

**TO:** Board Members

**THROUGH:** Kevin Patteson, Executive Administrator  
Les Trobman, General Counsel

**FROM:** Kaye Schultz, Assistant General Counsel

**DATE:** November 19, 2015

**SUBJECT:** Consider authorizing the Executive Administrator to execute a Memorandum of Understanding (MOU) between the Office of the Governor (OOG) and the Texas Water Development Board (TWDB) allowing for TWDB administration of \$6.8 million in emergency appropriations

## **ACTION REQUESTED**

Consider authorizing the Executive Administrator to execute a MOU between the OOG and the TWDB allowing the TWDB to administer \$6.8 million in emergency appropriations for installing a network of stream gages and making funds available to state and local entities for floodplain management.

## **BACKGROUND**

On November 5, 2015, Governor Greg Abbott determined that an emergency exists with respect to flood notification systems and floodplain management planning in Texas. The Governor made the determination based on:

- Severe flooding in May 2015 and October 2015, resulting in loss of life and property damage, declaration of a state disaster in 122 counties and a federal disaster in 113 counties;
- The fact that more than 756,000 Texans live in flood hazard areas in 43 counties intersecting with rivers that have the potential to flood;
- The potential to improve flood warning systems across the state through installation of a network of stream gages that could help quickly alert citizens, emergency personnel, law enforcement and state and community leaders to potential flood conditions; and
- Action taken by the 84<sup>th</sup> Legislature that was intended to provide specific funding for flood gages and floodplain management. That funding was improperly appropriated to an account that cannot be accessed without the emergency action taken by the Governor.

### **Our Mission** : **Board Members**

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas :  
: Bech Bruun, Chairman | Kathleen Jackson, Member  
:  
: Kevin Patteson, Executive Administrator

The Texas Comptroller of Public Accounts has endorsed use of funds in the Disaster Contingency Account, General Revenue Account 0453, as statutorily allowable for these purposes, and certified on November 16, 2015 that the full \$6.8 million in the account is available for special appropriation.

Also on November 16, the Legislative Budget Board approved the appropriation of the \$6.8 million for enhancing flood notification systems and improving state and local floodplain management.

The Governor may authorize an executive branch agency to administer emergency appropriations approved under Texas Gov't Code Chapter 401, Subchapter D through an interagency contract.

The Executive Administrator, on behalf of the TWDB, has authority under Texas Water Code Section 6.190 to enter into this contract.

Texas Water Code § 6.104 requires the TWDB to adopt by rule any MOU between the TWDB and any other state agency. That rulemaking proposal will be brought before you in January.

The ability to enter into the MOU, and the effectiveness of the MOU, is not related or contingent upon the separate administrative requirement of adopting the MOU into Agency rules.

### **KEY ISSUES**

Under the terms of this MOU, the TWDB would be responsible for administering the \$6.8 million in appropriated emergency funding in accordance with statute, rules and program requirements, and for reporting to the OOG at least quarterly on the status of project administration, including financial reporting on expenditure of funds in the emergency account.

### **RECOMMENDATION**

Authorize the Executive Administrator to execute a MOU between the OOG and the TWDB to administer \$6.8 million in emergency appropriations for installing a network of stream gages and making funds available to state and local entities for floodplain management.

Attachment: Draft MOU between the OOG and the TWDB

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE OFFICE OF THE GOVERNOR AND  
THE TEXAS WATER DEVELOPMENT BOARD**

**SECTION I. RECITALS.**

**WHEREAS**, pursuant to Texas Government Code § 401.065, the Governor by interagency contract may authorize an agency of the executive branch of state government to administer emergency appropriations under Texas Government Code Chapter 401, Subchapter D; and

**WHEREAS**, the Texas Water Development Board (TWDB) has authority under Texas Water Code, Section 6.190 to enter into this agreement; and

**WHEREAS**, on November 5, 2015, the Governor determined that an emergency exists affecting the health, public safety, and economic prosperity of Texans with respect to flood notification systems and floodplain management planning; and

**WHEREAS**, the Texas Comptroller of Public Accounts (the Comptroller) has endorsed use of funds in the Disaster Contingency Account, General Revenue Account 0453, as statutorily allowable for purposes of preparing for a disaster, including installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management; and

**WHEREAS**, on November 16, 2015, the Comptroller certified that the full cash balance of the special account, \$6.8 million, is available for appropriation; and

**WHEREAS**, on November 16, 2015, the Texas Legislative Budget Board (LBB) approved the appropriation of the full balance of the special account for enhancing flood notification systems and improving state and local floodplain management; and

**WHEREAS**, on November 17, 2015, the Governor filed with the Secretary of State and the LBB a copy of the Governor's original certification and the returned certification containing the Comptroller's endorsement.

**NOW THEREFORE**, the TWDB and the Office of the Governor (OOG) hereby enter into this Memorandum of Understanding (MOU) for the purposes set forth herein.

