

**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. 96: Minutes of the September 28, 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, September 28, 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 10:00 a.m.

### **II. Approval of the minutes from the August 24, 2017, Open Meeting.**

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

### **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 September 28, 2017.**

#### **Renewals:**

- 1. Lease #10412 – Texas Department of Criminal Justice: Brownwood, TX.**
- 2. Lease #10349 – Texas Department of Criminal Justice: Austin, TX.**
- 3. Lease #7229 – Texas Department of Criminal Justice: Mineral Wells, TX.**
- 4. Lease #10291 – Department of State Health Services and the Health and Human Services Commission-Texas Civil Commitment Office: Austin, TX.**
- 5. Lease #20181 – Department of State Health Services - Women, Infants, and Children: Austin, 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 Perry and a second to approve the motion made by Commissioner Reinbeck.

### **V. Consideration and possible action to award an architectural and 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 V was pulled from the agenda.

**VI. Consideration and possible action to award a construction manager-at-risk 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 VI was pulled from the agenda.

**VII. 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, gave a brief update on the end of the year activities, and that the fiscal year end rollover was successful. Mr. Hilderbran also informed the Commission that despite being under staffed the HR Division continues to work hard to get all the job postings up now that the hiring freeze has expired and that the new HR employee will start on Monday October 2, 2017. Next, Mr. Hilderbran informed the Commission that the second Professional Development Training Session has been completed and was a success. In addition, Mr. Hilderbran gave a quick update on the preparations that were made in anticipation of Hurricane Harvey and the post storm report related to Hurricane Harvey. Lastly, Mr. Hilderbran gave brief remarks on the groundbreaking ceremony that took place that morning for the new construction in the Capitol Complex.

**VIII. Presentation, review, and discussion of the External Quality Assurance Review results and report.**

“Good morning. For the record, my name is Richard Tarr. I was engaged to conduct an external quality assurance review, sometimes referred to as a peer review, of the internal audit function here. I believe you have a copy of my report and also the presentation that I’m going to walk through here in the next couple of minutes. Let’s start off on why the review was performed. Well, Texas is among a handful of states, actually more than that, have requirements in law that says that state agencies and universities have to have an audit function and that the audit function must comply with professional standards. The two standard setting bodies in this case are the Institute of Internal Auditors and the Government Accountability Office. Those two set of standards are the ones that are required for your audit activity to comply with. Both of those standards require that periodically there be an external review. Someone who can be judged to be independent and objective, who can come in and determine whether or not the planning and conducting of audit work within the agency is following and done so in accordance with those professional standards. So, that is what I was engaged to do. And obviously, I’ve written a report and making this presentation then concludes what I’ve been contracted to do. The review is an overall opinion, and that opinion is that the office of Internal Audit at the Texas Facilities Commission generally conforms to the applicable standards. By that I mean the yellow book and the red book or the IIA and GAO standard. Generally conforms doesn’t sound very impressive, but it is the highest opinion that’s allowed. Typically, it’s either generally conforms, conforms partially conforms, or does not conform. In this case, this is the highest opinion that I was allowed to give as a result of the review I conducted. In conducting that review, I did identify some things I thought would be helpful in the way of recommendations. They were based on some observations I made during the review. I interviewed fifteen people, interviewed all of the Commissioners, interviewed some of the executives here in the agency, and I’ve interviewed other people in other positions in the agency. As a result of those reviews and the information that I looked at and all the documents I reviewed, I identified some things I thought were worth mentioning in order to set the context within which I’ve made some recommendations in my report. TFC has a very good Internal Audit Department. Unfortunately, the OIA is not getting the cooperation it needs from executive management. And, the Commission is not providing the support necessary to overcome some of the hardship it has encountered because it’s not getting cooperation from agency management. The Executive Director, my first observation, believes that the Audit Department is not independent. And unfortunately, the only way you can rely on the work of an Internal Audit Department is to believe that they are independent and thus capable of rendering objective opinions and providing objective information. At this point, the ED doesn’t believe that the Internal Audit Department is independent. Is being used, he believes, that the Internal Audit Department is being used to further a political agenda. Another observation I made, the program management is usually cooperative and collaborative, agreeing with the Internal Audit Department’s findings and recommendations until the Executive Director gets involved in the process. There is no clear guidance as to what the responsibility are of the Commission Audit Work Group. There’s no charter, there is a charter for the Internal Audit Department, but there’s no charter for what that work group is expected to do or what its responsibilities are. So, it’s unclear as to how they are supposed to interact with the Internal Audit Department and the Internal Audit Director. There is a growing anti-audit culture in the agency unfortunately that seems to be getting worse instead of better. In that, there is a lot of push back. There’s a lot of slow response when asked for information that seems to hamper a lot of projects that the Audit Department is expected to undertake or has scheduled to undertake. There is a belief that information shared with Internal Audit Department will not be kept confidential. Consequently, the people are reluctant within the agency

