maintain copies of signed contracts for at least three years.

During the course of fieldwork, the auditors randomly selected five special events contracts executed during the scope period. The Institute could not provide the OIG with copies of four of those contracts.

Institute employees did not appear to be aware of the Institute’s record retention policy.

Recommendation 7: The Institute should require all employees, including management and subsequent new hires, to take a training to educate employees on record retention policies. As the Institute revises its

¹⁰⁰ Audubon Nature Institute Record Retention Policy. Effective December 9, 2008 and revised on November 19, 2014.

policies, it should provide training to its employees to ensure that policies are understood and implemented.

IX. PURCHASING PROCEDURES AND APPROVALS

The Institute's purchasing policy required the following:

- "A purchase order must be issued for all goods and services....
- A purchase order number will be issued when a purchase request/purchase order is submitted, complete with authorized signatures, account codes, and item descriptions....
- Check Request and Purchase Orders over \$1,000 require two signatures.... Capital Expenditures... over \$10,000 require a minimum of two signatures, one of which shall be an EVP [Executive Vice President] or above [either the Chief of Staff (COS) or Chief Executive Officer (CEO)].... Capital Expenditures... over \$25,000 will require a minimum of two signatures to include COS or CEO approval."¹⁰¹

Positive Finding 1: The Institute's controls over the initiation, approval, and execution of the purchasing process were designed properly and implemented and operating effectively. The auditors noted 98 of the 99 expenditures tested complied with Article VII Section 14(A) of the Louisiana Constitution.

Auditors sampled 88 expenditures, totaling \$11,702,598, and 11 Community Development Block Grant (CDBG) expenses, totaling \$1,496,478, from the \$42,339,927 disbursements population for the period of January 1, 2014 through December 31, 2014. Auditors noted all purchases sampled from this population were:

- Initiated through a purchase requisition/order;
- Properly approved and included the proper account codes and item descriptions; and
- Approved in accordance with the dollar thresholds outlined in the Institute's policy.

Auditors noted one expenditure, a payment to an employee as part of a revenue share agreement (Refer to Finding 5), may have violated Article VII Section 14(A)

¹⁰¹ Audubon Nature Institute Purchasing Guidelines and Procedures. Revised April 25, 2014.

of the Louisiana Constitution. All other expenditures appeared to comply with the Constitution.

X. CONCLUSION

Since 1972, Orleans Parish property tax payers provided funding for the acquisition, construction, and capital improvements to various Audubon Facilities, which are owned by the City of New Orleans. 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 to provide an array of services on behalf of the Commission. The Institute's responsibilities under the management fee greatly exceeded that payment. The Contract also ended with a declaration that the relationship between the Commission and the Institute was a cooperative endeavor but failed to satisfy the requirements of *Cabela's*. The Louisiana Constitution permitted CEAs between public and private entities. However, funds spent pursuant to a CEA are public. Under a management fee structure, a fee and obligations are established and funds are paid pursuant to the terms of the contract. In that instance, the funds transferred from the Commission to the Institute would change the nature of the funds into private Institute funds. However, the inequities in the management fee structure and the ill-defined Contract improperly allowed the Institute to mischaracterize Commission funds as those spent under the terms of the management agreement. 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 are utilized in a transparent and cost-effective manner to benefit citizens. The Commission also disregarded the basic principles of *Cabela's* in its application of the CEA.

In 2014, the Commission generated \$40.0 million from the operations of the Audubon Facilities and received \$20.8 million of other revenue (e.g. grants, insurance proceeds, and other support/contributions).¹⁰² The Commission also collected \$9.3 and \$9.6 million in property taxes in 2013 and 2014, respectively. The Commission and the Institute have an obligation to taxpayers to ensure it uses property taxes, as well as revenues generated from public assets, in the most cost-effective manner and for the purposes for which the property taxes were levied.

¹⁰² *Audubon Commission Audits of Financial Statements December 31, 2014 and 2013*. April 30, 2015.

Despite growing operating losses, the Institute paid commissions and salaries to employees which created a conflict of interest between the motivation of commissioned employees versus the effective and profitable operation of the Audubon Golf Club and Pro Shop which went uncorrected for three years.

The Institute's controls over the initiation, approval, and execution of the purchasing process were designed properly and implemented and operating effectively.¹⁰³ However, the Commission did not provide the oversight required by the Charter and the Contract. Although the Institute developed procurement policies, it did not adhere to the Louisiana Constitution. The OIG noted the following findings:

- The Commission did not maintain and administer its funds as required by the Home Rule Charter and the Contract. The Commission failed to exercise authority over its bank accounts because all signatories on the Commission's bank accounts were Institute officers or employees.
- The Commission did not approve the Institute's annual operating budget as required by the Contract.
- The Institute may have violated the Louisiana Constitution because it used \$416,261 of Commission funds to pay for lobbying services and did not obtain sufficient documentation to support the services rendered. The Institute did not competitively purchase these services nor did it enter into a written contract with either firm. Furthermore, the Institute paid invoices that did not provide detailed information as to the services rendered.
- The Institute did not seek competitive proposals for professional service contracts, totaling \$416,261, which violated its policy as well as City Executive Order MJL 10-05.
- The Institute may have violated the State of Louisiana Code of Ethics because it paid employees \$579,570 in commissions in addition to their regular salaries for performing duties related to their job.
- The Institute did not comply with best practices when it entered into verbal contracts for lobbying services. The Institute also entered into verbal contracts with its employees.

