

# Audubon Commission Minutes

November 17, 2021

Video Conference

Attending: Kelly Duncan, Gayle Benson, Ashley Francis, Field Ogden, Sally Shushan, Brent Wood, Lex Kelso, Bruce Hofer, Storey Charbonnet, Leila Eames, Xavier Angel, Dierdre Kelly, Victor Jones, Frances Fayard, Jermaine Smith, Emily Vuxton, Catherine Morrell

Excused: Coleman Ridley, Danny Conwill, Charles Teamer, Dolfinette Martin, Minh Thanh Nguyen

President Kelly Duncan called the meeting order at 4:00 pm. He reminded everyone that the Commission is meeting by video conference consistent with Proclamation Order JBE 2020-30, extended by Proclamation Order 7 JBE 2021. He stated public comment would be saved for later in the meeting. Members of the public Louis Shepard, Tiki McIntyre, Lee Isaacson, and Sandy Rosenthal identified themselves for the record.

The minutes of the September meeting were unanimously accepted as distributed (Wood/Benson).

As President of the Commission, Mr. Duncan changed the agenda order by moving the official business and motions ahead of updates and reports. He then introduced Ms. Laurie Conkerton, EVP and CAO, to discuss the bond sale resolution. The resolution was circulated for review prior to the meeting. The bond sale occurred earlier in the day and was very successful with an interest rate of 2.37%. Those funds will be primarily used for the Aquarium renovations. She then introduced Mr. Jason Akers, bond attorney with Foley & Judell, to talk more about the resolution to move forward with the bond sale. Mr. Akers gave a brief background on the sale. The resolution that has been presented to Commissioners is a companion resolution to the Board of Liquidation resolution that was already adopted. The target closing date is December 15, with funds available at that time. Mr. Duncan asked for motion to the approve the resolution below.

The following resolution was offered by Field Ogden, and seconded by Gayle Benson:

## **RESOLUTION**

A resolution authorizing the issuance and sale of the \$33,860,000 Limited Tax Bonds (Audubon Commission Projects), Series 2021 of the City of New Orleans, Louisiana; and requesting the taking of all actions required to issue said bonds; and providing for other matters in connection therewith.

**WHEREAS**, the City of New Orleans, Louisiana (the "City") is currently receiving the proceeds of a special ad valorem tax of 6.31 mills (the "2021 Tax") pursuant to the following proposition approved by a majority of the electorate voting at a special election held in the City on May 4, 2019:

In lieu of 3.00 mills currently levied for Parkway and Parks Commission and New Orleans Recreation Department and 0.32 mills and 2.99 mills levied for Audubon Commission ("Prior Taxes"), shall the City be authorized to levy a special tax of 6.31 mills ("Tax") for twenty years, January 1, 2021 - December 31, 2040 (estimated at \$22,150,000 in the first year) with proceeds dedicated first to payment of debt service obligations secured by the Prior Taxes then to

improving park safety and accessibility, capturing stormwater to reduce flooding, repairing and upgrading playgrounds and recreation centers, conserving natural areas, and constructing, improving, maintaining, and operating parks, recreational, and wildlife conservation facilities in the City, except that a portion of collections shall be remitted to certain state and statewide retirement systems as required by law, allocated pro-rata as follows: 1.95 mills to New Orleans Recreation Development Commission; 1.80 mills to New Orleans Department of Parks and Parkways; 0.61 mills to City Park Improvement Association; and 1.95 mills to Audubon Commission, supplemental to and not in lieu of City general fund appropriations budgeted for 2020, subject to requirements provided by Ordinance Calendar Number 32,501 and with expenditures subject to public disclosure through annual audits; and

**WHEREAS**, the City is authorized to issue bonds payable from ad valorem taxes levied for the Commission, such as the 2021 Tax, pursuant to the provisions of Part XIV of Chapter 4 of Subtitle II of Title 39 of the Louisiana Revised Statutes of 1950, as amended, and other constitutional and statutory authority (the "Act"); and

**WHEREAS**, all bonds of the City payable from the proceeds of special ad valorem taxes, such as the 2021 Tax, are administered by the Board of Liquidation, City Debt (the "Board of Liquidation"); and

**WHEREAS**, by the adoption of this Bond Resolution, the Commission desires to authorize the issuance in one or more series of the \$33,860,000 Limited Tax Bonds (Audubon Commission Projects), Series 2021 of the City of New Orleans, Louisiana (the "Bonds") and to provide certain details of the Bonds; and

**WHEREAS**, the Bonds shall be secured by the Commission's share of the revenues of the 2021 Tax (the "Commission's Portion of the 2021 Tax"), which is authorized to be levied each year through December 31, 2040 (subject to adjustment from time to time due to reassessment).