to talk or respond when asked about information when conducting an audit project. The recommendations that have come out of what I just talked about include, the first one of the five recommendation. The first recommendation is the request to the Chief Auditor for information or projects from Commissioners should be approved by the seven-member Commission. In other words, they should be brought as part of, I would hope would be part of the normal agenda of the Audit Work Group. The Commission should document the purpose and responsibilities of the Audit Work Group so everyone understands what they're expected to do and what they can expect out of those meetings. The Commission should have the General Counsel research and document a policy on what information from employees, when shared with Internal Audit Department, can be expected to be confidential. Right now, there is a lot of ambiguity and confusion about what information will be treated as confidential information and what will not be treated as confidential. The last two recommendations are the Commission working with the ED, the General Counsel and the Chief Auditor needs to identify and approve procedures the agency and the Office of Internal Audit will follow when accessing electronic information considered confidential. There obviously should be a process in place, so all the players know what the procedure is and what's going to be followed as far as accessing and the need to keep that information confidential. Last, the Commission should receive reports regularly from the Chief Auditor on the support and cooperation the Office of Internal Audit receives when conducting audit projects. The Commission should hold the ED accountable when personnel are uncooperative. That's the end of my presentation.

**Chairman Thomas:** Thank you, sir. Colleagues, any questions, comments of Mr. Tarr?

**Commissioner Slovacek:** Glad that's done?

**Mr. Tarr:** Sir?

**Commissioner Slovacek:** Glad that's done?

**Mr. Tarr:** Yes, sir. I am.

**Commissioner Slovacek:** It's difficult to take criticism but helpful to get an independent view; and I generally get defensive when I get criticized. But, I'm going to shut up and listen to you. Thank you for your time.

**Mr. Tarr:** Thank you.

**Chairman Thomas:** Commissioner Jones.

**Commissioner Jones:** Yes, the only comment I want to make more for the record than anything is, Mr. Tarr you and I tried to communicate but never got a chance to. My only comment that I have on this, on the overall report was your first report that we all received, and then it was revised. I'm not in full agreement with that revision. It's my opinion because some of things you have stated in here, I don't agree with, especially after talking about the political agenda of some Commissioners. Just the way this has played out. Because when make that comment about some Commissioners then it goes directly into the ED. I don't see how these several paragraph kind of fall in behind that one statement. So I want this on the record that I don't agree the comments that were made about the ED, especially after where they were placed after the political agenda of some Commissioners.

**Chairman Thomas:** Colleagues anyone else?

**Commissioner Novak:** As you stated, this is an opinion, right? This not the gospel. I'm kind of like my colleague Slovacek over here is. That, I think this is a wonderful exercise, and I think it's a tool in a tool box. Mr. Chairman, I might not clear, today are we continuing in Executive Session our reviews, our performance reviews?

**Chairman:** Correct.

**Commissioner Novak:** That's the intention, right? Because some of the discussion, I think, is more appropriate under that. It has nothing to do with transparency, it has to do with personnel issues. I think this another tool in our tool box that we need to flush out under the umbrella of performance review. This is just my thought. In the spirit of transparency too, I think I talked about this at the last meeting. When I read this report for the first time, the one that really got my attention was it said, 'a belief that the OIA is not independent but is an instrument that is being used to further the political agenda of some Commissioners.' I called Mr. Tarr and said, 'You know what? I've been doing this kind of stuff, and I've sat on a lot of commissions and boards. I was a county commissioner myself, and I don't

remember a time where... It appeared to me like you threw a grenade in a room and then bailed. You know. Why would you leave it like that? And Patti, that's what prompted I think that second amendment trying to clarify just a little bit.

**Mr. Tarr:** I was trying to clarify the initial comment and to put it in a better context.

**Commissioner Novak:** Again, I'm not trying to have a debate on this. I think the report is an opinion. I'm just trying to be transparent here about calling him and some of my concerns about it. With that being said, I'm kind of back where Commissioner Slovacek was. I think it's a tool in the tool box and I appreciate it.

**Commissioner Reinbeck:** I also called Mr. Tarr, and told him what I thought. And I told him I appreciated the report, and I thought some of the recommendations were excellent. But, I disagreed with him on most of his opinions.

**Mr. Tarr:** That's fair.

**Commissioner Perry:** I agree with Betty and Patti and think the recommendations are great and think we should go on down the road with the recommendations.

