

APR '91

MEMORANDUM OF AGREEMENT
FOR THE DESIGN AND CONSTRUCTION OF
REHABILITATION WORK AT BASIN TRIANGLE,
MARLEY HOMES, JOHN F. KENNEDY AND
WILLIAMS DELIGHT, USVI

This MEMORANDUM OF AGREEMENT is made and entered into this 2 day of April, 1990 by and between the GOVERNMENT OF THE VIRGIN ISLANDS acting by and through the Governor's Authorized Representative of the Office of MANAGEMENT AND BUDGET, the VIRGIN ISLANDS HOUSING AUTHORITY (hereinafter referred to as "VIHA"), the FEDERAL EMERGENCY MANAGEMENT AGENCY (hereinafter referred to as "FEMA"), the U.S. ARMY CORPS OF ENGINEERS (hereinafter referred to as "COE"), and the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (hereinafter referred to as "HUD");

WITNESSETH:

Whereas, the Virgin Islands was struck by Hurricane Hugo in the fall of 1989 and there exist funds available to accomplish the rehabilitation of certain public housing on St. Croix through FEMA and HUD; and,

Whereas, the Virgin Islands Office of Management and Budget is the grantee of FEMA funds and the Virgin Islands Housing Authority is the grantee of HUD CIAP funds; and,

Whereas, the Parties to this Agreement desire that these funds be provided to COE and COE have responsibility for design and construction of the rehabilitation work due to the construction processes; and,

Whereas, the COE has the authority under 10 U.S.C. Section 3036 and 31 U.S.C. Section 1535 to provide services to other Federal agencies; and,

Whereas, the VIHA has certified that it cannot reasonably and expeditiously procure through ordinary business channels the construction, design and management to be provided by the COE;

NOW THEREFORE, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. COE will provide services for the rehabilitation of the following public housing sites in St. Croix, Virgin Islands: Basin Triangle, Marley Homes, John F. Kennedy, and Williams Delight. The services will generally include the design, preparation and procurement of design and construction contracts, value engineering, contract negotiations, award of design and construction contracts, quality assurance, safety plans and inspections, change order authority, contractor payments, and scheduling and accounting reports for the public housing sites. The particular description of the services to be provided at each public housing site is set forth in Exhibits A-1, A-2, A-3 and A-4.

2. The accomplishment of the rehabilitation work shall be coordinated with the parties to this Agreement in the following manner to maximize the assurance that grant funds are available and applicable to the intended work:

a. Federal Acquisition Regulations (FAR) and supplements shall govern all design and construction contract procurement.

b. All architect/engineer contracts shall be obtained by competitive negotiation and approved by HUD as being within the scope of the grant. HUD will also certify that grant funds are available.

c. All construction contracts shall be supported by bid, performance and payment bonds.

d. All construction and bid documents shall receive prior HUD approval that these documents reflect work within the scope of the grant and that grant funds are available before inviting bids.

e. All proposed contract modifications shall have prior HUD approval as being necessary and economical and for which grant funds are available.

f. COE will request approval for contract modifications required to complete the approved rehabilitation work. Funds will be provided through a budget revision, ACC amendment, Section 8 reserves funds and operating reserves and/or local funds as may be necessary to complete the work.

g. All inspections of COE contracted work by HUD and VIHA as required per HUD requirements in HUD Handbook 7485.1 (Rev. 4) shall occur prior to construction contract settlement within a timely fashion to insure the opportunity to take corrective actions as deemed necessary by the Contracting Officer.

h. All required HUD approval of work within the scope of the grant and certification of availability of funds indicated above shall occur within ten days after submission of documents by COE.

3. COE shall be the authorized Contracting Officer and as such shall have the authority to approve contract modifications. However, all contract modifications over \$50,000 shall be approved by HUD prior to giving notice to proceed to the contractor. In the event HUD funding or other funding is not available due to HUD nonconcurrence with COE determination, or otherwise, VIHA will forward all monies needed to support the contract modifications within 10 days of notification of approval and nonavailability of HUD funding.