## **SECTION II. PARTIES.**

This MOU is made and entered into between the TWDB, an agency of the State of Texas, and the OOG, also an agency of the State of Texas.

## **SECTION III. PURPOSE.**

The purpose of this MOU is to make available to TWDB an appropriation of up to \$6.8 million in the Disaster Contingency Account, General Revenue Account 0453, for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management ("the emergency funding"), under the authority provided by House Bill 1, Rider 3, Acts of the 84<sup>th</sup> Texas Legislature, Trusteed Programs Within the Office of the Governor.

The Parties will work together to accomplish the transfer of funds from the OOG to the TWDB.

## **SECTION IV. PERIOD OF PERFORMANCE.**

This MOU will become effective upon signature by the parties and will terminate on August 31, 2017.

## **SECTION V. PERFORMANCE.**

### **OOG RESPONSIBILITIES.**

The OOG shall be responsible for making available up to \$6.8 million in the Disaster Contingency Account, General Revenue Account 0453, for administration by the TWDB during the biennium ending on August 31, 2017 for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management.

### **TWDB RESPONSIBILITIES.**

The TWDB shall be responsible for administering the emergency funding made available under this MOU for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management.

The TWDB shall be responsible for administering the emergency funding in accordance with their applicable state laws, programmatic requirements and agency rules.

The TWDB shall ensure that the applicable provisions for grant contracts or procurement contracts made under the emergency funding comply with the relevant state or federal laws.

The TWDB shall report to the OOG, at least quarterly, on the status of the administration of the emergency funding, including financial reporting on the usage of the emergency funds.

The TWDB shall hold a stakeholder meeting(s), as directed by the OOG.

## **SECTION VI. TERMINATION.**

This MOU shall terminate on August 31, 2017, or upon expenditure of all available appropriated funds unless otherwise terminated earlier by the parties.

## **SECTION VII. GENERAL PROVISIONS.**

**Duty to Maintain Records; Records Retention.** TWDB shall maintain adequate records to support its administration of the emergency funding. TWDB shall maintain such records as are deemed necessary by the OOG and auditors of the State of Texas or the United States, or such other persons or entities designated by the OOG, to ensure proper accounting for all costs and performances related to this MOU, for a period of seven (7) years after the end of this MOU.

**Access to Records and Right to Audit; State Auditor.** TWDB shall grant access to all records, of any kind, relevant to this project to OOG, auditors of the State of Texas, or such other persons or entities designated by OOG for the purposes of inspecting, auditing, evaluating or copying by the OOG, the State of Texas or such other authorized persons or entities designated by the OOG. All records, shall be subject to examination or audit by the OOG, auditors of the State of Texas, or such other persons or entities designated by the OOG in accordance with all applicable state and federal laws, regulations or directives. TWDB will direct any grantee or subcontractor with regard to this project to likewise permit access to, inspection of, and reproduction of all records of TWDB's grantee(s) or subcontractor(s). In addition to and without limitation on the other audit provisions of this MOU, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of TWDB or any of its grantees or subcontractors receiving funds from the TWDB for the project. The acceptance of funds by TWDB or any other entity or person directly under this MOU or indirectly through a grant or subcontract is acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, TWDB or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. TWDB further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. TWDB shall ensure that this paragraph regarding audit rights and the requirement to cooperate is included in any grant or subcontract it awards for this project.

**Texas Public Information Act.** Information, documentation and other material in connection with this MOU or any resulting grant contract or subcontract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the Public Information Act (PIA)). TWDB acknowledges that information created or exchanged in connection with this MOU is subject to the PIA, and TWDB agrees that information not otherwise excepted from disclosure under the PIA, will be available in a format that is accessible by the public at no additional charge to the state and agrees to require this provision in any grant or subcontract awarded for this project. TWDB will cooperate with OOG in the production of documents or information responsive to a request for information.

**Funding Limitation.** TWDB agrees that nothing in this MOU will be interpreted to create an obligation or liability of the OOG in excess of the funds delineated in this MOU. TWDB agrees that funding for this MOU is subject to the actual receipt by the OOG of funds appropriated to the OOG.

TWDB agrees that the funds, if any, received from the OOG are limited by the term of each state biennium and by specific appropriation authority to and the spending authority of the OOG for the purpose of this MOU. TWDB agrees that notwithstanding any other provision of this MOU, if the OOG is not appropriated the funds or if the OOG does not receive the appropriated funds for this project, or if the funds appropriated to the OOG for this project are required to be reallocated to fund other state programs or purposes, the OOG is not liable to pay the TWDB any remaining balance on this MOU.

**Amendment.** This MOU may only be amended by written agreement between the parties.

The effective date of this MOU is the last date shown signed below.

\_\_\_\_\_  
Kevin Patteson  
Executive Administrator  
Texas Water Development Board

\_\_\_\_\_  
Chief of Staff or Designee  
Office of the Governor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

