

## ROUTING SLIP

**NOTE: CONTRACTS TO BE RELEASED TO AUTHORIZED PERSONNEL  
DESIGNATED BY PROCUREMENT AND SUPPLY.**

ROUTE	DEPARTMENT/OFFICE	PRINT	DATE IN	DATE OUT
DS 1205 1	PROCUREMENT AND SUPPLY	<i>she</i>		9/15/08
2	FINANCE AND ACCOUNTING			
3	SECRETARY OF FINANCE			
4	ATTORNEY GENERAL			
5	GOVERNOR			
6	CONTRACTOR			
7	DIRECTOR OF PROCUREMENT AND SUPPLY			

\*PLEASE CALL 664-1500, 1506 WHEN CONTRACTS ARE READY FOR PICK-UP WALK-THRU \_\_\_\_\_

## CONTRACT SPECIFICATION

CONTRACTING OFFICER : Governor  
 VENDOR : Howard P. Willens Wilsie Co.  
 PROJECT : Special Legal Counsel for the Office of the Governor  
 Fr: 10/01/08 to 09/30/09  
 AMOUNT : NTE: \$48,000.00-Add  
 ACCOUNT NUMBER : 1011.62060  
 CONTRACT NUMBER : 462080-OC C/O#02

OK BY DIRECTOR FOR WALK-THRU: \_\_\_\_\_

*Herman S. Sablan*  
 Herman S. Sablan

DIRECTOR OF PROCUREMENT AND SUPPLY

*09-16-08*  
 DATE

# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SAIPAN, MP 96950

## CONTRACT CHANGE ORDER

NO: 02

Project Title: SPECIAL LEGAL COUNSEL FOR THE OFFICE OF THE GOVERNOR

Contract No. 462080-OC

Account No. 1011-62060

Scope of Change: RENEWAL OF CONTRACT NO. 462080-OC. THIS CHANGE ORDER IS FOR THE PERIOD OF ONE YEAR EFFECTIVE OCTOBER 1, 2008 TO SEPTEMBER 30, 2009.

Reason for Change: UNDER SAME TERM AND CONDITIONS.

Existing Completion Date:	<u>09/30/08</u>	Original Contract Amount:	<u>\$36,000.00</u>
		Previous Addition	<u>\$48,000.00</u>
New Completion Date:	<u>09/30/09</u>	Previous Deductions	<u>-0-</u>
		Revised Contract Amount	<u>\$84,000.00</u>
Time extension resulting from this change:		Cost of this Change Order:	
		Add	<u>\$48,000.00</u>
None _____ Add <u>365</u> Year <u>1</u> year		Deduct	<u>-0-</u>
		New Contract Amount	<u>\$132,000.00</u>

1 of 3

DATE: 09/12/08  
TIME: 11:20AM  
BY: [Signature]

Contract No. 462080-OC

5. **Office of the Attorney General**

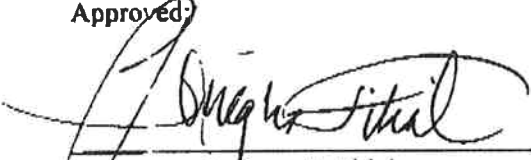
I hereby certify that this change order has been numbered, reviewed, and approved as form and legal capacity.

  
\_\_\_\_\_  
Attorney General

Date: 7/11/09

6. **Office of the Governor**

Approved:

  
\_\_\_\_\_  
Benigno R. Fitial  
Governor, Commonwealth of the Northern  
Mariana Islands

Date: 9/11/08

7. **Contractor: Howard P. Willens Wilsie Co.**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney at Law  
Title

\_\_\_\_\_  
Howard P. Willens  
Type or Print Name

\_\_\_\_\_  
Date

8. **Division of Procurement & Supply**

I hereby certify that this change order bears all signature and is therefore complete.

  
\_\_\_\_\_  
Herman S. Sablan  
Director, Procurement & Supply

Date: 09-19-08



# Department of Finance

## Division of Procurement and Supply

E-mail: [procurement@pticom.com](mailto:procurement@pticom.com)

P.O. BOX 510008 CK SAIPAN. MP 96950

TEL. (670) 664-1500

FAX (670) 664-1515



### MEMORANDUM

DATE : September 19, 2008

TO : Governor

FROM : Director Procurement & Supply

SUBJECT : Completion of Contract Processing



Pursuant to Section 2-104 (7a) of the CNMI Procurement Regulations, this is to inform you that processing of the attached contract no. **462080-OC C/O#02** for **Special Legal Counsel for the Office of the Governor vs. Howard P. Willens Wilsie Co.** is completed. You may proceed with contract implementation according to the terms contained therein.

