

**CHAIR**  
Robert D. Thomas

**COMMISSIONERS**  
William D. Darby  
Patti Jones  
Mike Novak  
Jack W. Perry  
Betty Reinbeck  
Joseph Slovacek



**EXECUTIVE DIRECTOR**  
Harvey Hilderbran

## **TEXAS FACILITIES COMMISSION**

Minutes No. 95: Minutes of the August 24, 2017 Public Meeting of the Texas Facilities Commission in Austin, Travis County, Texas.

After providing notice as required by the Texas Open Meetings Act, the Texas Facilities Commission held an open meeting at the Central Services Building, 1711 San Jacinto Boulevard, in Conference Room 402, Austin, Texas, on Thursday August 24, 2017, commencing at 10:00 a.m. Chairman Thomas presided, and Commissioners Novak, Perry, Reinbeck, Jones and Slovacek were also present. Commissioner Darby was absent.

### **I. Call to Order.**

Chair Thomas called the meeting to order at 10:01 a.m.

### **II. Approval of the minutes from the June 21, 2017, Open Meeting.**

The Commission voted unanimously to approve the minutes from the previous meeting with a motion made by Commissioner Jones and a second to approve the motion made by Commissioner Perry.

### **III. Public Comment.**

There was no public comment.

### **IV. Consent Agenda for Award of Lease Recommendations and Summaries.**

**Leases and/or Amendments Pending Execution on or after August 24, 2017.**

#### **Replacements:**

- 1. Lease #303-8-20595-A – Texas Department of Criminal Justice: Abilene, TX.**

#### **Renewals:**

- 2. Lease #20152 – Texas Education Agency – Permanent School Fund; Texas Education Agency – Special Populations; Texas Veterans Commission: Austin, TX.**
- 3. Lease #7607 – Texas Department of Criminal Justice: Garland, TX.**
- 4. Lease #20166 – Department of Family and Protective Services: Austin, TX.**
- 5. Lease #20137 – Department of Family and Protective Services: Waco, TX.**

The Commission voted unanimously to approve the above Consent Agenda for Award of Lease Recommendations and Summaries with a motion to approve made by Commissioner Reinbeck and a second to approve the motion made by Commissioner Novak.

### **V. Consideration and possible action to approve cancellation of Lease No. 10234, Cedar Hill Texas, at the request and on behalf of the Texas Department of Public Safety.**

The Commission voted unanimously to approve the cancellation of Lease No. 10234, Cedar Hill Texas, with a motion to approve made by Commissioner Jones and a second to approve the motion made by Commissioner Reinbeck.

**VI. Contract Consent Agenda.**

1. **Consideration and possible action to approve an amendment to the property management services contract with Tarantino Properties, Inc., for the Waco State Office Building, TFC Contract No. 12-030.**
2. **Consideration and possible action to renew the outside counsel contract with Coats Rose, PC.**
3. **Consideration and possible action to approve a construction manager-at-risk contract amendment for the Sam Houston Building Emergency Water Intrusion Repair, Project No. 17-010-5141 in Austin, Texas.**

The Commission voted unanimously to approve the above Contract Consent Agenda items, with a motion to approve made by Commissioner Novak and a second to approve the motion made by Commissioner Perry.

**VII. Report on contracts delegated to the Executive Director per Commission Policy.**

1. **Consideration and possible action to award an architectural/engineering professional services contract for commissioning services for the North Austin Complex, Phase 1 Development, Project No. 16-030-8060 in Austin, Texas.**
2. **Consideration and possible action to award an architectural/engineering professional services contract for the TFC Portfolio Wide Facility Condition Assessment, Project No. 16-026-3402, a state-wide project.**
3. **Consideration and possible action to approve a custodial services contract award for the Park 35 State Office Complex in North Austin, Texas, under TFC RFP No. 303-8-00009.**

Ms. Kay Molina, General Counsel gave a brief report regarding the three contracts delegated to the Executive Director per Commission Policy.

**VIII. Consideration and possible action to award an architectural/engineering professional services contract for the Capitol Complex New Buildings and Utility Infrastructure Project, Central Utility Plant Expansion and Utility Tunnel Package (Package 3), Project No. 17-008A-8040 in Austin, Texas.**

Agenda Item VIII was pulled from the meeting agenda.