¹⁰³ Notwithstanding exception noted at Finding 5.

- The Institute violated its record retention policy and Public Records Law because it did not maintain copies of signed contracts for at least three years.

To resolve these findings, the OIG recommends:

- The Commission add a minimum of one Commission member as an authorized signatory to all bank accounts containing Commission funds.
- The Commission approve the Institute's budget each year and perform regular financial performance reviews to determine if amendments to the budget are required. To the extent the Contract contains contradictory language regarding the Commission's approval of the budget, the Commission should amend the language in the Contract.
- The Institute should require all contractors and vendors to provide sufficient detail as to the services rendered on their submitted invoices so that the Institute can show they received at least equivalent value in exchange for the expenditure or transfer of the Commission's public 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) and Louisiana Constitution art. XI, Section 4. The Institute should require all employees, including management and subsequent new hires, to participate in annual training to educate employees on prohibited expenses. Furthermore, the Institute and the Commission should maintain separate bank accounts to segregate Commission and Institute funds.
- Institute employees, including management and subsequent new hires, should obtain training on the Code of Governmental Ethics and develop a policy to prohibit revenue share agreements. Rather than providing commissions, the Institute should pay each employee a competitive salary commensurate to the employee's abilities and with consideration for the financial condition of the employing entity.
- The Institute revise its policy to require formal written contracts for purchasing materials, supplies, and other services.
- The Institute should require all employees, including management and subsequent new hires, to take a training to educate employees on record retention policies. As the Institute revises its policies, it should provide

training to its employees to ensure that policies are understood and implemented.

APPENDIX A. OBJECTIVES, SCOPE, AND METHODOLOGY

The OIG conducted a performance audit of the Commission and the Institute's use of funds. The objectives of the audit were to determine if:

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

The scope of the audit included all disbursements of Commission funds from the Commission's Operating and Vendor bank accounts and the Institute's CDBG expenses incurred during the period of January 1, 2014 through December 31, 2014. The scope of the audit also included all Institute development and fundraising expenses incurred during the period of January 1, 2012 through December 31, 2014.

To accomplish the audit objectives, auditors:

1. Verbally 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. Commission and Institute financial statement audits for the years ended December 31, 2012 through December 31, 2014;
 - c. *Audubon Commission Handbook*;
 - d. Legal authority, including but not limited to:
 - Louisiana Constitution;
 - Louisiana Revised Statutes; and
 - New Orleans City Charter;
 - e. Various Louisiana Attorney General Opinions;
 - f. Various Institute policies and procedures, including those governing disbursements of Commission funds;

- g. Commission and Institute bank statements and budget documents; and
 - h. Various other documentation relevant to the audit objective, scope, and methodology.
2. Conducted interviews with the Institute’s managers to gain an understanding of the processes and controls over:
 - a. Purchasing,
 - b. Fundraising and business development, and
 - c. Other operating expenses.

For disbursements testing, the auditors performed the following procedures:

1. Segregated disbursements into two populations for the period of January 1, 2014 through December 31, 2014 as shown in Figure 7 below.

Figure 7. Disbursement Populations

Population	Population Description	Amount
1	Disbursements	\$40,820,933 ¹⁰⁴
2	CDBG Disbursements	\$1,518,994
	Total	\$42,339,927

2. Randomly sampled each population for testing using the sampling methodology shown in Figure 8 below.

Figure 8. Disbursements Sampling Methodology.

Population	Confidence Level	Tolerable Error	Expected Error	Sample Size
1	95%	5%	1%	88 ¹⁰⁵
2	95%	5%	1%	11 ¹⁰⁶
Total Sample Size				99

For development and fundraising expense testing, the auditors performed the following:

¹⁰⁴ Refer to Appendix B.

¹⁰⁵ Six of the 88 sample selections, totaling \$3,718,066, were high-value selections; therefore, 100 percent of high-value expenses were tested.

¹⁰⁶ Nine of the 11 sample selections, totaling \$1,483,837, were high-value selections; therefore, 100 percent of high-value expenses were tested.

1. Segregated the development and fundraising expenses for the period of January 1, 2012 through December 31, 2014 as shown in Figure 9 below.

Figure 9. Fundraising and Development Disbursement Population.

Population	Population Description	Amount
3	Fundraising/Development	\$3,875,847

2. Tested the population using the sampling methodology shown in Figure 10 below.

Figure 10. Fundraising and Development Sampling Methodology.

Population	Confidence Level	Tolerable Error	Expected Error	Sample Size
3	95%	5%	1%	73 ¹⁰⁷
Total Sample Size				73

For the above samples, auditors obtained and/or inspected various supporting documentation (e.g. purchase requisitions, invoices, cancelled checks, contracts, receipts, etc.) for each sampled expense to achieve the audit objectives.

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 the data were sufficiently reliable for the purposes of this report.

Auditors used the following criteria for this performance audit:

- Louisiana Constitution;
- Louisiana Revised Statutes;
- Louisiana Attorney General Opinions;
- Louisiana Legislative Auditor Best Practices; and
- The Institute’s policies governing procurement and expenditures.

