

## APPENDIX F: LIABILITY and INDEMNIFICATION

Emergency management is a necessary function of all levels of government that relies on an integrated partnership between federal, state, and local government and the private sector. It is a comprehensive effort to prepare for, respond to, mitigate, and recover from natural, technological, and manmade disasters or emergencies. If an emergency incident is serious enough, other state governments, as well as the federal government, may provide additional assistance to supplement local and state resources in the affected area. In offering such assistance, the aiding state governments and/or Federal government will not assume total responsibility for fixing disaster damages.

### **Robert T. Stafford Disaster Relief and Emergency Assistance Act, 1974**

The Robert T. Stafford Act, as amended by Public Law 106-390, provides an orderly and continuing means of assistance by the federal government to state and local governments in carrying out their disaster or emergency recovery and mitigation responsibilities.

#### Nonliability

Sec. 305. The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this Act.

Under Public Law 106-390, The Disaster Mitigation Act of 2000:

A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this Act if—

“(1) the payment was authorized by an approved agreement specifying the costs;

“(2) the costs were reasonable; and

“(3) the purpose of the grant was accomplished.”

#### Repair, Restoration, and Replacement of Damaged Facilities

Sec. 406. (a) Contributions. The President may make contributions—

(1) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility which is damaged or destroyed by a major disaster and for associated expenses incurred by such government; and

(2) to a person who owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or

replacement of such facility and for associated expenses incurred by such person.

(b) Minimum Federal Share. The Federal share of assistance under this section shall be not less than—

(1) 75 percent of the net eligible cost of repair, restoration, reconstruction, or replacement carried out under this section;

(2) 100 percent of associated expenses described in subsections (f)(1) and (f)(2); and

(3) 75 percent of associated expenses describe in subsections (f)(3), (f)(4), and (f)(5).

(c) Large In Lieu Contributions

(1) For Public Facilities. In any cases where a State or local government determines that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by such State or local government, it may elect to receive, in lieu of a contribution under subsection (a)(1), a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing, such facility and of associated expenses. Funds contributed under this subsection may be used to repair, restore, or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures which the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

(2) For Private Nonprofit Facilities. In any case where a person who owns or operates a private nonprofit facility determines that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing such facility, such person may elect to receive, in lieu of a contribution under subsection (a)(2), a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing such facility and of associated expenses. Funds contributed under this subsection may be used to repair, restore, or expand other selected private nonprofit facilities owned or operated by such person, to construct new private nonprofit facilities to be owned or operated by such person, or to fund hazard mitigation measures which such person determines to be necessary to meet a need for its services and functions in the area affected by the major disaster.

(3) Restriction on Use for State or Local Contributions. Funds provided under this subsection shall not be used for any State or local government cost-sharing contribution required under this Act.

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(d) Flood Insurance

(1) Reduction of Federal Assistance. If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Director pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001, et seq.) is damaged or destroyed, after the 180th day following the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).

(2) Amount of Reduction. The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lessor of—

(A) the value of such facility on the date of the flood damage or destruction, or

(B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.

(3) Exception. Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local governments failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) Dissemination of Information. The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

(e) Net Eligible Cost.

(1) General Rule. For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum, be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement.

- (2) Special Rule. In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing such facility shall include, for purposes of this section, only those costs which, under the contract for such construction, are the owners responsibility and not the contractors responsibility.
- (f) Associated Expenses. For purposes of this section, associated expenses include the following:
- (1) Necessary Costs. Necessary costs of requesting, obtaining, and administering Federal assistance based on a percentage of assistance provided as follows:
    - (A) For an applicant whose net eligible costs equal less than \$100,000, 3 percent of such net eligible costs.
    - (B) For an applicant whose net eligible costs equal \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such net eligible costs in excess of \$100,000.
    - (C) For an applicant whose net eligible costs equal \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such net eligible costs in excess of \$1,000,000.
    - (D) For an applicant whose net eligible costs equal \$5,000,000 or more, \$61,000 plus 1/2 percent of such net eligible costs in excess of \$5,000,000.
  - (2) Extraordinary Costs. Extraordinary costs incurred by a State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses of such employees, but not including pay for regular time of such employees, based on the total amount of assistance provided under sections 403, 404, 406, 407, 502, and 503 in such State in connection with the major disaster as follows:
    - (A) If such total amount is less than \$100,000, 3 percent of such total amount.
    - (B) If such total amount is \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such total amount in excess of \$100,000.
    - (C) If such total amount is \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such total amount in excess of \$1,000,000.
    - (D) If such total amount is \$5,000,000 or more, \$61,000 plus 1/2 percent of such total amount in excess of \$5,000,000.
  - (3) Cost of National Guard. The costs of mobilizing and employing the National Guard for performance of eligible work.

- (4) Costs of Prison Labor. The costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging.
- (5) Other Labor Costs. Base and overtime wages for an applicants employees and extra hires performing eligible work plus fringe benefits on such wages to the extent that such benefits were being paid before the disaster.

### **The Emergency Management Association Compact**

The Emergency Management Association Compact (EMAC) is an interstate mutual aid agreement that allows states to assist one another in responding to emergencies and disasters. Requests for EMAC assistance are legally binding agreements in which the affected state in need of help is responsible for reimbursing all out-of-state costs and are liable for out-of-state personnel.

Article VI—Liability. Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

Article VII—Compensation. Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain

injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX—Reimbursement. Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

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