**IX. Consideration and possible action to approve an architectural/engineering professional services phase II contract for design and construction administration services supporting TFC's 2016-17 deferred maintenance in ten buildings for the Health and Human Services Commission, Project No. 16-011-550 in Austin, Texas.**

The Commission voted unanimously to approve an architectural/engineering professional services to Atkins North America, Inc. in the amount of \$1,116,980 for phase II contract for design and construction administration services supporting TFC's 2016-17 deferred maintenance in ten buildings for the Health and Human Services Commission, Project No. 16-011-550 in Austin, Texas, with a motion made by Commissioner Novak and a second to approve the motion made by Commissioner Reinbeck.

**X. Consideration and possible action to award a construction manager-at-risk contract for the Texas Department of Public Safety's deferred maintenance and crime lab expansion on the Midland office building, Project No. 14-031P-6047 & 14-041-6049 in Midland, Texas.**

The Commission voted unanimously to award a construction manager-at-risk contract to J.T. Vaughn Construction, LLC in the amount of \$1,795,000.00 for the Texas Department of Public Safety's deferred maintenance and crime lab

expansion on the Midland office building, Project No. 14-031P-6047 & 14-041-6049 in Midland, Texas, with a motion made by Commissioner Slovacek and a second to approve the motion made by Commissioner Reinbeck.

**XI. Consideration and possible action to approve requested tuition increase for the Capitol Complex Child Care Center, TFC Contract No. 15-052.**

The Commission voted unanimously to approve the tuition increase requested by the University of Texas at Austin, Child Care Development Center, TFC Contract No. 15-052, with a motion made by Commissioner Perry and a second to approve the motion made by Commissioner Jones.

**XII. Consideration and possible action to approve an outside counsel contract with Winstead PC for legal services to assist with P3 and commercial real estate transactions.**

The Commission voted unanimously to approve the outside counsel contract with Winstead PC for legal services to assist with P3 and commercial real estate transactions, with a motion made by Commissioner Reinbeck and a second to approve the motion made by Commissioner Novak. Chairman Thomas and Commissioner Perry abstained.

**XIII. Consideration and possible action to approve the automatic salary increase awarded to the Executive Director by the 18-19 General Appropriations Act.**

**Chairman Thomas:** "Agenda Item XIII. Consideration and possible action to approve the automatic salary increase awarded to the Executive Director by the 18-19 General Appropriations Act. Colleagues, there has been some question on how this came about. I had a good conversation."

**Commissioner Slovacek:** "Point of order."

**Chairman Thomas:** "Yes Sir."

**Commissioner Slovacek:** "Can we take up fourteen first?"

**Chairman Thomas:** "If there is no objection, sure."

**Commissioner Reinbeck:** "Is there some reason? I guess you could say that's my form of objection."

**Commissioner Slovacek:** "I just think it makes more sense to take up fourteen before we take up thirteen."

**Chairman Thomas:** "I have no problem with that, is there any reason anyone would have any issue with that? Then we will take up agenda item fourteen first, we'll come back to the other one shortly."

After the discussion on agenda item fourteen, the Commission took up agenda item thirteen. A majority of the Commission voted to approve the automatic salary increase awarded to the Executive Director by the 18-19 General Appropriations Act with a motion made by Commissioner Reinbeck and a second to approve the motion made by Commissioner Novak. Commissioner Slovacek voted against the motion.

**XIV. Consideration and possible action on the posting and hiring of a Chief Operating Officer.**

**Chairman Thomas:** "Consideration and possible action on the posting and hiring of a Chief Operating Officer."

**Commissioner Slovacek:** "I have a motion."

**Chairman Thomas:** "Yes Sir."

**Commissioner Slovacek:** "I move that the agency is directed to hire a COO, and that the Executive Director shall work with the Chairman, Vice Chair, and Commissioner Slovacek to take all necessary steps to identify and retain a COO with the appropriate experience and skill sets to assist the Executive Director and the agency as a key operations management leader to enhance the effective, efficient, and accountable execution of the agency's mission."

**Commissioner Novak:** "I'll second."

**Chairman Thomas:** "There is be a motion to approve by Commissioner Slovacek and a second by Commissioner Novak. Any discussion?"

**Commissioner Slovacek:** "Yes. Harvey, did you tell the Chairman and the Vice Chairman that you supported this action?"

**Executive Director, Harvey Hilderbran:** "What I said all along is, 'I'm not opposing it, lobbying against it, interfering and will make it work,' but this is a decision that was initiated by Commission Leadership. And, we had previous experience last year trying to do it. In which, the way ended up doing it, which was forced upon us by the similar issues we have today: which is how much money is indirect. We ended up doing it differently than I think some on the Commission wanted me to do it. It was not a direction it was a recommendation. Worked real closely with the two of them in several meetings; ended up with what we did. Clearly, from what I'm hearing now, we want to do it differently."