¹⁰⁷ Four of the 73 sample selections, totaling \$872,156, were high-value selections; therefore, 100 percent of high-value expenses were tested.

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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.¹⁰⁸

Auditors also conducted this performance audit in accordance with the Principles and Standards for Offices of Inspector General.¹⁰⁹

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.¹¹⁰ During the course of the audit, the Commission and the Institute contended the Institute was not subject to the Louisiana Constitution as it pertains to the expenditure of Commission funds and requested a Louisiana Attorney General (AG) opinion on the matter. Pursuant to their request, the OIG agreed to allow the Commission and the Institute to seek an AG opinion. In October 2017, the Commission/Institute and the OIG requested separate opinions from the AG. In anticipation of an AG opinion, the OIG temporarily suspended the audit. By July 2018, the AG had not issued an opinion. The OIG met with the Institute and determined to proceed without the AG opinions. Auditors communicated the findings of this report to the Commission and the Institute on February 28, 2020, to obtain management's assessment of why the findings occurred. The Commission and the Institute provided the OIG with their assessment on May 1, 2020.

LEGAL AUTHORITY

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

¹⁰⁸ *Government Auditing Standards, Chapter 7.30*; U.S. Government Accountability Office, 2011.

¹⁰⁹ "Quality Standards for Audits by Offices of Inspector General," *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2014).

¹¹⁰ *Government Auditing Standards, Chapter 7.11*; U.S. Government Accountability Office, 2011.

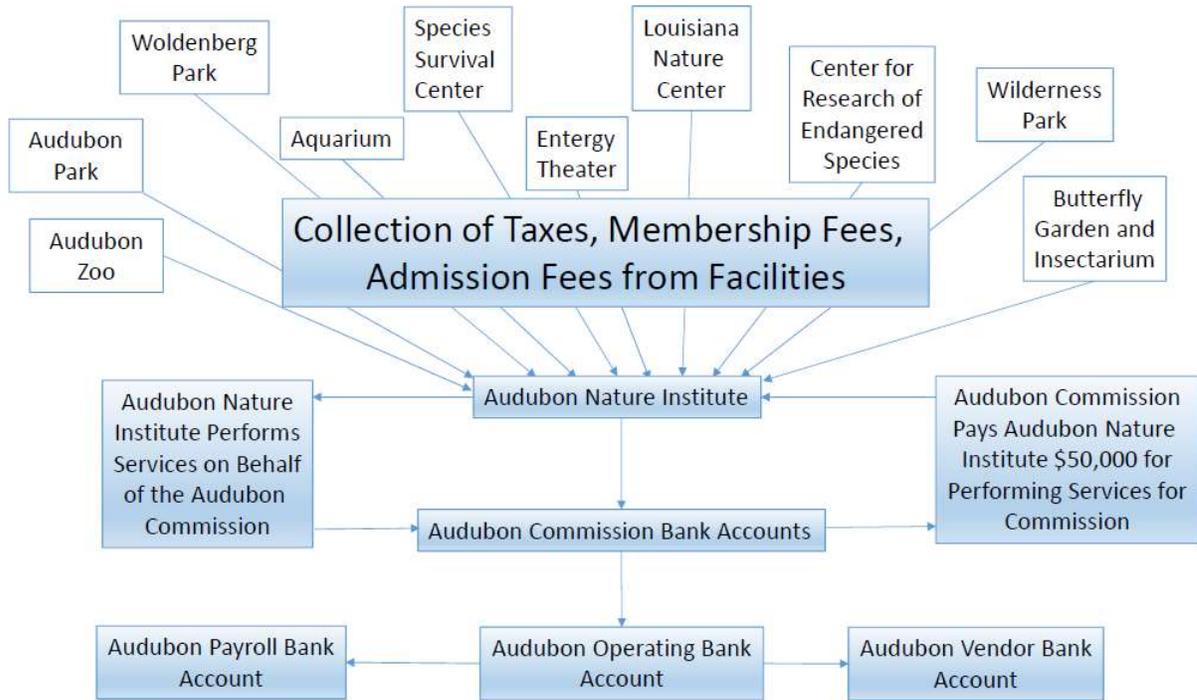
APPENDIX B. DISBURSEMENT POPULATION RECONCILIATION

The OIG compiled the disbursements population by including all payments and withdrawals from the Commission’s Operating and Vendor bank accounts for the period of January 1, 2014 through December 31, 2014.¹¹¹

Expense Type	Population Total
Total withdrawals from Commission Operating & Vendor bank accounts	\$104,998,690
Less: Transactions excluded from testing	
Purchase card statement payments	(\$6,395,516)
Payroll	(\$21,076,532)
Wires to pay back Institute lines of credit	(\$4,000,000)
Inter-company transfers between Commission and Institute bank accounts	(\$32,705,709)
Total Disbursements Population Tested	\$40,820,933

¹¹¹ Transfers between Audubon bank accounts were removed from the population as well as wires to pay back lines of credit. In order to avoid duplicate testing, payroll and purchase card payments were removed from the population. Note: These payments were tested in separate OIG audits.