4. VIHA shall be responsible for providing all real estate and rights-of-way required for the project and shall provide written rights-of-entry for field investigations and construction contracts. The VIHA shall be responsible for all relocations of persons, temporary and permanent, required by or resulting from the rehabilitation work. The rights-of-entry shall be provided no later than one week prior to the advertisement of the respective contracts. Each right-of-entry will be accompanied by a certification that all persons have been relocated as required by law.

5. The funds available for each public housing site by HUD are as follows: Basin Triangle, VQ001004B - \$955,200; Marley Homes, VQ001004C - \$1,353,200; John F. Kennedy, VQ001008 - \$2,812,000; and Williams Delight, VQ001015 - \$246,820.

6. COE will not incur any foreseen obligations in excess of the above funded amounts without first seeking HUD budget revisions through VIHA application for same and subject to HUD approval. All penalties and interests attributable to processing contract claims and contract modifications due to delay in budget revisions shall be HUD's responsibility and made part of the HUD budget revisions.

7. COE shall requisition funds using HUD-5402-A form directly from HUD Field Office, Caribbean Office for work completed by the contractor which has been inspected and accepted by COE and for which contractor billings have occurred together with COE in house cost associated therewith. HUD field office will completely process the requisition within 10 working days of receipt. HUD will cause a transfer of funds to occur by wire transfer to VIHA depository bank (AMSOUTH Bank, NA, Mobile, Alabama Routing No. 062000019). The VIHA depository bank shall receive and distribute those funds as escrow agent pursuant to the term of an escrow agreement dated _____.

8. In the event COE receives excess funds, those funds shall be returned to VIHA for reimbursement to HUD.

9. COE will provide VIHA and HUD with pertinent and required documents required for maintenance of their records and necessary for VIHA's preparation of the required Modernization Quarterly Reports to HUD. The information for preparation of the modernization quarterly report shall be provided at least ten days prior to the required submission date of the Modernization Quarterly Report.

10. In the event litigation arises between COE and a contractor, all costs of the litigation shall be borne by HUD and FEMA in relation to their budgetary participation in the public housing site rehabilitation. All costs includes all in-house COE personnel costs, overhead costs, travel costs incurred by Coe in defending the contractor's claim.

11. Any and all claims received from a contractor shall be administered by the Contracting Officer with HUD and VIHA receiving immediate notification of same. HUD will promptly, within 10 days, review the claim for purposes of determining if the claim is within the scope of the grant and if grant funds are available. HUD's determination shall be forwarded to the Contracting Officer.

12. VIHA is responsible for all third party costs and COE in house costs incurred in the contracting and construction rehabilitation, including claim settlement and dispute, of the four public housing sites identified in this Agreement for which HUD and FEMA funding is not available nor provided within a reasonable and timely manner.

13. a. Communications between the parties pertaining to this MOA or to any amendments thereto, or to the policies of the parties to interpretations thereof, or to the policies of the signatories thereto, their successors in office, or their successors in office, or their designated representatives.

b. Communications pertaining to the WORK and the FUNDING, shall be between the CEO of VIHA and the District Engineer, their successors in office or their designated representatives, as the nature of the communications may require. HUD and its designated representative may be a party to any of these communications for information purposes.

c. Each party hereto shall keep the other party fully informed of its various business addresses, changes thereto, and relevant communications procedures.

14. a. To provide for consistent and effective communication between VIHA, HUD and COE during the term of design, design review and construction, the VIHA, HUD and COE shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to real estate acquisition, design and construction of the WORK. The representatives of the VIHA shall attend job site meetings, receive monthly reports and obtain scheduling reports.

b. The representatives appointed above shall meet as necessary during the term of design and construction and shall make such recommendations as they deem warranted to the Contracting Officer.

c. Contracting Officer, in good faith and in accordance with acceptable professional engineering standards, shall consider the recommendations of the representatives in all matters pertaining to the WORK, but the Contracting Officer, having ultimate responsibility for the design and construction of the WORK has complete discretion to accept, reject or modify the recommendations including contract modifications and claims settlements.