**Commissioner Slovacek:** "Do you support, did you tell the Chairman and the Vice Chairman that you supported hiring the COO?"

**Executive Director, Harvey Hilderbran:** "I never said, I never endorsed the hiring of the COO."

**Commissioner Slovacek:** "So, you don't support it?"

**Executive Director, Harvey Hilderbran:** "I think there are some things that could be good to come from it, but I also think--"

**Commissioner Slovacek:** "Okay, don't act like a politician."

**Executive Director, Harvey Hilderbran:** "No, there's--"

**Commissioner Slovacek:** "Do you support it or not support it?"

**Executive Director, Harvey Hilderbran:** "There is some financial challenges. I would like to do the motion differently. We need to know more about how the financials unfold in the coming months: how actuals compare to budget expenses. We need to, there are some thing that has some obstacles and financial consequences that we have to deal with that are not, that are considerable."

**Chairman Thomas:** "Let me try and short circuit this. I had a good conversation, colleagues, with Harvey before I came in. That's why I wasn't sitting here thirty minutes ahead of time like I normally do. I felt very confident and comfortable in Harvey's commitment to this now. He told me his concerns: about the financial concerns. The motion does not stop the financial concerns from being addressed. I acknowledge to Harvey it wasn't just the Commission leadership. Harvey, this has been an ongoing discussion across the Commissioners. And, regardless of where we've gotten to multiply times, we felt like this is something that would assist you, and allow you to just shine, and really do what you do best, and let some of the other stuff . . . that having being said, I think it's critical to acknowledge what you said, is that we got to work with financial leadership of our agency to figure out how that happens. I don't think anything in that motion precludes that. And, I think it acknowledges that. So, let's proceed in that regard and that vain. I would like to let this move forward unless there is something particularly in light of our conversation . . . unless there is something, significant concerns or issues that anyone has. I would like for us to put this behind us, colleagues, and move forward in a positive way. The Vice Chairman told me something that I really took to heart. He said, 'let's quit looking backwards and let's start looking forward.' This is one of the things."

**Commissioner Slovacek:** "If Harvey doesn't support it . . . it's my understanding that you in fact told Vice Chair and Chairman you do support it. If you don't support it, I would like to know that."

**Chairman Thomas:** "That was his statement to me. It was his statement directed to me. I appreciated that the Vice Chairman in trying to continue to be a bridge for all of the Commissioners and our senior management team at the budget briefing--when it was just the three of us--was very gracious--as he always is--and asked for Harvey to communicate the things in the confirmations of the discussions that they had been having. It was brilliant. It was smart. And, I thought it was directed at putting us all on a good footing and moving forward in a positive way. In that conversation that is was exactly what he said to me."

**Commissioner Slovacek:** "Right, but I'm asking Harvey."

**Chairman Thomas:** "I got it, okay."

**Executive Director, Harvey Hilderbran:** "Well, I didn't ask for this, but so I didn't ask for this. We, as I said last year, it was discussed. It wasn't directed. I think we all know it's on the record. All we need to do is look at the minutes from February, March Meeting. I was never directed to do it, but we did take it on. Where I had several meetings with Mike and Robert, the Chair and Vice Chair, regarding. Some other Commissioners had input. Every once in a while, there was some e-mails sent giving status updates: where we were on the process. I felt like everybody was happy. I got no objections once the decision was made to go with a DOO."

**Chairman Thomas:** "No, no. Clarification, that's not accurate. We had many conversations about that Harvey. Like I said, I think it's counterproductive to look backwards."

**Executive Director, Harvey Hilderbran:** "I'm just trying to put the perspective of where we are now."

**Chairman Thomas:** "But, but then for the record, let's make sure that's very clear. There was multiple conversations and follow-ups with you. Because we also had those among Commissioners, about whether or not the DOO was the COO. Whether you had worked with us on the job description, and what you had told us you would take it under advisement. So my point is."

**Executive Director, Harvey Hilderbran:** "The job description you said was very good, we were visiting most recently. The one we hired the DOO on."