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Audubon Commission, as follows:

**SECTION 1. Definitions.** Unless the context shall clearly indicate some other meaning, the following terms shall, for all purposes of this Resolution and of any resolution or other instrument amendatory or supplemental thereto, have the following meanings:

"**2021 Tax**" has the meaning given such term in the recitals hereto.

"**Act**" shall mean Part XIV of Chapter 4 of Subtitle II of Title 39 of the Louisiana Revised Statutes of 1950, as amended.

"**Additional Bonds**" means bonds issued after the initial issuance of the Bonds pursuant to Section 10 hereof.

"**Board of Liquidation**" means the Board of Liquidation, City Debt.

"**Board of Liquidation Resolution**" means the resolution to be adopted by the Board of Liquidation authorizing the issuance, sale and delivery of the Bonds.

"**Bond**" or "**Bonds**" means the Limited Tax Bonds (Audubon Commission Projects), Series 2021 of the City of New Orleans, Louisiana.

**"Bond Resolution"** or **"Resolution"** means this resolution authorizing the issuance of the Bonds, together with any Supplemental Resolutions.

**"City"** means the City of New Orleans, Louisiana.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Commission"** means the Audubon Commission, a political subdivision of the State.

**"Commission's Portion of the 2021 Tax"** has the meaning given such term in the recitals hereto.

**"Cooperative Endeavor Agreement"** means the Ad Valorem Collection and Distribution Cooperative Endeavor Agreement by and between the Board of Liquidation and the Commission effective as of November 1, 2020.

**"Costs of Issuance"** means all items of expense, directly or indirectly payable or reimbursable and related to the authorization, sale and issuance of Bonds, including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any fiduciary, legal fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, insurance, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of refunding, premiums for insurance of the payment of the Bonds and any other cost, charge or fee in connection with the original issuance of Bonds.

**"Council"** means the Council of the City of New Orleans.

**"Authorized Officers"** means the President and the Secretary of the Commission, acting collectively or individually.

**"Outstanding"** when used with reference to the Bonds, means, as of any date, all Bonds outstanding pursuant to the Board of Liquidation Resolution.

**"Outstanding Parity Bonds"** means the Limited Tax Bonds (Audubon Commission Projects), Series 2020 of the City of New Orleans, Louisiana.

**"Owner," "Owners," "Registered Owner" or "Registered Owners"** when used with respect to any Bond means the Person on whose name such Bond is registered in the Bond register.

**"Paying Agent"** means the Paying Agent designated in the Board of Liquidation Resolution.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

**"Project Fund"** means the fund set forth in Section 5(i) hereof.

**"Purchaser"** means the original purchaser of the Bonds, as forth in the Board of Liquidation Resolution.

**"State"** means the State of Louisiana.

As used herein, the foregoing definitions shall be equally applicable to both the singular and plural forms and male and female of such terms and vice versa, and unless the context dictates otherwise, the greater shall include the lesser herein.

**SECTION 2. Authorization of the Bonds; Form of Bonds.** Pursuant to the authority of the Act and other constitutional and statutory authority, there is hereby authorized the incurring of indebtedness and the issuance of \$33,860,000 Limited Tax Bonds (Audubon Commission Projects), Series 2021, of the City of New Orleans for the purpose of (i) constructing and improving the Commission's parks, recreational, and wildlife conservation facilities and (ii) paying the costs of issuance of the Bonds.

The Bonds shall bear interest at the rates, mature at the times and in the principal amounts, be callable for redemption, be substantially in the form and contain other terms and provisions as shall be set forth in the Board of Liquidation Resolution.

**SECTION 3. Obligations of and Security for Bonds.** The Bonds shall be special and limited obligations of the City payable solely from and secured, equally with the Outstanding Parity Bonds, solely by the Commission's Portion of the 2021 Tax, which revenues shall be and are hereby irrevocably and irreparably pledged and dedicated in an amount sufficient for the punctual payment of the principal of and interest on the Bonds, the Outstanding Parity Bonds, and any Additional Bonds. All of the revenues of the Commission's Portion of the 2021 Tax shall be set aside in the funds and accounts as provided by the Board of Liquidation and shall be and remain pledged for the security and payment of the Bonds, the Outstanding Parity Bonds, and the Additional Bonds, if any, in principal and interest and for all other payments provided for in this Resolution. The Registered Owners of the Bonds together shall have and are hereby granted a first lien on the moneys held by the Board of Liquidation until paid over to the Commission. Bonds issued hereunder shall constitute a borrowing solely upon the credit of the Commission's Portion of the 2021 Tax on a parity with the Outstanding Parity Bonds and shall not constitute an indebtedness or pledge of the general credit or exercise of the taxing or police power of the City within the meaning of any constitutional, statutory or charter provision relating to the incurring of indebtedness.