15. This MEMORANDUM OF AGREEMENT shall terminate: (1) when the contract for the WORK has been completed; or (2) by mutual written agreement; or (3) by either party giving 60 days written notice to the other. In the event that this MOA is terminated in the last-

named manner, the termination agreement shall set forth the agreements for completing the WORK in progress, if any, for funding the termination, and for handling all other matters then pending. The 60 days notice and completion arrangements may be waived during a declaration of war or national emergency.

16. The VIHA will hold and save the United States Government harmless from liability for all damages except those attributable to the negligence of the Government or its contractors. *

17. This MOA shall take effect upon approval by the Parties hereto.

IN WITNESS WHEREOF, witness the signatures of the Parties hereto on the dates set forth below.

VIRGIN ISLANDS OFFICE OF
MANAGEMENT AND BUDGET

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

Jose L. George

BY JOSE L. GEORGE
Governor's Authorized
Representative

James C. Wilby
Manogue

Caribbean Office, Region IV

DATE: 12/12/90

DATE: JAN 1 1991

VIRGIN ISLANDS HOUSING
AUTHORITY

U.S. ARMY CORPS OF ENGINEERS

BY: Conrad E. Francois II
CONRAD E. FRANCOIS II
Chief Executive Officer

BY: Bruce A. Malson, LTC
BRUCE A. MALSON, Colonel
Corps of Engineers
Jacksonville District

BY: Juel T.R. Molloy VICE-CHAIRMAN
FOR JUEL T.R. MOLLOY
Chairman, VIHA Board
of Commissioners

DATE: 12-06-90

DATE: 30 JAN 1991

FEDERAL EMERGENCY MANAGEMENT
AGENCY

William E. Coffey LTCM 1/4/91

BY CORPS OF ENGINEERS AS
AGENT UNDER AUTHORITY OF
MISSION ASSIGNMENT
R-USACE-SAD-10

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

BY: *Richard W. Conner*
Atlanta Regional Office

DATED: 2/13/91

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

BY: *[Signature]*
Headquarters, Washington
D.C.

DATED: 3/11/91

BASIN TRIANGLE (VQ001004B) - \$955,200

- a. Review and revise final drawings completed for VIHA by the A/E firm which were delivered to COE on March 15, 1990. Include in the revision specifications as to whether work will be done with or without temporary relocation of tenants.
- b. Prepare cost estimates based on revised drawings.
- c. Identify work items funded with FEMA funds and delete from HUD funded scope of work and HUD approved budget.
- d. Develop contract documents integrating FEMA and HUD funded work, but identifying each item payable by HUD and FEMA, respectively.
- e. Advertise and award construction contract documents.
- f. Administer construction contract, to include supervision, approval of change orders, final inspections and contract settlement.
- g. Submit to VIHA all contract documents, books and records, and related items for VIHA submission of audited Actual Modernization Cost Certificate for the close-out of the CIAP Program or Phase where each of the subject projects are included.
- h. All of the above shall be done using as a basis the approved HUD 52825.
- i. The funds shall be obligated (contract awarded) on or before September 30, 1990, to avoid HUD recapture. Refer to HUD Handbook 7485.1 (Rev. 4), Chapters 7 and 11. Revise and submit to HUD revised implementation schedule, as may be necessary.

MARLEY HOMES, VQ001004C - \$1,353,200

- a. Review and revise final drawings completed for VIHA by the A/E firm which were delivered to COE on March 15, 1990. Include in the revision specifications as to whether work will be done with or without temporary relocation of tenants.
- b. Prepare cost estimates based on revised drawings.
- c. Identify work items funded with FEMA funds and delete from HUD funded scope of work and HUD approved budget.
- d. Develop contract documents integrating FEMA and HUD funded work, but identifying each item payable by HUD and FEMA, respectively.
- e. Advertise and award construction contract documents.
- f. Administer construction contract, to include supervision, approval of change orders, final inspections and contract settlement.
- g. Submit to VIHA all contract documents, books and records and related items for VIHA submission of audited Actual Modernization Cost Certificate for the close-out of the CIAP Program or Phase where each of the subject projects are included.
- h. All of the above shall be done using as a basis the approved HUD 52825.
- i. The funds shall be obligated (contract awarded) on or before September 30, 1990, to avoid HUD recapture. Refer to HUD Handbook 7485.1 (Rev. 4), Chapters 7 and 11. Revise and submit to HUD revised implementation schedule, as may be necessary.