**Chairman Thomas:** "Right. You posted for a COO. You hired under a job posting for a COO, and you created a title of a DOO. That's fine. That's what you decided to do. I'm saying if you're going, let's. If we're going to litigate publicly or discuss publicly, then let's make sure it's clear. Because that statement . . .that you had not been told . . . that would not be accurate."

**Commissioner Novak:** "If I may Mr. Chairman, let me just call time out. Harvey, because were about to go down a path here . . . where we're about to get tangled up. We don't want to do that. We want to look forward."

**Executive Director, Harvey Hilderbran:** "Right."

**Commissioner Novak:** "Commissioner Slovacek has a legitimate question here. But you're responding like, 'okay well I didn't ask for it.' That's irrelevant right now. I think the question is, are you on board? We talked about this and you looked me in the eyes--"

**Executive Director, Harvey Hilderbran:** "I'm on board to make it work if the Commissioners direct me to do it. I'm going to make it work, were going to figure out how to resolve."

**Commissioner Novak:** "That's what we needed to hear."

**Executive Director, Harvey Hilderbran:** "But there's a difference in the way he posed it. I mean I would bring it back differently. But if y'all direct me to do it, I'm going to get the job done. And we're going to figure out how to do it. There are some challenges."

**Chairman Thomas:** "I materially would like to see us work positively in that situation. I materially like to see us for once, on a substantive governance issue, to be able to set policy direction from the dais and have the senior staff,

Harvey you in particular, say, 'I'm going to figure out how to make that work.' I think that would be an outstanding message."

**Executive Director, Harvey Hilderbran:** "That's what I said. I'm going to make it work."

**Commissioner Slovacek:** "Here's my preference."

**Chairman Thomas:** "Okay."

**Commissioner Slovacek:** "In the words of my good friend John Sharp, 'I can count votes.' I see six people up here. If Harvey tells me what he told you, that he would support--subject to money, hiring freeze, etc--would support the hiring of the COO for his benefit that all I need is for him to say that; and this motion gets withdrawn. Would you agree to that?"

**Executive Director, Harvey Hilderbran:** "Say that again . . . so you're saying . . . I'm completely confused."

**Chairman Thomas:** "You're welcomed to withdraw your motion."

**Commissioner Slovacek:** "No, no. I thought I was perfectly clear. Did anybody understand that?"

**Audience:** "No."

**Commissioner Slovacek:** "Let me explain it this way. I can count votes. What I'm asking you, Harvey, is publicly to tell me, do you stand by your assurances to Mike and to Robert to hire a COO subject to hiring freezes, and cash, etc.? And if you do, we don't need this motion."

**Executive Director, Harvey Hilderbran:** "Okay, so you're saying . . ."

**Commissioner Slovacek:** "You make the decision."

**Executive Director, Harvey Hilderbran:** "What you want is my assurance that. Clearly there's a lot of members of the Commission would like us to move this direction and--"

**Commissioner Slovacek:** "No, that's not. I just want you to say yes or no."

**Executive Director, Harvey Hilderbran:** "Well I told you, I'm going to implement what you tell me to do."

**Chairman Thomas:** "Just a second Harvey, you've been clear. Let's not, were still going down. So there has been a motion and a second. And because of what happened last time, when you said you didn't get clarity from the dais, we're going to proceed with the vote. Whatever the will of the Commission is perfectly fine by me, and I'm going to move forward. Either way, I'm putting this behind me today, Harvey. Okay, and if the Commission tells us that we're working together, I'm going to do what I've done. And that is the last time they told Mike and I to sit down together and work with you and report back to them, I did that. And if they tell us to continue to do that, as came out of the June meeting, then I'm going to do that. If they tell me as Chair that they're ready to move on, I'm ready to move on Harvey. Okay so."

**Commissioner Slovacek:** "To be very clear, I don't want to divide our board. What I want Harvey to tell me, does he support what he told you and Mike: yes or no? Do you support hiring a COO? Yes or no?"

**Commissioner Jones:** "Chairman?"

**Chairman Thomas:** "Yes ma'am."

**Commissioner Jones:** "I do have a few points that I want to raise on this, and I do think this needs to go to a vote. I don't think it needs to be just a consent on Harvey's part. Looking at the organizational chart, and I know we had discussions on this for quite some time. But, tell me exactly what it is that you want the COO to do that Harvey and

his four department individuals have . . . You've got General Counsel, Chief Financial Officer, Planning and Real Estate, and Facilities and Design those are basically . . . I know they're associate deputies or assistant deputies . . . They could also be consider."