  
Herman S. Sablan

Attachment:-

Cc: Attorney General  
Acting Director of Finance & Accounting  
Contract File (With Attachment)  
Vendor (With Attachment)

**INDEPENDENT CONTRACTOR**

CONTRACT NO. 462080-DC ENTERED OCT 02 2006

This agreement for the provision by an independent contractor of professional legal services for the Office of the Governor is entered into between the OFFICE OF THE GOVERNOR, Honorable Benigno R. Fitial, Governor, Commonwealth of the Northern Mariana Islands, herein referred to as the "Contracting Officer", and HOWARD P. WILLENS, Attorney at Law, whose address is [REDACTED], herein referred to as the "Contractor".

This agreement is effective from January 1, 2007 and shall continue until the completion of projects to be assigned from time to time, but no later than September 30, 2007.

The Commonwealth agrees to pay the Contractor an amount not to exceed \$36,000.00 payable quarterly at \$12,000.00.

The Contractor has agreed to provide professional legal services to the Contracting Officer free of charge.

Contracting Officer agrees to reimburse Contractor for the following expenses:

**Airfare:** The actual cost of airfare to travel round-trip between Washington, D.C. and Saipan at the coach rate not to exceed \$3,000.00 per trip with the understanding that the Contractor will not make more than one such trip in each quarter of the fiscal year during which Contractor provides professional services without the advance permission of the Contracting Officer. Estimated total for airfare is \$9,000.00.

**Per Diem Payment:** The Contractor will receive per diem payments of \$100.00 per day estimated at sixty days per quarter to cover his costs for lodgings, meals, and miscellaneous expenses in the Northern Mariana Islands while performing services under this contract. Estimated total per diem is \$18,000.00.

**Local Transportation:** Contractor will receive reimbursement for the actual cost of the rental of an automobile to use while in Saipan not to exceed \$1,000.00 per month. Estimated total for rental car is \$9,000.00.

Unless otherwise noted, all payments due in accordance with this contractual agreement will be made within 30 days of certification of billing by the Contracting Officer or his/designee.

Contract # 462080-DC

The Office of the Governor requires completion of the following scope of work which the Contractor understands and represents that it has the necessary expertise, training, knowledge, materials, manpower, and time to perform for the fee stated.

**Special Legal Counsel for the Office of the Governor**

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**Project Title**

Provision of professional legal services as Outside Counsel to the Office of the Governor for the purpose of providing independent legal counsel, as requested from time to time, to the Office of the Governor, Contractor will serve as Special Legal Counsel to the Governor.

In addition, Contractor will have the title of Assistant Attorney General in order to serve as counsel for the Commonwealth with respect to cases involving public lands regarding which the Attorney General has recused himself.

**Scope of Work:**

Contractor shall provide professional legal services to the Office of the Governor, as requested by the Contracting Officer, relating to assisting the Office of the Governor in its legal affairs. In addition, Contractor will represent the Commonwealth in those cases involving public lands regarding which the Attorney General has recused himself or any other cases as directed by the Governor. In this regard, Contractor shall work with the Governor, Lt. Governor and their counsel and staff as well as the Attorney General and its staff to assist the Office of the Governor in its legal affairs.

The parties recognize and acknowledge that the legal services provided from time to time under this Agreement are supplemental to the legal services that are constitutionally provided to the Office of the Governor through the Attorney General under Article III, Section 11 of the Commonwealth Constitution. This section reads, in pertinent part, as follows: "... The Attorney General shall be responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in the all legal matters, and prosecuting violations of Commonwealth law." Contractor shall be deemed to be an officer and appointed official (and not an independent contractor) of the Commonwealth for purposes of PL 15-22, and Contractor shall receive the privileges and protections of CNMI law with respect to this Scope of Work.

**Contract Deliverables:**

1. Communicate on a regular basis with the Governor, Lt. Governor, Attorney General, and such in-house counsel to the Governor and Lt. Governor as may be appointed.

