TEXAS FUNERAL SERVICE COMMISSION
Janice McCoy, Executive Director

August 15, 2018

The Honorable Brian Birdwell, Chair
Sunset Advisory Commission
PO Box 13066
Austin, Texas 78711-3066

Re: Agency Response to Sunset Staff Report

Dear Chairman Birdwell:

The individual members of the Texas Funeral Service Commission have reviewed the Sunset Advisory Commission Staff report issued on August 2, 2018, but have not had the opportunity to discuss the report in a meeting called pursuant to Chapter 551 of the Government Code prior to the submission deadline for this response. Thus, the responses set forth in this letter should not be construed as reflecting the final decision of the Commission with regard to the recommendations set forth in the staff report. With that being said, however, the undersigned believes the following will generally reflect the agency's response to those issues identified in the staff report.

Issue No. 1.1: Require the MOU between TFSC and DSHS to include sanitation standards for funeral homes and death care businesses.
Agency Response: The agency agrees with the recommendation.

Issue No 1.2: Authorize the TFSC to order refunds to consumers.
Agency Response: The agency agrees with the recommendation.

Issue No. 1.3: Authorize the agency to use injunctive relief through the attorney general for unlicensed activity.
Agency Response: The agency agrees with the recommendation.

Issue No. 1.4: Direct the agency to establish a risk-based, biennial approach to inspections.
Agency Response: The agency agrees with the recommendation. While statute provides that establishments licensed by the Commission be inspected every other year, the agency's performance measures related to inspections require the agency to inspect every establishment annually. In order to accomplish this management directive, the agency's annual performance measure related to inspections would need to be decreased to match statutory guidelines. The agency did request this change in its Legislative Appropriations Request.

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Issue No. 1.5: Direct the agency to adopt rules for informal settlement conferences.
Agency Response: The agency agrees with the recommendation.

Issue No. 1.6: Direct to the agency to provide more detailed disciplinary information on its website.
Agency Response: The agency agrees with the recommendation. The agency already has begun the process of uploading full versions of finalized agreed orders and disciplinary actions to its public database.

Issue No. 1.7: Direct the agency to maintain complainants' confidentiality when possible.
Agency Response: The agency agrees with the recommendation and has already begun redacting as much personal information as possible before notifying a licensee of a violation. It should be noted that due to the nature of the complaints, most licensees will be able to discern the complainant based on the information being sought for investigative purposes.

Issue No. 1.8: Direct the agency and DSHS to coordinate access to death certification information for investigations.
Agency Response: The agency agrees with the recommendation.

Issue No. 2.1: Authorize TFSC to determine the criteria for preparation room exemptions.
Agency Response: The agency agrees with the recommendation.

Issue No. 2.2: Authorize TFSC to set license terms in rule.
Agency Response: The agency agrees with the recommendation. The agency notes that if the recommendation is adopted, the agency will have to modify its fee schedule to account for the change from an annual license to a biennial license.

Issue No. 2.3: Remove outdated and unused licensure qualifications.
Agency Response: The agency agrees with the recommendation. Additionally, in accordance with 78R HB 91, the agency is in the process of updating and reviewing its criminal history policy before December 31, 2018.

Issue No. 2.4: Provide TFSC general fee-setting authority to fully recover its costs.
Agency Response: The agency agrees with the recommendation.

Issue No. 2.5: Direct TFSC to eliminate unnecessary notarization requirements.
Agency Response: The agency agrees with the recommendation. The agency notes most of its applications already have been updated to remove the notarization requirement.

Issue No. 2.6: Direct the agency to accept all license applications and fee payments online.
Agency Response: With the current technology available to the agency, the agency cannot move forward with this recommendation at this time. Allowing applicants to apply online would create a burden for the agency's three person licensing staff by creating duplicative files in the agency's database. If the agency had additional resources to update its database to prevent the duplications, the agency could support this recommendation.

Issue No. 2.7: Direct the agency to make the consumer brochure freely available to licensees online.
Agency Response: The agency agrees with the recommendation. As discussed in its Legislative Appropriations Request, the agency has been considering this policy change for the past year. By law, this consumer brochure must be provided to all consumers prior to funeral arrangements being made – including transactions that are solely conducted online. This brochure is currently printed and mailed to licensees for a fee – licensees are not authorized to print their own copies. The agency is considering making the consumer brochure available to licensees on the agency's website at no cost. One concern with implementing this policy change is the loss of appropriated receipts – funds which are used to not only pay for the printing and shipping of the brochures but also fund part of a licensing technician's salary. In order to implement this policy change, the agency would need the Legislature to offset a portion of lost appropriated receipts with General Revenue so that the agency has the resources to pay the licensing technician's full salary.

Issue No. 2.8: Direct the TFSC to develop standard procedures for evaluating experience for military service members, military veterans, and military spouses.
Agency Response: The agency agrees with the recommendation.

Issue No. 2.9: Direct TFSC to review and evaluate continuing education courses.
Agency Response: The agency agrees with the recommendation. The agency would like to note that the 15+ year employee who processed continuing education providers left the agency in 2016. The agency believes only the applications received in 2017 were not reviewed prior to being issued a continuing education provider/course number?

Issue No. 3.1: Discontinue TFSC's regulation of non-perpetual care cemeteries.
Agency Response: The agency agrees with the recommendation.

Issue No. 3.2: Replace the member of the TFSC commission who much be a cemetery owner or operator with a public member.
Agency Response: While the agency understands the Legislature's intent as it relates to FTC action, this recommendation would increase the Commission's public members from four to five and decrease the Commission's industry members from three to two.

Issue No. 3.3: Direct the agency to discontinue its involvement in mediating private cemetery access disputes.
Agency Response: The agency agrees with the recommendation. Although a management action, the agency also would request Chapter 711 of the Health & Safety Code be amended to remove the authority of the agency to adopt rules related to cemetery access disputes.

Issue No. 4.1: Continue the Texas Funeral Service Commission
Agency Response: The agency agrees with the recommendation.

Issue No. 4.2: Authorize TFSC to create advisory committees.
Agency Response: The agency agrees with the recommendation. The agency would like to point out it does not have authority to pay travel expenses for advisory committee members. This

authority is an important tool to allow the agency to attract individuals from across the state to serve on any advisory committee created by the Commission.

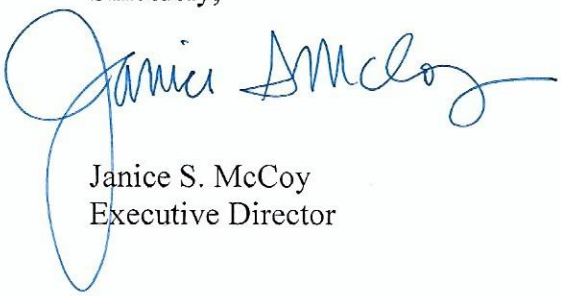
Issue No. 4.3: Modify the agency's biennial reporting requirement to increase transparency.
Agency Response: The agency agrees with the recommendation.

Issue No. 4.4: Update the standard across-the-board requirement related to commission member training.
Agency Response: The agency agrees with the recommendation.

The Commission would like to thank Sunset Commission staff for the time and attention they have shown in conducting this review. Additionally, the agency's staff would like to express their appreciation for the professionalism and courtesy they were shown by the Commission's reviewers, Julie Davis and Taj Sheikh.

Should you have any questions or concerns regarding this response, or need additional information or responses prior to the public hearing, please do not hesitate to contact me.

Sincerely,



Janice S. McCoy
Executive Director