**Chair Thomas:** "So here's the issues. If you really want to ask that question, we need to get Harvey's permission to have basically his evaluation in public. And I'm prepared to do that. But, we have had extensive conversations . . . which you've been included."

**Commissioner Jones:** "Yes, I have."

**Chairman Thomas:** "Where we talk about the skill sets, and the responsibility, and Harvey and I had a great conversation this morning. And he even just said he acknowledges that there are areas where a COO would be extremely beneficial for him, and help him on the day to day operational detailed issues."

**Commissioner Perry:** "Isn't that a John Raff?"

**Chairman Thomas:** "No, he is a program director. He is responsible for his program. He is the COO of his program."

**Commissioner Jones:** "That was my point I was making."

**Chairman Thomas:** "This is my concern. Okay this is my concern, and this just may be an understanding, but this is like kind of fundamental stuff folks. This is what we had talked about so often about corporate structure roles, and responsibility, and achieving execution. That's why the motion was drafted as you all told me to go back and do. Working with the last meeting. This didn't just come out of the blue. This was your instruction to me. To go back, and to coordinate the effort. We sat here, and I was told unanimously that, yes, we want to move forward without disclosing the details, we want to move forward. It's going to be Joe Slovacek, Mike Novak, and Robert Thomas. And we want you all to meet with Harvey, prepare a motion, talk about all of those things. So, the difficulty that I have is getting cut off at the knees--yet once again--on these kinds of issues. If you didn't mean it the first time, don't embarrass me, and put me in the situation where we're going to talk about it again. Tell me what you mean the first time, so I can move on. I don't want there to be strife, difficulty. If it's not something you support, I'm fine with it. But we've talked about this for a year. Since February 2016, is when we had the first evaluation and we started talking about this in December of 2015."

**Commissioner Jones:** "Okay, one of the points I want to make, and I know what's been said here today. But when myself, Joe, and Rob had our budget conference, we didn't come in for the meeting. We did it over the phone. With the information we got on the budget, the budget review. We went through the whole packet looking at that understanding how administration is paid by indirect funds. You can't pull from just where you pay your plumbers, or from where you have many allocated to build a building, or a parking garage. There are standards in place as to where that money comes from. And so seeing that, and with money that was told to me as far after what was going to be swept at the end of this year, what dollars we have left, that I would rather see that money that is taken--and I'm not talking about senior management--I'm talking about if you want to call rank and file. I don't like that. I don't want to degenerate anyone. But we have some positions that need some additional funding added to their positions, because we're having a hard time retaining people because of the private sector building that's going on versus the public sector that we have to do. We have a job to do. There's no question about that."

**Chairman Thomas:** "There's no doubt. That's right."

**Commissioner Jones:** "So, that's why at this point I do not want to spend the money on a COO. So, I'm not going to support a COO at this point."

**Chairman Thomas:** "That's fine. That's fine."

**Commissioner Novak:** "Could I offer another suggestion Chairman?"

**Chairman Thomas:** "Yes sir."

**Commissioner Novak:** "The dialog we're having right now to me clearly falls under the umbrella of the performance evaluation. And if we're still on track to tackle that in executive session, I would like to defer this item until after the executive session, to totally avoid a split vote."

**Commissioner Slovacek:** "Again, I care more about this board and the State of Texas than an employee. The employee does not, the tail does not wag the dog. I understood that Harvey supported this position of COO. And now, if Harvey is going to back track on that, I'm going to withdraw my motion. If Harvey told you something that now he's either denying or if he's changed his mind, I'm going to withdraw my motion. I asked him, do you support the hiring of the COO or not?"

**Commissioner Perry:** "If the Board approves it, right?"

**Commissioner Reinbeck:** "There are six of us up here, as you pointed out."

**Commissioner Slovacek:** "It's three and three. I know that you've . . . I know what Harvey has done here, okay."

**Commissioner Perry:** "Harvey hasn't done anything."

**Commissioner Reinbeck:** "Harvey hasn't even talked to me."

**Commissioner Slovacek:** "I know what he's done. What I'm saying is, we're going to be divided. I want a consensus. We had a consensus in May. If we don't have a consensus, and if he opposes, then why are we doing it?"

**Commissioner Reinbeck:** "We never had a vote in May."

**Chairman Thomas:** "Or June? You're talking about June."

**Commissioner Reinbeck:** "Or June, whenever it was. I lose track of months, sorry. I've done a lot of thinking about this too. And I've been here a long time. And after our last meeting, whichever month it was. And I was driving home, I thought, we have a policy in place where the Executive Director does the hiring and the firing, and makes recommendations on who he wants on his staff, and what positions he wants on his staff. Why are we all of sudden not adhering to our own policy?"

