

Agreement to Amend Article X of the Federal Programs and Services Agreement  
Between the Government of the United States and the Government of the  
Republic of the Marshall Islands  
Concluded Pursuant to  
Article III of Title One, Article II of Title Two, (including Section 222), and Section 231  
of  
The Compact of Free Association, as Amended

The United States of America and the Republic of the Marshall Islands agree to amend Article X of the Federal Programs and Services Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands Concluded Pursuant to Article III of Title One, Article II of Title Two, (including Section 222), and Section 231 of The Compact of Free Association, as Amended, signed in Majuro on March 23, 2004, to read as follows:

Article X

United States Disaster Preparedness and Response Services and Related Programs

1. In order to save lives and to protect property and public health and safety, and to supplement available resources in alleviating damage, loss, hardship or suffering, the Government of the United States shall provide disaster preparedness, response and recovery assistance programs and services to the Republic of the Marshall Islands in accordance with this Article. Nothing in this Article shall affect the disaster assistance available from United States Government agencies other than the United States Agency for International Development (USAID) and the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA).
2. USAID is responsible for providing disaster assistance and coordinating the United States Government response to declared disasters in the Republic of the Marshall Islands. In the Republic of the Marshall Islands, these programs and services shall be provided pursuant to:
  - (a) The Foreign Assistance Act of 1961, as amended, and other applicable statutes;
  - (b) Applicable Executive Orders of the President of the United States;
  - (c) Applicable USAID regulations, policies and directives; and

(d) This Agreement.

3. Section 211(e) of the Compact, as amended, shall be implemented as follows: notwithstanding its terms, no contribution shall be made by either the Government of the United States or the Government of the Republic of the Marshall Islands for Fiscal Year 2004, but the Government of the United States shall make an annual contribution of two hundred thousand dollars (\$200,000) on or about the beginning of the fiscal year, beginning in Fiscal Year 2005 and ending with a contribution in fiscal year 2023, into a Disaster Assistance Emergency Fund (DAEF) established by the Government of the Republic of the Marshall Islands in accordance with section 211(e) of Title Two of the Compact, as amended, and the Government of the Republic of the Marshall Islands shall deposit annually an equal amount to the DAEF. The terms and conditions for use of the DAEF are set forth in Annex A to this Article.

4. The Republic of the Marshall Islands may request disaster assistance from the United States Government through the Chief of Mission of the United States Embassy. Based on assessment information provided by the Government of the Republic of the Marshall Islands, assessments of other partners, or its own assessment, the Chief of Mission can request assistance from USAID. To warrant such a request for assistance, the following criteria must be met:

- (a) The President of the Republic of the Marshall Islands officially declares a national state of emergency in accordance with the laws of the Government of the Republic of the Marshall Islands, and
- (b) The disaster is deemed to be beyond the ability of the Government of the Republic of the Marshall Islands to respond, including taking into account the available resources of the Disaster Assistance Emergency Fund and the need to protect the sustainability of the Fund, and
- (c) The Government of the Republic of the Marshall Islands has requested assistance through the United Nations designated representative for the coordination of disaster and humanitarian assistance.

5. If the Chief of Mission determines that the criteria set forth in (4) above have not been met, no disaster relief or assistance would be provided by the United States Government pursuant to this Article.

6. If the criteria identified in (4) above are met, the initial assistance provided through USAID is to be used for immediate relief to save lives and reduce human suffering, and may be in the form of funding, commodities or services (or a combination thereof). The dollar value of this initial immediate assistance (whether in cash, kind, or commodities) will usually be limited to fifty thousand dollars (\$50,000).

7. If the President of the Republic of the Marshall Islands determines that the emergency or disaster requires a greater response from the United States Government, the President of the Republic of the Marshall Islands may request, through the U.S. Chief of Mission, to the DHS/FEMA that the President of the United States make a presidential disaster declaration pursuant to this Article. DHS/FEMA will recommend that the President of the United States declare such a disaster when the following conditions have been met:

- (a) The President of the Republic of the Marshall Islands certifies that the situation is of such severity and magnitude that the combined resources of the DAEF, USAID, and the international community, if any, that have been, or are likely to be made available, are insufficient to address the needs caused by the disaster, and
- (b) The President of the Republic of the Marshall Islands provides information describing the amount and severity of damages and losses stating the impact of the disaster on the public and private sector, and
- (c) The President of the Republic of the Marshall Islands provides preliminary estimates of the types and amount of supplementary assistance required, and
- (d) Following joint damage assessments involving the Republic of the Marshall Islands, DHS/FEMA and USAID, and other United States Government agencies, as appropriate, DHS/FEMA and USAID agree that supplementary assistance is necessary, and
- (e) The request for a presidential disaster declaration is made within 60 days of the occurrence of the event triggering the need for assistance.