JOHN F. KENNEDY, VQ001008 - \$2,812,000

- a. Review and revise final drawings completed for VIHA by the A/E firm which were delivered to COE on March 15, 1990. Include in the revision specifications as to whether work will be done with or without temporary relocation of tenants.
- b. Prepare cost estimates based on revised drawings.
- c. Identify work items funded with FEMA funds and delete from HUD funded scope of work and HUD approved budget.
- d. Develop contract documents integrating FEMA and HUD funded work, but identifying each item payable by HUD and FEMA, respectively.
- e. Advertise and award construction contract documents.
- f. Administer construction contract, to include supervision, approval of change orders, final inspections and contract settlement.
- g. Submit to VIHA all contract documents, books and records and related items for VIHA submission of audited Actual Modernization Cost Certificate for the close-out of the CIAP Program or Phase where each of the subject projects are included.
- h. All of the above shall be done using as a basis the approved HUD 52825.
- i. Funds shall be obligated on or before September 30, 1991. Submit revised implementation schedule, as may be necessary.

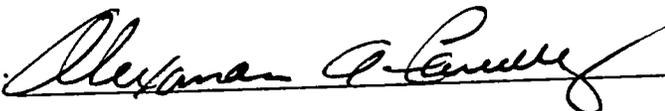
WILLIAMS DELIGHT, VQ001015 - \$246,820

- a. Design of rehabilitation of seven (7) units in accordance with scope of work in the approved HUD 52825.
- b. Prepare cost estimates based on completed construction drawings performed by COE.
- c. Identify work items funded with FEMA funds and delete from HUD funded scope of work and HUD approved budget.
- d. Develop contract documents integrating FEMA and HUD funded work, but identifying each item payable by HUD and FEMA, respectively.
- e. Advertise and award construction contract documents.
- f. Administer construction contract, to include supervision, approval of change orders, final inspections and contract settlement.
- g. Submit to VIHA all contract documents, books and records, and related items for VIHA submission of audited Actual Modernization Cost Certificate for the close-out of the CIAP Program or Phase where each of the subject projects are included.
- h. All of the above shall be done using as a basis the approved HUD 52825.

COMMITMENT OF FUNDING

The United States Virgin Islands commits by this instrument to provide all funds of any contract under this Memorandum of Agreement for the Design and Construction of Rehabilitation Work at Basin Triangle, Marley Homes, John F. Kennedy and Williams Delight, U.S. Virgin Islands for which the Virgin Islands Housing Authority is unable to fund under CIAP, its Operating Budget and Section 8 Reserve Funds or from any other source subject to appropriation by the V.I. Legislature.

Government of the U.S. Virgin Islands

BY: 

CERTIFICATE OF AUTHORITY

I, ROSALIE SIMMONDS BALLENTINE, do hereby certify that I am the Attorney General of the United States Virgin Islands, that the Virgin Islands Housing Authority and the Government of the United States Virgin Islands are legally constituted public bodies with full authority and legal capability to perform the terms of this Memorandum of Agreement between the Department of the Army, the Federal Emergency Management Agency, the United States Department of Housing and Urban Development and the Virgins Islands Housing Authority in connection with the Project, and to provide funding, if necessary, in the event FEMA funding and Hud funding is insufficient to fund the Contracts awarded pursuant to this Memorandum of Agreement and that the persons who have executed the Agreement on behalf of Virgin Islands Housing Authority and the Virgin Islands have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 19th day of December 1990.

Rosalie S Ballentine
Attorney General of the
United States Virgin Islands

CERTIFICATION OF LEGAL REVIEW

The draft Memorandum of Agreement for the rehabilitation of the Four Public Housing Projects at St. Croix, USVI has been fully reviewed by the Office of Counsel, USAED Jacksonville.

John Brady
for District Counsel

(SEAL)
ATTEST:

Chylli M. Garfield exp. 30 Nov 91
Jan. 28, 1991 County: Duval
State: Florida