**Chairman Thomas:** "Do you really want?"

**Commissioner Slovacek:** "Mr. Chairman, I withdraw my motion, okay? Period. We're not going to vote. Withdrawn."

**Chairman Thomas:** "Okay, is there anyone else who would prefer to make the motion or?"

**Commissioner Novak:** "No. Under the circumstances, tell me what the appropriate action is here. I would propose that we defer this until after the executive session and have ability to bring it back up after executive session."

**Chairman Thomas:** "We can certainly do that, right now."

**Commissioner Novak:** "Does that require a motion? Or is it your prerogative?"

**Chairman Thomas:** "It's my prerogative. It's the Chair's prerogative. So, I'll table it until after that. But, I will say that publicly what's happening here . . . I'll answer a couple of questions. It's critical. The policy . . . and I got some clarification from the Governor's Office. They expect us to govern and run the agency and that includes setting policy direction and then asking the senior leadership to carry that out. If you look in the, every month Kay gives us the language and the statue that clearly says that this is our responsibility. The responsibility for executive session privileges. Our responsibilities includes, the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director and executive management staff, Section 551.074. It is within the policy direction and guidance of the governing board to send this type of direction. It is then subject to Harvey as the Executive Director to decide whether he wants to follow that direction or act in a different context. Then and only

then once we set a policy direction, then the direction that the Executive Director has then decided to follow proves a good direction. Proves one that makes sense. Then it makes sense for the Executive Director to come back to his governing board and say this is the direction I went. I think it worked out okay. I know you guys set a policy direction. I hope you can accept this is the way I did it. Not optimal, but I think that's the responsibility of a good governing board to look and work with their Executive Director. If it doesn't work out or they continue to have problems, it is also the responsibility and obligation, as it's been pointed out. At that point, this Board, pursuant to statute has no authority to manage or set the economic incentive or disincentive for either the Executive Director . . . It's only for our Chief Internal Auditor. So, it was pointed out, then the only option--and this was pointed out in February of 2016 folks, not by me but by somebody else on the Commission--that the only other option is Harvey chooses not to follow our express direction instructions, is then to put on the agenda the question of his continued employment. So, let's not confuse ourselves but what our roles and responsibility are. I think the areas are pretty broad but clearly defined. So, I'm okay with that. I'm okay if Harvey . . . as Chair and as your colleague, as a Commissioner . . . I'm okay if Harvey decided he wanted to move in a different direction. I'm okay with that. Then, I'm going to pray that it's successful. If it's not successful or if we believe differently than pursuant to proper governance and oversight, we have a decision to make. So, after two years of serving on this Board . . . you know I'm reading a book now, I talked to Kay and talked to Catherine about it. It's called Radical Candor, you lead with radical candor and hopefully a lot of love those two together."

**Commissioner Novak:** "That's what Joe does."

**Chairman Thomas:** "Boy, does he ever. So, let's be clear the circumstances we find ourselves in. It's okay whatever direction we decide to go. But our inaction from this dais and our getting caught up in some of those things that have been happening--the era whispering--has caused the people who sit in the key seats in this agency to have difficulties sometimes performing their jobs. I want us to remember that that's critically important, because we exist to provide governance oversight so that our deputy executive directors are carrying out their program functions. So they can do it properly, effectively, and efficacy without problem. They can't control, and I'm not suggesting they have an issue, but they can't control. The only people that get to hire and fire the Executive Director is us. So just remember folks, we do have a job to do, and we do it collaborated."

**Commissioner Novak:** "Mr. Chairman, we already momentarily deferred item thirteen which is the salary increase item. Again, my suggestion would be that we defer thirteen and fourteen until after executive session. Because I think all of this is clearly under the umbrella of what we're trying to accomplish."

**Chairman Thomas:** "I'm with you. I'm good. To tell you the truth, I'm good with fourteen. I understand your motivation and your reasoning. I think that makes sense. Thirteen, I'm not prepared to defer, because frankly I'm very comfortable with Harvey's explanation that this was not his doing, that this was an automatic adjustment by the Legislature. Under the General Appropriations Act, the body . . . I mean we could chose not to give it, but I don't have any reason to believe we shouldn't. We can offer it, and then that gives our Executive Director the discretion about how, when, or even if he wants to accept it. But before he can do that, we have to act first. I just assume move then back to Agenda Item Thirteen, consideration and possible action to approve the automatic salary increase. That's why I put 'automatic salary increase.' So we could be clear, awarded to the Executive Director by the 18-19 General Appropriations Act. Is there a motion?"