**SECTION 4. Funds and Accounts.** So long as the Bonds, the Outstanding Parity Bonds or any Additional Bonds are Outstanding, the Commission agrees that there shall be maintained the following special funds and accounts, with the moneys therein to be held, controlled and disbursed by the Board of Liquidation in accordance with the Cooperative Endeavor Agreement:

(i) the "Audubon Commission Projects Series 2021 Project Fund," which will be created to receive deposits of proceeds from the sale of the Bonds; and

(ii) the "Audubon Commission Projects Tax Proceeds Account," created to receive deposits of the Commission's Portion of the 2021 Tax.

**SECTION 5. Sale of the Bonds.** The Commission hereby confirms the sale of the Bonds by the Board of Liquidation to the Purchaser on the terms set forth in the Board of Liquidation Resolution, as provided at this meeting.

**SECTION 6. Application of Proceeds of Sale of the Bonds.** The proceeds of the sale of the Bonds shall be paid to the Board of Liquidation and deposited in the Project Fund and applied for the purposes of constructing and improving the Commission's parks, recreational, and wildlife conservation facilities and paying all Costs of Issuance of the Bonds.

**SECTION 7. Covenant to Levy the 2021 Tax: Enforcement of Rights.** It is recognized that the

Council will obligate the City and is bound under the terms and provisions of the Act to levy, impose, enforce and collect the 2021 Tax and to provide for all reasonable and necessary rules and regulations, procedures and penalties in connection therewith, including the proper application of the proceeds of the 2021 Tax, until all of the Bonds and the Outstanding Parity Bonds have been retired as to both principal and interest or are no longer considered outstanding under the Bond Resolution. In case of the failure of the Council to levy the 2021 Tax while any Bonds are Outstanding and unpaid, the Board, or its successor, shall order the proper officers to extend the 2021 Tax upon the assessment rolls of the City and to order the proper officers of the City to collect the 2021 Tax, to its maximum authorized amount or an amount sufficient to pay principal and interest falling due on the Bonds if less than the maximum authorized amount will be sufficient to pay such Bonds, and the officers shall assess and collect the 2021 Tax as so ordered. The Board is empowered to enforce the assessment and collection of the 2021 Tax as provided hereinabove by appropriate judicial proceedings. The Board of Liquidation is requested to work with the Paying Agent to ensure prompt payment of debt service on the Bonds when due.

**SECTION 8. Issuance of Additional Bonds.** Upon request of the Commission, Additional Bonds may be issued on a parity with the Bonds and the Outstanding Parity Bonds in accordance with the term of the Board of Liquidation Resolution.

**SECTION 9. Tax Covenants.** The Commission covenants and agrees that, to the extent permitted by the laws of the State of Louisiana, it will comply with the requirements of the Code in order to establish, maintain and preserve the exclusion from gross income of interest on the Bonds under the Code. The Commission further covenants and agrees that it will not take any action, or permit at any time or times any of the proceeds of the Bonds or any other funds of the Commission to be used directly or indirectly in any manner, the effect of which would be to cause the Bonds to be "arbitrage bonds" or would result in the inclusion of the interest on any of the Bonds in "gross income" under the Code, including, without limitation, (i) the failure to comply with the limitation on investment of bond proceeds; or (ii) the failure to pay any required rebate of arbitrage earnings to the United States of America; or (iii) the use of the proceeds of the Bonds in a manner which would cause the bonds to be "private activity bonds".

The Executive Officers are hereby empowered, authorized and directed to take any and all action and to execute and deliver any instrument, document or certificate necessary to effectuate the purposes of this Section.

**SECTION 10. Management Contracts.** The Commission hereby covenants that as long as the Bonds or the Outstanding Parity Bonds are Outstanding, any contracts for the management of its facilities shall comply with the requirements of the Code and the regulations issued thereunder. The Commission further covenants that it will comply with any further regulation or guidelines of the Internal Revenue Service relating to the management of facilities financed with the proceeds of tax- exempt bonds.