APPENDIX C. AUDUBON FACILITIES FLOW OF FUNDING



APPENDIX D. LOBBYING DOCUMENTS

SPRADLEY & SPRADLEY, INCORPORATED

A GOVERNMENTAL AFFAIRS CONSULTING FIRM
P.O. BOX 85125 • BATON ROUGE, LOUISIANA 70884
TELEPHONE (225) 766-1358 • FAX (225) 769-5261 • www.spradleyandspradley.com

July 9, 2012

Mr. Bill Kurtz
The Audubon Nature Institute
P.O. Box 4327
New Orleans, La 70178

INVOICE

Professional services – July, 2012

\$ 6,000.00

OK
WAK
7/12/12

VAN SCOYOC
A S S O C I A T E S

Invoice

Invoice Number: 43926

Invoice Date: 10/1/12

AUDUBON NATURE INSTITUTE
ACCOUNTS PAYABLE
P O BOX 4327
NEW ORLEANS, LA 70178

TO Laurie Conkerton

DEPT Development

NEED PO/CODING/APPROVAL

OK TO PAY APPROVAL

APPROVAL SIGNATURE MISSING

Payment Due Upon Receipt

RE: Professional Services for the Period: 10/1/2012 to 12/31/2012

RETAINER FOR THE QUARTER ENDING IN DECEMBER	SCANNED	\$ 15,000.00
	DATE <u>10/17/12</u>	
EXPENSES		
PRINTING & COPYING	\$ 6.90	
TELECOMMUNICATIONS	34.28	
TOTAL EXPENSES		<u>41.18</u>
	TOTAL THIS INVOICE:	\$ 15,041.18
PREVIOUS BALANCE DUE		<u>0.00</u>
	TOTAL DUE:	\$ 15,041.18

*OK to pay
VZ*

Current	31-60 Days	61-90 Days	91-120 Days	> 120 Days
\$ 15,041.18	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

101 CONSTITUTION AVENUE N.W. SUITE 600 WEST WASHINGTON, DC 20001
TELEPHONE 202-638-1950 FAX 202-638-7714
WWW.VSADC.COM

Jan Schoonmaker
147 E Street, SE
Washington, DC 20003
August 26, 2020

Ms. Laurie Conkerton
Executive Vice President
Chief Administrative Officer
Audubon Nature Institute
6500 Magazine Street
New Orleans, LA 70118

Dear Laurie:

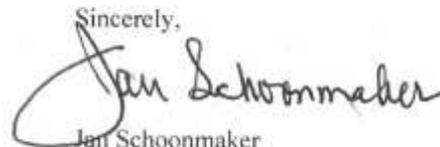
I left employment by the U.S. House of Representatives in 1991 and that year I joined a new government affairs and strategic advice firm, Van Scoyoc Associates. One of the firm's earliest clients was the Audubon Nature Institute. I represented the Audubon Nature Institute from 1991 until I retired from Van Scoyoc Associates in March 2015. During this period I registered for the Institute as required under the Lobbying Disclosure Act.

As a contract government affairs representative for the Audubon Nature Institute I advocated for Audubon with the Legislative and Executive Branches of the Federal government, monitored legislation of interest to the Institute, kept members of the House of Representatives and the Senate informed of initiatives planned by Institute, and arranged meetings for representatives of the Institute with government officials, among other activities.

The legislative and administrative issues I advocated for the Institute, including, but not limited to, specific appropriations for facilities and research programs associated with the Audubon Center for Research of Endangered Species, renovation of the New Orleans Custom House, the proposed Living Science Museum (now the Audubon Insectarium), the Whooping Crane Recovery Program, and efforts to strengthen the research, conservation, and education programs at the Institute. Other issues included the ARS-SRRC Formosan Subterranean Termite Research Program, Hurricane Katrina recovery efforts, Deepwater Horizon Oil Spill recovery, and issues relating to zoological parks and museums.

Over several years prior to my retirement, I worked with Institute representatives on renegotiation of the General Services Administration lease space in the New Orleans Custom House for the Audubon Insectarium, implementation the RESTORE Act, and funding for the Prescott Marine Mammal Rescue Assistance Grant Program.

When I retired from Van Scoyoc Associates in 2015, the contract between the firm and the Audubon Nature Institute terminated.

Sincerely,

Jan Schoonmaker

OFFICIAL COMMENTS FROM THE COMMISSION AND THE INSTITUTE

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

A draft report was distributed on July 30, 2020 to the entities who were the subject of the audit so that they would have an opportunity to comment on the report prior to its public release. The Commission and the Institute provided comments on August 31, 2020. These comments are attached.

OIG Comment on the Commission and the Institute’s Response:

According to GAGAS, “When the audited entity’s comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditors’ recommendations, the auditors should evaluate the validity of the audited entity’s comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement.”¹¹² As documented below, the OIG noted the Institute’s comments were inconsistent with the findings and conclusions in the report. The OIG specifically disagrees with the Institute’s response regarding Finding 3.

The Louisiana Attorney General has consistently opined public resources cannot be used to advocate, urge, lobby or provide public relations to promote a particular position. The Louisiana Attorney General stated:

...the line between legality and illegality is that between advocacy of only one side of the public issue through use of public funds and the neutral statement of facts pertinent to all sides of an issue and presented without bias. “Public relations” includes, but is not limited to, lobbying, which is advocacy directed toward government rather than the public at large...