**Commissioner Reinbeck:** "So moved."

**Chairman Thomas:** "Motion by Commissioner Reinbeck. Is there a second?"

**Commissioner Novak:** "Second."

**Chairman Thomas:** "Seconded by Commissioner Novak."

**Kay Molina, General Counsel:** "Chair, is it okay if we put in the motion as you were discussing that it would be, to be taken at the time?"

**Chairman Thomas:** "I think that's automatic."

**Kay Molina, General Counsel:** "Okay."

**Chairman Thomas:** "Let's leave it as is. Because once we approve it, and once we approve the budget, then it goes properly again this whole governance thing. It goes to the Executive Director and working with his senior staff to evaluate how and when to implement those things. So, let's do that."

**Kay Molina, General Counsel:** "Okay."

**Chairman Thomas:** "Okay, there has been a motion and a second. No discussion. All those in favor of the approval of Agenda Item Thirteen, to approve the automatic salary increase signify by saying, 'Aye.'"

**Commissioners:** "Aye."

**Chairman Thomas:** "Any opposed?"

**Commissioner Slovacek:** "Me. I opposed it."

**Chairman Thomas:** Okay. "Then, it passes. Okay, we'll move then to Agenda Item Number Fifteen."

**XV. Consideration and possible action on the redevelopment of the G.J. Sutton State Office Building site in San Antonio, Texas.**

Samuel Franco, Director of the Center for Alternative Finance and Procurement made brief comments on the redevelopment of the G.J. Sutton State Office Building site in San Antonio, Texas. In addition, Commissioner Novak made comments that the P3 Work Group will continue to work on the redevelopment of the G.J. Sutton State Office Building site. Commissioner Novak said that he will work with the City of San Antonio through this process to keep them informed, and that he will also keep all elected officials of San Antonio informed with the process. Lastly, Commissioner Novak read the motion for the consideration and possible action on the redevelopment of the G.J. Sutton State Office Building site in San Antonio, Texas. Thereafter, Commissioner Novak made the motion.

Commissioner Novak moved that the Commissioners direct TFC staff to use any and all authority it has to redevelop the G.J. Sutton site, including but not limited to, a public-private partnership, a long-term ground lease, or a combination thereof. Given the ongoing cost to the State to provide minimal maintenance and operational expenditures including providing security and emergency structural upgrades, it should be the goal of TFC staff to see that the redevelopment of the property happens in as short of a timeframe as possible. However, TFC staff should carry out this work in a timeframe that allows for the adequate planning and preparation required before the release of any subsequent procurement. This planning and preparation should take into consideration the goals, objectives, and priorities of all affected parties including but not limited to the State of Texas, the City of San Antonio, and any information received from potential public or private sector partners. TFC staff will use an open and transparent, two-step procurement process, release of RFQ then RFP, consistent with all applicable state and federal laws as well as accepted industry standards as they pertain to alternative delivery type procurements.

The Commission voted unanimously to approve the motion.

**XVI. Consideration and possible action to approve the FY18 Operating Budget.**

The FY18 Operating Budget was presented by Mr. Rob Ries, Director of Budget. Thereafter, the Commission voted unanimously to approve the FY18 Operating Budget with a motion to approve made by Commissioner Jones and a second to approve the motion made by Commissioner Perry.

**XVII. Report from the Executive Director on facilities design, construction projects, facilities leasing, facilities operations, maintenance, energy management, HUB and legislation.**

Mr. Harvey Hilderbran, Executive Director, informed the Commission that due to the hiring freeze he was not able to give one time merits in August and salary increases in September, but he continues to work on agency morale and the issue of how the agency is financed and how to retain money currently returned to General Revenue for this purpose.

Mr. Hilderbran informed the Commission that the contract for the Capitol Complex Project has been executed and the groundbreaking has been set for September 28, 2017, at 8:30 AM. In addition, Mr. Hilderbran gave a brief update on the interlocal agreement with the City of Austin and the challenges we have encountered and asked the Commissioners for any help they could provide to help move that process along. Mr. Hilderbran then spoke briefly on the tuition increase for the Child Care Development Center, the plans for the new child care facility, and the survey conducted at the North Austin Complex resulting in no need for child care facilities in that area. Next, Mr. Hilderbran spoke briefly on the storm preparations for the facilities that will be effected by Hurricane Harvey and introduced the new Director of Property Services, Kevin Myers. Finally, Mr. Hilderbran reminded the Commission that the hiring freeze will be ending on September 1, 2017, and that the agency has started posting critical positions.