8. For the purposes of this Article, a “presidential disaster” means any occasion, regardless of cause, for which, in the determination of the President of the United States, U.S. Government assistance is needed to supplement the efforts of the Republic of the Marshall Islands and the international community, including USAID, to save lives and to protect property and public health and safety and to supplement available resources in alleviating the damage, loss, hardship or suffering caused thereby.

9. Following a presidential disaster declaration in the Republic of the Marshall Islands pursuant to this Article, the United States Government, in consultation with the President of the Republic of the Marshall Islands, will prepare a relief assistance and reconstruction plan including the identification of the types and amounts of assistance to be provided for further relief and long-term reconstruction.

10. The types of assistance eligible to be included in the relief assistance and reconstruction plan may include the following:

- (a) Repair and replacement of damaged public facilities and private non-profit facilities that provide services which are governmental in nature;
- (b) Debris removal and emergency protective measures;
- (c) Housing, including temporary housing, and repair and replacement of damaged dwellings;
- (d) Provision of temporary public facilities for schools and other essential community services;
- (e) Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine and other essential needs, including the movement of supplies and people; and
- (f) Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety.

11. For purposes of the United States Government's Disaster Relief Fund appropriations, the funding of the activities to be carried out pursuant to paragraphs 7, 9, 10, 12, and 13 of this Article shall be deemed to be necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 United States Code, Sections 5121 et seq. A presidential disaster declaration under this Article shall be deemed to be a major disaster declaration under the Stafford Act for purposes of activating the authorities of United States Government agencies other than USAID and DHS/FEMA to provide disaster assistance under their own authorities to the same extent that a major disaster declaration under the Stafford Act activated such authorities in Fiscal Year 2003.

12. In the event of a presidential disaster declaration, USAID will implement relief, rehabilitation, and reconstruction activities in accordance with the relief assistance, rehabilitation, and reconstruction plan. FEMA will provide funding in the amount of the estimates, together with an amount for administrative expenses, to USAID to carry out the plan. USAID may support programs proposed by private voluntary organizations, contractors, non-governmental organizations, U.S. Government agencies and international organizations. This assistance will be based on the magnitude of the disaster, the response by the international community, and the Republic of the Marshall Islands Government's own response capabilities.

13. The Government of the Republic of the Marshall Islands may request, through DHS/FEMA, an annual grant from the Government of the United States for disaster preparedness which shall not exceed fifty (50) percent of the cost of improving, maintaining and updating disaster assistance plans, including evaluation of natural hazards and development of the programs and action to mitigate such hazards, as well as

to fund development of such plans as required in paragraph 16 of this Article. No such grant shall exceed fifty thousand dollars (\$50,000) per annum. USAID may also make available mitigation and disaster risk management programs to prepare for and lessen the effects of disasters. These non-relief programs may be provided without the need for a presidential disaster declaration, and will be coordinated among the Government of the Republic of the Marshall Islands, the United States Chief of Mission, USAID, and other partners.

14. The Government of the Republic of the Marshall Islands assumes all rights, obligations and liabilities arising out of the programs and services provided under this Article, including matching fund obligations that may be required by law or for which a commitment has been made by agreement between the Government of the United States and the Government of the Republic of the Marshall Islands.

15. To the extent necessary to permit the Government of the United States to provide disaster assistance under this Article following a presidential disaster declaration, the Government of the Republic of the Marshall Islands shall:

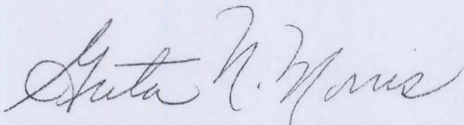
- (a) Make available to the United States Government, at no cost, personnel, equipment or facilities in its territory, including facilities necessary for communications;
- (b) Permit the United States Government to operate telecommunications services in its territory;
- (c) Endeavor to make available radio frequencies for the exclusive use by the United States Government;
- (d) Assist representatives of the United States Government in inter-island and intra-island movement for the purpose of accomplishing pre-declaration damage assessment, post-declaration damage survey and the provision of disaster assistance including the movement of supplies and equipment; and,
- (e) Upon request, provide to representatives of the United States Government, including the Controller General of the United States, access to any books, papers, and records, that pertain to United States Federal funds, equipment and supplies received under this Article, for the purpose of audit and examination.