¹¹² *Government Auditing Standards, Chapters 7.37*; U.S. Government Accountability Office, 2011.

(Emphasis in original).¹¹³ “It is the purpose for which the funds are spent, and the intent of the [paying public agency]... which controls the legal character of the expenditure.”¹¹⁴ The Institute operates exclusively on behalf of a public entity and must provide documentation evidencing expenditures of public funds meet the applicable legal standards to be constitutionally permissible and not a prohibited donation pursuant to La. Const. art. VII, Sec. 14.¹¹⁵ The OIG’s audit report detailed the evidence, or lack thereof, to support expenses the Institute, not the OIG, defined as “lobbying.” La. R.S. §24:51(4) and (5)(a) describes lobbying as “influencing legislation”.^{116, 117} The OIG included these definitions to illustrate that “lobbying” encompasses unconstitutional services because those services are not just disseminating a neutral statement of facts. The Institute characterized the legal character of their expenditures as lobbying.

Following their initial review of the OIG findings related to lobbying, the Institute asked to provide additional documentation supporting their lobbying expenditures and to define its purpose for the spending. A good portion of the documentation provided by the Institute supported the finding the Institute may have violated the Constitution rather than mitigated the finding.

¹¹³ La. Atty. Gen. Op. No. 90-126(A) (1990), quoting *Godwin v. East Baton Rouge Parish School Board, et al.*, 372 So.2d 1060 (La. App. 1st Cir. 1979).

¹¹⁴ *Id.*

¹¹⁵ La. Atty. Gen. Op. No. 10-0011.

¹¹⁶ La. R.S. §24:51(4) stated, “‘Lobbying’ or ‘to lobby’ means any of the following: (a) Any direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation. (b) Any preparation or research specifically intended, at the time it is performed, for use in or in support of any ongoing or planned direct act or communication with a legislator, the purpose of which is to aid in influencing the passage or defeat of any legislation. (c) Conducting or attending a meeting the purpose of which is to discuss direct communication with a legislator to aid in influencing the passage or defeat of any legislation.

¹¹⁷ Louisiana Revised Statute §24:51(5)(a) stated, “‘Lobbyist’ means either of the following: (i) Any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of such employment or engagement. (ii) Any person who acts in a representative capacity and makes an expenditure. (b) However, ‘lobbyist’ shall not mean any person who does not make any direct act or have any direct communication with a legislator for the purpose of influencing the passage or defeat of any legislation.”

The distinction between a “valid governmental function of public information and the ultra vires¹¹⁸ activity of public relations is well settled in Louisiana law.”¹¹⁹ The definition of “public relations” as defined in *Godwin* was adopted generally to distinguish public relations from public information.¹²⁰ Public relations includes “lobbying,” defined as advocacy directed toward the government rather than the public at large.¹²¹ There is never legal authority for publicly funded lobbying – advocacy - unless otherwise permitted by statute or the Constitution.¹²² Public relations in government generally results in the manipulation of public opinion for the benefit of some private or political goal.¹²³ The Attorney General further described public relations as “unfair and unlawful” “publicly financed political advocacy” precisely because it deprives those opposed to the private or political result sought of a level playing field with government.¹²⁴

During the three-year audit period, the Institute spent approximately \$416,000 on two lobbying firms – Van Scoyoc Associates (\$197,201) and Spradley and Spradley (\$219,060) – and described these services as “lobbying.”¹²⁵ The only explanation offered by the Institute, other than the records obtained by the OIG, was the Institute’s referral of the OIG to a website which statutorily requires lobbyists to report certain lobbying activities.

After reviewing the OIG report, in August 2020, the Institute sent the OIG various emails to prove they did not engage in unconstitutional lobbying and to show the types of services provided. The Institute also requested one of the lobbyists, formerly employed by Van Scoyoc Associates, to provide a letter, dated August 26, 2020, to describe the services rendered more than five years earlier. However, in the Institute’s newly received evidence, the lobbyist acknowledged, “As a contract government affairs representative for the Audubon Nature Institute I **advocated for Audubon with the Legislative and Executive Branches** of the Federal government.” (Emphasis added.) The lobbyist acknowledged her advocacy a

¹¹⁸ *Ultra vires*, meaning “beyond the powers,” “describes actions taken by government bodies or corporations that exceed the scope of power given to them by laws or corporate charters. When referring to the acts of government bodies (e.g., legislatures), a constitution is most often the measuring stick of the proper scope of power.” https://www.law.cornell.edu/wex/ultra_vires.

¹¹⁹ La. Atty. Gen. Op No. 90-126(A) at *1.

¹²⁰ *Id.* at *3.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ As noted throughout the report.

second time by stating, “The legislative and administrative issues **I advocated for the Institute**, including, but not limited to, [sic] specific appropriations for facilities and research programs...” (Emphasis added.) The Louisiana Attorney General concludes that advocacy is unconstitutional. The Institute failed to acknowledge the “advocacy” in their response to our report.

On February 18, 2013, Ms. Spradley wrote the following regarding upcoming Legislative meetings, “Hi Alison – Every year about this time, we schedule legislative meetings w/key Senators, Reps, and, of course, the Administration, to discuss our Capital Outlay request.”