**Chairman Thomas:** So, I'm very appreciative of it, and I may be the lone voice on the island, but I think you absolutely fundamentally nailed underlining issues. And, I think from a governance perspective it's incumbent upon us in our fiduciary duty—regardless of whether we like the tail you've identified—that we have to turn around and see how big or little it may be from a perspective of transparency and fulfilling our fiduciary duty. The underlying issue that you found and issues predate me. And, I think they predate most of our colleagues on the Commission and our Executive Director and our Internal Auditor. I think this agency has gone through some very tough times, Mr. Tarr. And particularly, in those two offices and their relationship with each other and because of whatever insecurity existed—again, well before I got here—the issues when I got here have continued to manifest themselves in a very large way. So much so, I have concerns about our ability to maintain our Chief Internal Auditor who continues to receive strong reviews. In full disclosure, when your report came out, she called me and asked me what the Commission's response would be to it, particularly the bullet points that are critically important to her and to her team. And, she challenged me, appropriately, that this is the oversight function to ensure the independence of their direct report. I unfortunately can't give her any assurances. But, I do believe that the intent of my colleagues is... You took some hits. I think you know. And I'm sure some of those phone calls were uncomfortable for you. But, hearing the truth is painful. And the question is, 'how are we now going to respond to it?' Are we going to do the things that would allow this to continue and, to whatever level of degree people agree with? More importantly, I finally realize it doesn't matter who sits in any of these chairs up here—starting with me. And, it doesn't matter who sits in the Executive Director chair or the Chief Internal Auditors chair. The issues you identified and particularly those persons and locations where you said those issues were most critically impactful to that function, they're going to continue. It doesn't matter who they are. So, I likewise thank you for your work. I'm sorry it took us thirteen years to get this External Quality Assurance Review done. So long as those of us on this dais now stay on this dais, and we understand now it should be done every three years, I'm sure we will be pushing to make sure that happens. Is there anything, sir, you would like to say or any response that you believe would be appropriate?

**Mr. Tarr:** Two things, I would like to thank the candor and the support I got from the people that I interacted with in the agency. You have some excellent people and a lot of positions here who were very helpful and provided a lot of information, and a lot of comment, and a lot of insight into a lot of the areas I looked at. I appreciate that. The last comment that I would make is that the Internal Audit function within this agency is a very important tool for the Commission. It is your primary tool for being assured that the objectives that the agency has are going to be accomplished. And, that you're doing the very best you can, and the management of this agency are doing the very best they can in making sure those objectives are accomplished in an efficient, effective way. So you have to have confidence in your Internal Audit Department and in the internal audit process. And, I would hope that you would continue to focus on making sure that the Internal Audit Department and the activity has the support that it needs from various levels within the agency and has the resources it needs to continue to be able to provide you with objective information that you can then you use to make good decisions with.

**Chairman Thomas:** That is my prayer as well. That's fundamental board governance and oversight governance, and I hope we take that under advisement. We owe it to the citizens of the State of Texas. We owe to the gentlemen who appointed us to these positions. But most importantly, we owe to the people who work here, earn their living here every day and try and make it better for the State of Texas. Thank you so much for your time, sir.

Mr. Tarr: Thank you.”

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

- 1. Review and discussion of the results of OIA’s Review of the Budget Process.**
- 2. Review and discussion of the results of OIA’s Review of Information Security.**

Ms. Amanda Jenami, Director of Internal Audit, gave the opening remarks regarding the Review of the Budget process and then Donna Steadman lead the discussion on the results of the OIA’s Review of the Budget process. Thereafter, Chairman Thomas recessed the open meeting in order to convene in Executive Session regarding the results of the OIA’s Review of Information Security.

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

Mr. Rob Ries, Director of Budget, 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.

Chairman Thomas asked for a briefing on the breakdown of the line items that are negative in the financial report.

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

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

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

**XIV. 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 10:51 a.m. for Agenda Item IX as stated above.

Chair Thomas recessed the meeting to convene in Executive Session at 11:54 a.m. for Agenda Items XII and XIII.

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

Chair Thomas reconvened the open meeting at 11:31 a.m. after the discussion of Agenda Item IX was held in Executive Session as stated above and the open meeting continued with Agenda Item X.

Chair Thomas reconvened the open meeting at 2:16 p.m.

**XVI. Adjournment.**

Chair Thomas adjourned the meeting at 2:17 p.m.

Reviewed and Submitted:

By:   
Kay Molina, General Counsel

Approved by the Commission on December 13, 2017.

By:   
Robert D. Thomas, Chair