**SECTION 11. Continuing Disclosure.** The Commission covenants and agrees for the benefit of the owners of the Bonds from time to time to provide or cause to be provided to the Municipal Securities Rulemaking Board (the "MSRB") through the internet-based portal referred to as the Electronic Municipal Market Access System ("EMMA") the information to be contained in the Annual Report or the notice of material events shall be as more fully set forth in a Continuing Disclosure Certificate approved by the Board of Liquidation. Failure to comply with the Continuing Disclosure Certificate shall not constitute an "event of default" under the Bond Resolution, however any of the owners of the Bonds may take such action or exercise such remedies as may be provided by law to enforce the obligations of the Commission under the Continuing Disclosure Certificate.

**SECTION 12. Preparation of Official Statement.** The preparation and distribution of a Preliminary

Official Statement and Official Statement containing security features, other pertinent information as may be deemed necessary, advisable or desirable and detailed and comprehensive financial and statistical data, are hereby authorized and approved. The submission of the Preliminary Official Statement to a nationally recognized bond rating service as recommended by the co-municipal advisor to the Board of Liquidation, together with a request that an appropriate rating be assigned, is hereby ratified.

**SECTION 13. Publication of Resolution.** This resolution shall be published in one (1) issue of the official journal.

**SECTION 14. Severability Provision.** In case any one or more of the provisions of this Resolution or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of the Bonds, but this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. Any constitutional or statutory provision enacted after the date of this Resolution which validates or makes legal any provision of this Resolution and/or the Bonds which would not otherwise be valid or legal, shall be deemed to apply to this Resolution and the Bonds.

After a roll call vote, the resolution was declared adopted on this, the 17<sup>th</sup> day of November 2021.

Mr. Duncan again introduced Ms. Conkerton to present the 2022 budgets. She reminded the group that the budget presentation would be a little different this year because of the recent changes to the management agreement. One budget will be for the facilities operated by Audubon Nature Institute, another is specifically for the Commission, and there is also a capital projects plan. Ms. Conkerton began her presentation with some background information. Next year is still a transitional year and Audubon is not where it was pre-COVID. However, great progress is being made and the organization is rebuilding with purpose.

Some general assumptions for 2022 include a five days per week operating schedule of Thursday through Monday for the Zoo and Aquarium, six days a week of operations for spring break (March 16-April 20, adding Wednesdays), Aquarium construction closures scheduled for six weeks in January and February and all of December, groups will be admitted again, still offering Community Connect and Taylor Audubon Scholars programs, and team will remain flexible should COVID restrictions return.

Ms. Conkerton then shared some of the operating priorities for 2022. Those include reintroduction of education programs, conservation program with dedicated funding, continued living wage implementation and talent development, new website and employee intranet, timely management of capital projects, PR campaign for Aquarium project, capital campaign, implement updated management agreement changes, and business planning for downtown transformation and beyond. She went on to explain salary adjustments and positions included in 2022 baseline budget. Before COVID, Audubon had a total of 869 employees and as of September 30, 2021 has 415.

She continued the presentation with a summary of Audubon Facilities Operating budget for 2022. The net results of the proposed operating budget are -\$2.2M, however based on positive 2021 results we are hoping to exceed that. A cash reserve is available to cover the net loss from operations.

Audubon Nature Institute- Operating Budget						
FINANCIAL DASHBOARD						
DRAFT AS OF NOVEMBER 10						
(AMOUNTS IN THOUSANDS)						
NET OPERATING RESULTS BY FACILITY:						
FACILITY	BUDGET 2022	BUDGET 2021	VARIANCE 2022 Budget To 2021 Budget	FORECAST 2021	ACTUAL 2020	ACTUAL 2019
Aquarium	\$2,215	\$342	1,873	\$5,598	2,904	7,493
Zoo & Park	(\$3,648)	(\$3,543)	(105)	(\$1,439)	(5,988)	(6,726)
Butterfly Garden & Insectarium	\$0	\$0	0	(\$13)	(375)	523
FMASSC	(\$651)	(\$599)	(52)	(\$620)	(163)	(594)
Louisiana Nature Center	(\$112)	\$0	(112)	(\$25)	(230)	(335)
<b>NET OPERATING RESULTS</b>	<b>(\$2,196)</b>	<b>(\$3,800)</b>	<b>\$1,604</b>	<b>\$3,501</b>	<b>(\$3,852)</b>	<b>\$361</b>
Excludes capital revenues and expenses.						