On March 28, 2013, Ms. Spradley provided the Institute with a letter dated March 27, 2013, from La. Representative Gary Smith to Gov. Bobby Jindal regarding a recent meeting he had with Audubon “representatives.” It is clear from the letter the meeting concerned increased funding and their “request” for additional funding.

On April 5, 2013, Laurie Conkerton wrote Jan Schoonmaker the following, apparently related to a Senate funding bill which reduced funding:

Would you mind taking a look at this Prescott Funding Support letter to make sure the language appropriately addresses the current funding situation? I had minimal information from the people driving this effort, and I don’t want Audubon to look half-baked! Thanks.

On April 17, 2013, Ms. Spradley address the changes to legislation presumably as it related to Audubon:

> Subject: HB 2 GOOD NEWS BAD NEWS

> All of the P5 money moved up to P1 as promised...but no new P5 money. We need to talk about next steps...I recommend we get Leger and Abramson and Moreno (and possibly Arnold) involved quickly.

On May 14, 2013, Ms. Spradley wrote to Institute individuals, “I have alerted our key supporters that we might need some help on the Senate side.”

On October 18, 2013, Laurie Conkerton of the Institute asked Linda Spradley to review an item “before [the Institute] send[s] out to elected officials? It’s basically the same letters that we have used previously. I’ve also attached the project list

we'll be including in our request." Spradley spoke about how she would advocate for Audubon - "an extra \$19 mill is a big ask. Suggest you explain re original request and why we are where we are."

In one of the emails dated July 3, 2014, Jan Schoonmaker of Van Scoyoc describes about writing a letter advocating on why something should be expedited.

The OIG cannot verify the completeness of these emails. The Institute stated the emails were "representative emails between the state consulting firm Spradley and Spradley and Audubon executive staff." Other than those listed above, the emails do not provide enough context to determine the specific services rendered by the lobbying firms. There is a reference to a potential meeting with the Louisiana governor. If the meeting occurred, what was discussed? The lobbying firms were paid monthly, suggesting a monthly retainer fee. These emails, assuming a complete disclosure of all lobbying-related emails, do not indicate services were provided every month the firms were paid.

Our auditing standards require findings to be developed based on the audit objectives. One of the objectives of this report was to "determine if... the Institute complied with its policies, as well as applicable laws and/or best practices, as it pertained to the expenditure of Commission funds." Eliminating the finding assumes no unconstitutional lobbying occurred. Based on our audit evidence and some of the newly provided evidence, the OIG cannot conclude the Institute provided no unconstitutional lobbying services. In fact, evidence exists the lobbying paid for with public funds was to advocate and urge different politicians and bills favorable or unfavorable to the Institute. Regardless, and based on the stated audit objectives, the OIG concluded the Institute "may have" violated the Constitution because the Institute, without dispute, hired two "lobbying" firms and the services on the website to which the OIG was directed included direct lobbying.

We also disclose in the report the description provided in the invoices. This statement exists so not to mislead the reader as to what type of evidence we reviewed. The Institute paid the bills with little/no documentation justifying the services. Therefore, because the Institute failed to require appropriate documentation describing the services rendered and the amount of time spent on a particular activity, and because there was no contract or preceding RFP, the OIG

cannot determine how much of the \$416,000 “may have violated the Constitution” under La. Const. art XI, sect. 4 pertaining to prohibited lobbying.

Because the Institute lacked sufficient documentation, the Institute suggested the OIG does not have support to conclude the Institute “may have violated the Constitution” as it relates to these lobbying services. However, the evidence as documented throughout our report provides a reasonable basis for the conclusion the Institute “may have violated the Constitution.”¹²⁶

¹²⁶ “Auditors must obtain sufficient, appropriate audit evidence to provide a reasonable basis for their findings and conclusions. Appropriateness is the measure of the quality of evidence that encompasses its relevance, validity, and reliability in providing support for findings and conclusions.... In assessing sufficiency of evidence, auditors should determine whether enough evidence has been obtained to persuade a knowledgeable person that the findings are reasonable.” *Government Auditing Standards, Chapters 6.56 and 6.57*; U.S. Government Accountability Office, 2011.

Audubon Commission/Audubon Nature Institute Response

Office of the Inspector General Use of Funds Audit

I. Executive Summary

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

The second audit entitled “Use of Funds” Audit pertains to Audubon’s disbursements from 2012-2014 made by check or wire. In the Use of Funds Audit, the OIG did not find a single instance of fraud, abuse, or impropriety in Audubon’s operations. The OIG, whose mission includes increasing accountability and deterring fraud within public entities, highlighted in the report that Audubon has adequate controls in place that were designed properly and are implemented effectively.

Audubon has reviewed the OIG’s findings and observations and is taking them into consideration. While Audubon disagrees with some conclusions reached by the OIG and notes that several of the findings have been resolved, we are always open to feedback for improvement.

It is noteworthy that this second audit comes at a time when Audubon is facing devastating financial and operational challenges due to the COVID-19 pandemic. Audubon is projecting revenue losses of over \$20 million for 2020 and an operating deficit of over \$10 million. Audubon has laid off over 70% of its staff and is engaging in essential operations only at this time including the care and feeding of 15,000 animals whose significant needs continue during the pandemic. Nevertheless, we have provided as thorough a response as possible as we continue to work with the OIG.