16. The Government of the Republic of the Marshall Islands shall set forth in a governmental emergency plan the procedures and assignment of responsibility which are required for the Government of the Republic of the Marshall Islands to prepare for and respond to disasters and to facilitate the delivery of disaster assistance.

17. Any reference in this Article to a provision of United States law, constitutes the incorporation of the language of such provision into this Article as such provision was in force on the effective date of this Article.

This amendment shall take effect upon the exchange of diplomatic notes by which the Government of the United States of America and the Government of the Republic of the Marshall Islands inform each other about the fulfillment of their respective requirements for entry into force.

DONE at Washington DC, in duplicate, this 18<sup>th</sup> day of June, 2004, each text being equally authentic.



FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF THE  
REPUBLIC OF THE MARSHALL  
ISLANDS

## Annex A

### Agreement on the Establishment and Use Of the Disaster Assistance Emergency Fund

Beginning in Fiscal Year 2005 and ending with a contribution in Fiscal Year 2023, and subject to the requirements of paragraph 2, on or about the beginning of each fiscal year, the Government of the Republic of the Marshall Islands and the Government of the United States shall each deposit \$200,000 in a Disaster Assistance Emergency Fund (DAEF) account established by the Government of the Republic of the Marshall Islands in accordance with section 211(e) of Title Two of the Compact, as amended. The funds contributed by the two parties shall be adjusted in accordance with Section 218 (Inflation Adjustment), of Title Two of the Compact, as amended. The account shall be with a bank or commercial financial institution organized in accordance with the laws of the United States or a State of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution in accordance with the laws of the Government of the Republic of the Marshall Islands.

1. The Government of the United States shall deposit its contribution upon certification by the Government of the Republic of the Marshall Islands that local matching funds have been deposited.
2. The Government of the Republic of the Marshall Islands may invest part or all of the DAEF in low-risk instruments such as insured certificates of deposit, money market funds and Treasury bills and notes, provided asset liquidity is not compromised. Any earnings from such investments shall be reinvested into the DAEF.
3. Funds from this account may be withdrawn only after the President of the Republic of the Marshall Islands officially declares a State of Emergency in accordance with the laws of the Government of the Republic of the Marshall Islands:
  - (a) Withdrawals from the fund up to \$50,000.00 for any one State of Emergency would require the approval of the President of the Republic of the Marshall Islands, and would be reported to the United States Chief of Mission as to use and amount of the withdrawal. No more than \$100,000.00 could be withdrawn under this subparagraph in any one calendar year.
  - (b) Withdrawals from the fund in excess of \$50,000.00, and withdrawals of less than \$50,000.00 where \$100,000.00 has already been withdrawn in the same calendar year under subparagraph (a) above, for a State of Emergency would require concurrence by the United States Chief of Mission as to use and the amount of the withdrawal.

(c) Unless the United States Chief of Mission and the Government of the Republic of the Marshall Islands otherwise agree, no more than fifty percent of the funds in the DAEF shall be used for any one disaster.

4. The funds shall be used to meet the immediate threats to life, health and safety of the residents of the Republic of the Marshall Islands in the event of a Presidentially declared emergency or disaster, and for the rehabilitation and reconstruction of public property damaged in such an emergency or disaster.

5. The Government of the Republic of the Marshall Islands shall provide the United States Chief of Mission and the Joint Economic Management and Financial Assistance Committee (JEMFAC):

(a) with a written report on the use of the DAEF within ninety days of any withdrawal; and

(b) beginning in Fiscal Year 200[6], with an annual financial report from the previous year showing deposits in the DAEF of both the Government of the United States and the Government of the Republic of the Marshall Islands, the amount of interest income generated during the fiscal year, and the fund balance.

6. In accordance with section 211 (e) of the Compact, as amended, the Fiscal Procedures Agreement shall govern the administration of the DAEF. The DAEF shall be included in the medium-term budget and investment framework of the Government of the Republic of the Marshall Islands.

7. At the end of Fiscal Year 2023, full ownership of the DAEF shall pass to the Government of the Republic of the Marshall Islands..