Ms. Conkerton then presented the 2022 Commission Operating budget. Under the new management agreement, this is the first year for the Commission to have its own budget. Tax millage and leases are the primary revenue. All tax millage is transferred to the Institute for operating expenses. That leaves a net of \$634K.

The total attendance projection for next year is roughly 843K. That number is based on past performance and conversations with New Orleans and Louisiana tourism leaders. The admissions projection total is about \$14M. Ms. Conkerton then explained the use of dynamic pricing next year. Using this variable pricing encourages online purchasing and allows our guests to get the best price.

Finally, Ms. Conkerton shared the 2022-2026 capital plan. The total budget for 2022 is \$48M with the primary source of funding being bond proceeds. The total for 2022-2026 is \$107.8M. Major capital projects planned include \$40M of projects at the Zoo and Park and \$56M for downtown.

Mr. Ron Forman, President and CEO, reminded the group that these budgets have already been reviewed and are being recommended by the executive and finance committees.

Mr. Duncan asked for a motion to approve the 2022 Audubon Nature Institute facilities operating budget. The budget was approved unanimously (Eames/Benson).

He then asked for a motion to approve the 2022 Audubon Commission operating budget. The budget approved unanimously (Francis/Benson).

Lastly, he asked for a motion to approve the 2022 Audubon Commission capital budget. The budget was approved unanimously (Benson/Vuxton).

Mr. Duncan introduced Dr. Kyle Burks, EVP and COO, to present the final motion of the meeting. Dr. Burks explained the use of Construction Manager at Risk for the Aquarium renovations project. The Commission previously approved contract execution for the project. We are now seeking approval to accept the guaranteed maximum price proposal from the contractor to be funded by bond sale proceeds. Dr. Burks stated we are seeking motion to authorize the President of the Audubon Commission or the CEO of Audubon Nature Institute to execute an amendment to the existing CMAR Broadmoor contract, thereby accepting the 100% CD GMP proposal of \$25,420,485 for renovations to the Audubon Aquarium of the Americas. Motion passed unanimously (Benson/Fayard).

Mr. Forman then requested Dr. Burks continue with his updates on facility operations. Dr. Burks announced that the Nature Center now has a staff of four and can reopen the interpretive center and reintroduce some educational programming for that community. The Aquarium project is moving forward, with demolition starting December 1. There have been six ray births in the last three weeks. And a lot of preventative animal care has recently taken place. He then presented some program and other facility updates. This is the time of year our team releases whooping cranes into Louisiana habitats. They are then tracked for research purposes. Menari, a Sumatran orangutan at the Zoo, is expecting twins. Because she will not be able to care for both babies, our animal care team is prepared to assist with rearing. To have four orangutan births in a two-year span is spectacular. All our great apes have received their covid vaccine and they all did so voluntarily. Pacha, our young male tapir is out on exhibit in Jaguar Jungle. Another new addition to that exhibit is a pair of maned wolves. Finally, last month Audubon was contacted by US Fish and Wildlife Service about taking a young jaguar cub that was confiscated at the Texas-Mexico border. She is now in our care after very poor treatment from her previous owner. Mr. Forman then concluded his report with hopes of meeting at least partially in person again next year.

Mr. Duncan thanked Dr. Burks for his report then asked members of the public if they wanted to comment. Mr. Louis Shepard asked the Audubon Nature Institute Board would vote on any tennis agreements before being voted on by the Commission, and if members of the public would have a chance to comment before voting. Mr. Forman answered that only the Commission would vote on anything related to tennis. As with any Commission meeting members of the public will have a chance to comment. Audubon will also be holding another public meeting on tennis before finalizing any agreement. Mr. Tomas Rey then commented that he is a neighbor across from the tennis courts. He asked how his neighborhood association would be notified of future public meetings, as he does not recall ever being notified about previous meetings. Mr. Forman said the public meeting would be advertised in the newspaper as it was in the past and we also send something directly to the association. He then stated there was an agreement to not put in lights at the tennis courts and that he, personally, is against any lights at the tennis courts. Mr. Forman said we would be happy to speak with the association and get their input, and that light technology has come a long way since the tennis courts were first built. We now have directional lighting with the ability to not disturb surrounding neighbors. Ms. Sandy Rosenthal then commented that there are currently not enough public clay tennis courts in the city. And she is very concerned about any reduction in the number of clay courts.

There being no further business, the meeting was adjourned shortly before 5:00 pm.