Audubon is aware that there is a third pending audit pertaining to payroll and has reviewed a draft of the payroll audit findings, yet the OIG has chosen to release three audits separately, requiring three separate responses from Audubon and three public releases. While Audubon has fully cooperated with the OIG for the last five years and welcomes opportunities to improve, the audits unfortunately come at a time when Audubon has incredibly pressing matters to address and very limited resources. As we have expressed at every meeting with the Office of the Inspector General, Audubon is always open to ways in which it can improve how it operates and will consider the OIG’s observations accordingly.

II. Response to Individual Audit Findings

Positive Finding 1

“The Institute’s controls over the initiation, approval, and execution of the purchasing process were designed properly and implemented and operating effectively. The auditors noted 98 of the 99 expenditures tested complied with Article VII Section 14(A) of the Louisiana Constitution.”

Response:

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

Finding 1-Banking:

“The Commission did not maintain and administer its funds as required by the Home Rule Charter and the Contract between the Institute and the Commission because the Commission failed to exercise authority over its own bank accounts and all signatories to the accounts were Institute officers or employees.”

Response:

The Commission *administers* Audubon funds through its Cooperative Endeavor Agreement and Management Agreement with the Institute. The Home Rule Charter states that funds shall be administered by the Commission---and it is within the authority of the Commission to contract with a non-profit to manage bank accounts on its behalf. Nothing in the Home Rule Charter limits the Commission’s authority to enter into a contract for administration of the funds generated by the Audubon Commission.

The CEA-Management Agreement specifically states in Section 4.1.3 that “the Institute is hereby authorized to expend the funds of the Commission for the purposes described in Section 4.1.1, above....” The Commission authorized the Institute to exercise authority over the bank accounts, consistent with the budget submitted by the Institute to the Commission.

Section 4.1.4 from the CEA states that “All 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 *in accordance with applicable law and pursuant to Section 4.1.3 above.*”

The Commission has authorized the Institute to maintain and administer the bank accounts and to make expenditures in accordance with the budget submitted by the Institute to the Commission. As such, we disagree with this finding.

However, and as was noted in Audubon’s response to the first disbursement audit, Audubon has already started the process of evaluating a revised means of segregating funds generated by the Nature Institute. We are working with our audit team to ensure that we are operating pursuant to best practices in non-profit management.

Finding 2- Budget:

“The Commission did not approve the Institute’s annual operating budget as required by the Contract.”

Response:

There are two provisions in the CEA/Management Agreement between the Commission and the Nature Institute which address submission and approval of the annual operating budget.

Section 4.1.3 states in relevant part:

The Institute shall submit its operating budget annually to the Commission, the Mayor of the City of New Orleans, and the City Council, no later than December 31st of each year. The Institute may submit an amended budget as it deems necessary...the Commission shall have the reasonable authority to approve and/or amend the budget at any time.

Section 5 states:

The Commission shall 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.

The Audubon Nature Institute presents an annual operating budget to the full Commission in an open public meeting, typically in November of the year preceding the budget year being presented. The Commission has full opportunity to comment, request amendments, and question the Nature Institute. Further, for the past two years, the full Commission has reviewed and approved the operating budget by resolution. Audubon agrees that the Contract between the Commission and the Nature Institute should be amended to eliminate any conflicting provisions regarding budget approval. The OIG and Audubon agree that this finding has been resolved.

Finding 3—Use of Commission Funds for Constitutionally Impermissible Purposes:

“The Institute may have violated the Louisiana Constitution because it used \$416,261 of Commission funds to pay for lobbying services.”

Response:

Audubon respectfully disagrees that it may have violated the Louisiana Constitution in hiring a lobbyist for legislative support. The OIG has mis-interpreted the Louisiana Constitution and Attorney General opinions and has presented no evidence at all to support this finding. As such, this finding is inaccurate and should be removed.

At the outset it is important to note that use of public funds by a municipality or municipal agency to engage in legislative affairs and/or lobbying does not violate the Constitution. Lobbying is a regulated profession under Louisiana law, which the OIG should acknowledge given its citation to the revised statute governing “lobbyists.” La. R.S. § 24-50, et seq. Lobbying can be a necessary

function of municipal government to work with the state and federal government on a myriad of issues that directly impact municipalities and municipal agencies. In fact, the City of New Orleans, varying city agencies and municipalities throughout the State employ lobbyists to assist with legislative affairs.¹

The Constitution prohibits use of public funds to urge an elector to vote for or against a candidate or ballot proposition. The OIG has offered no evidence to support its conclusion that the lobbyists working with Audubon engaged in activity related to any election.

The OIG cites Louisiana Constitution Art. XI, §4, which states in relevant part:

“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 OIG then concludes, *with no support*, that this provision of the Constitution “prohibited the use of public funds to seek influence of a politician or public official on an issue.” Article XI, §4 is quite clear and specifically prohibits the use of public funds to urge an elector to vote for a candidate or proposition or to fund a candidate or political organization.