**XVIII. Monthly Status Report from the Director of Internal Audit.**

**1. Consideration and possible action to approve the Agency's Internal Audit Plan for Fiscal Year 2018.**

The Commission voted unanimously to approve the Agency's Internal Audit Plan for Fiscal Year 2018, with a motion to approve made by Commissioner Reinbeck and a second to approve the motion made by Commissioner Jones.

**2. Review and discussion of OIA's Review of the Ethics Program, Report #20170120.**

Ms. Amanda Jenami, Director of Internal Audit gave a quick review of the results of the OIA's Review of the Ethics Program, Report. In addition, Kay Molina, General Counsel informed the Commission that she and Amanda are working together on ways to get information out and train staff on ethics.

**XIX. Report from the Commission Work Groups.**

**1. Energy Work Group.**

Commissioner Novak informed the Commission that the Energy Work Group continues to make progress, and in the last two years the agency is now saving an excess of 20.85%. In addition, Commissioner Novak also spoke on the savings to the agency from the LED lighting replacement.

**2. P3 Work Group.**

Commissioner Novak informed the Commission that the work group continues to have a conference call every other week and that most of the focus has been on the G.J. Sutton Building, as discussed earlier.

**3. Construction Work Group.**

Commissioner Jones informed the Commission that the Construction Work Group met on Wednesday, August 23, 2017, and most of what she was going to report was reported in the previous agenda items and in the Executive Director's report.

**4. Audit Work Group.**

Chairman Thomas informed the Commission that the work group met and they got a preview of the Ethics Program Audit, and the opportunity to discuss the Agency's Internal Audit Plan for Fiscal Year 2018.

**XX. Report from the Chief Financial Officer on the monthly financial report update.**

Mr. Daniel Benjamin, Director of Accounts Payable, provided the monthly financial report including the agency forecast, operating expense report, year to date budget adjustments, cost recovery programs, results of operations, the revenue forecast, and the financial transactions and appropriations not included in the operating budget.

**XXI. Discussion of Commission organization, policies, procedures and new initiatives.**

There was no discussion on this agenda item.

**XXII. Review and evaluation of the Executive Director.**

There was no action on this agenda item.

**XXIII. Review and evaluation of the Director of Internal Audit.**

There was no action on this agenda item.

**XXIV. Recess into CLOSED session, if necessary, pursuant to Texas Government Code Chapter 551 for the following purposes:**

- a. Pending and potential litigation, Section 551.071.
- b. The appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director and executive management staff, Section 551.074 The duties, roles, and responsibilities as Commissioners of the Texas Facilities Commission, Section 551.074.
- c. The deliberation regarding purchase, exchange, lease, or value of real property, Section 551.072.
- d. All matters identified in this agenda where the commission votes unanimously that deliberation in an open meeting of business and financial issues relating to a contract being negotiated would have a detrimental effect of the position of the State in negotiations with a third person and in which the General Counsel has issued a determination in writing, Section 551.0726.
- e. Any matters identified in this agenda where the Commissioners seek the advice of their attorney, Section 551.071.

Chair Thomas recessed the meeting to convene in Executive Session at 12:37 p.m.

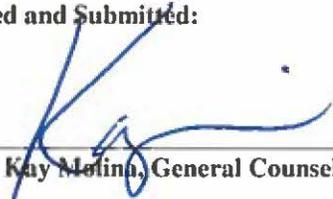
**XXV. Reconvene in open meeting and consider action on matters discussed in Executive Session.**

Chair Thomas reconvened the open meeting at 3:02 p.m.

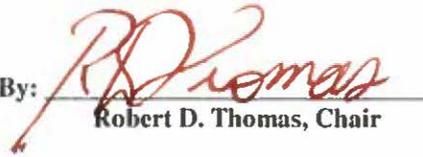
**XXVI. Adjournment.**

Chair Thomas adjourned the meeting at 3:03 p.m.

Reviewed and Submitted:

By:   
Kay Molina, General Counsel

Approved by the Commission on September 28, 2017.

By:   
Robert D. Thomas, Chair