The case cited by the OIG, *Godwin v. East Baton Rouge Parish School Board, et al.*, 372 So. 2d 1060 (La. App. 1st Cir. 1979), involved allegations that public funds were used to promote two tax propositions that would support the school board. As such, the case at its outset pertained to use of public funds to urge electors to vote for a proposition. The opinions cited by the OIG are all within the context of the prohibition of using public funds to advocate for or against a candidate or proposition, which is not the purpose of Audubon’s lobbying efforts. As such, these opinions are not applicable to the expenditures cited by the OIG.

The OIG has also concluded that the information provided by Audubon to support the work provided by its legislative consultants is insufficient, but notably provides no support or contrary evidence for its finding. Audubon has advised the OIG and proved through documentation that lobbying services provided to Audubon were not *a vote for or against a candidate nor a vote for or against a proposition*.

Importantly, Audubon provided the OIG with representative correspondence between Audubon and Spradley & Spradley and Audubon and Van Scoyoc Associates. Audubon also provided the OIG with summaries of the types of services these firms provided to Audubon.

Audubon provided information to the OIG showing that Van Scoyoc Associates provided strategy related to the Legislative and Executive Branches of the Federal government, monitored legislation of interest to the Institute, kept members of the House of Representatives and the Senate informed of initiatives planned by Institute, and arranged meetings for representatives of the Institute with government officials. Van Scoyoc worked with Audubon on federal appropriations for facilities and research programs associated with the Audubon Species Survival Center, renovation of the New Orleans Custom House, the Whooping Crane Recovery Program, and efforts to strengthen the

¹ <http://ethics.la.gov/LobbyistData/ResultsByCompRep.aspx?SearchParams=RepName.{City%20of},&OrderBy=1>

research, conservation, and education programs for Audubon. None of this work implicates an election.

Audubon also provided information to the OIG showing that Spradley & Spradley represented Audubon in state governmental affairs issues, primarily at the State and Legislative levels, including developing and implementing strategies to successfully attain state funding match to Audubon's long-term Capital Outlay plan. These strategies included, but were not limited to, attending Legislative committee meetings, and meeting with and educating individual legislators and members of the Administration about Audubon. None of this work implicates an election.

Finding 3 is unsupported and Audubon respectfully disagrees with this finding.

Finding 4-Professional Service Contracts:

“The Institute did not seek competitive proposals for professional service contracts, totaling \$416,261, which violated its policy as well as City Executive Order MJL 10-05. Note: The expenses also may have violated the Louisiana Constitution. (Refer to Finding 3).

Response:

Audubon's purchasing policy has evolved over time and in 2010 a revised policy was approved by the Board requiring competitive selection of professional service providers, consistent with Order MJL 10-05. Spradley & Spradley provided legislative consulting services prior to that change. When the contract expires, Audubon will issue a request for proposals for lobbying services. This finding has been resolved.

The OIG's misinterpretation of Louisiana law on lobbying services has been addressed in the response to Finding No. 3.

Finding 5— Revenue Sharing Agreements.

“The Institute may have violated the State of Louisiana Code of Ethics because it paid employees \$579,570 in commissions in addition to their regular salaries for performing duties related to their job.”

Response:

This finding presumes with no support that the Ethics Code prohibits employee revenue share as part of that employee's duly entitled compensation. The Louisiana Code of Ethics states:

No public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity **to which he is duly entitled**, for the performance of the duties and responsibilities of his office or position....

The employee revenue share related to golf and tennis lessons is part of the employees' duly entitled compensation provided by the employing agency. Audubon has been able to determine

that the practice of including commission as part of the duly entitled compensation existed in 2012 and in 2016 and was memorialized in writing as part of offers of employment.

The OIG's interpretation of La. R.S. 42:1113(A)(1)(a) is inaccurate. This provision does not prohibit a public servant from having an employment contract with its agency outlining the details of his/her compensation. This provision is intended to prohibit a public servant from having a contractual relationship with his agency unrelated to his employment (ex: a public servant in the department of public works bidding on a public works construction project).

Oddly, the OIG should agree that this provision does not prohibit a public servant from having an employment contract with its agency given that in its first audit of Audubon, the OIG issued a finding that all employment contracts should be in writing. Audubon disagrees with this finding.

Finding No. 6—Verbal Contracts.

“The Institute did not comply with best practices because it entered into verbal contracts for lobbying services. The Institute also entered into verbal contracts with its employees.”

Response:

Audubon's purchasing policy has evolved over time and in 2010 a revised policy was approved by the Board requiring competitive selection of professional service providers. The OIG's Use of Funds Audit covers the timeframe 2012-2014. Audubon has had a written contract with Spradley & Spradley since October 2017. Audubon memorialized its agreement with certain employees identified by the OIG in written offers of employment. Audubon maintains a purchasing policy that outlines requirements for contracting.

Finding No. 7—Public Records.

“The Institute violated its record retention policy and Public Records Law because it did not maintain copies of signed contracts for at least three years.”

Response:

Audubon maintains a robust document retention policy. The OIG requested five special events contracts and immediately prior to the shutdown of Audubon facilities due to Covid-19 and subsequent staff layoffs, Audubon was engaged in good faith efforts to locate these contracts. Audubon also provided the OIG correspondence among Audubon employees indicating that the files may be in offsite storage. With such limited resources and staffing, Audubon is unable to close out this finding at this time. Audubon trains its employees on its records retention policy and has made good faith efforts to locate the requested files.