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2. Provide legal services to the Office of the Governor, as requested from time to time by the Governor (or his designee).
3. Serve as Assistant Attorney General to represent the Commonwealth in those public land cases referred to in the Scope of Work.
4. Communicate with such other members of the Administration and Commonwealth Government as may be required by the Scope of Work.

**Schedule:**

Contract deliverables must be delivered in a timely manner, not to exceed December 31, 2006, the termination date of this agreement.

**Provided by Contractor:**

1. Legal services as requested by the Contracting Officer that have not been previously assigned to any other lawyer working for the Governor.
2. Representation of the Commonwealth in the public land cases referred to in the Scope of Work.

**Provided by Commonwealth:**

1. Consideration. As set forth above, the Commonwealth undertakes to reimburse Contractor for his reasonable expenses incurred in the performance of his professional services under this contract.
2. Office of Space, supplies and Administrative Support. The Contracting Officer shall provide office space, supplies, and administrative support while Contractor is in the Commonwealth at the Office of the Governor, as approved by the Contracting Officer.

**Additional Terms of Billing and Payment**

The Contracting Officer agrees to reimburse the Contractor for the expenses incurred in rendering the professional legal services set forth in the Scope of Work described above. The total financial obligation under this Agreement for reimbursement of such expenses shall not exceed \$12,000.00 each quarter (three months). A monthly statement seeking reimbursement for such expenses shall be prepared by Contractor and forwarded to the Contracting Officer.

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### Additional Terms of Suspension of Services and Termination

Contracting Officer may terminate or suspend work under this Agreement at any time without notice and with or without cause. Contractor may terminate this Agreement at any time with cause and if, without cause, by giving thirty (30) days written notice to the Contracting Officer of its intent to terminate the contract. During the thirty –day period after such notice is sent the parties shall continue to act toward each other in good faith.

### Contractor Affirmations

Contractor affirms that he is licensed to do business under and through the applicable laws of the District of Columbia; that he is acting within the scope of his license; and that he has acquired and maintains any permits applicable and required for the performance of the Scope of Work. Contractor affirms that Contractor is an active member of the Commonwealth Bar Association. Contractor's services will be primarily performed within the Northern Mariana Islands with some additional work performed out of the Contractor's office in the District of Columbia.

During this Agreement Contractor's representation of the Office of the Governor will be exclusive and Contractor will not represent other clients in their business or personal affairs in the Commonwealth.

### Delegation

Contractor's legal services are to be delivered personally and may be not be delegated to another attorney. Contracting Officer may delegate any rights and obligations under this Agreement to a designee, including the Chief Procurement Officer.

### Attachments

The following documents are attached hereto and made a part hereof as though set out herein in full:

Attachment A.

**NOTE: All terms and conditions of this contract are herein set out and no other conditions, promises, or representations have been made.**

The Contractor agrees to complete the project according to the description above to the satisfaction of the Contracting Officer, Honorable Benigno R. Fitial, which shall be certified before payment by the Contracting Officer.

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## TERMS AND CONDITIONS

§ 1. Regulations Controlling: This contract is null and void if either the procurement processes or contract execution fails to comply with the CNMI Procurement Regulations. Commonwealth Register Vol. 22, No. 08 (2000) and Vol. 23, No. 05 (2001). Any procurement action of a government official or employee in violation of said regulations is not authorized by the government and is an act for which the government will not take responsibility or be liable for in any manner. The Contractor and the government Contracting Officer hereby certify that they have both read and understand said procurement regulations and have complied with all such regulations.

§ 2. Penalties For Violation of Regulations: If this contract is in violation of the procurement regulations referred to above, the Contractor may be subject to debarment or suspension from government contracting and the government Contracting Officer may be personally liable for any damages incurred, in addition to other penalties provided for by law or regulation.

§ 3. Contract Disputes: Any dispute arising under this contract between the Commonwealth and the Contractor shall be submitted to administrative review and appeal as provided for in Section 5-201 of said regulations before any action may be brought at law or equity for a remedy.

§ 4. Gratuities: It shall be a breach of contract for the Contractor to offer, give or agree to give any employee or former employee to solicit, demand, accept or agree to accept from the Contractor, a gratuity or an offer of employment in connection with any decision approval. Disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal thereof.

§ 5. Kickbacks: It shall be a breach of contract for any payment, gratuity or offer of employment to be made by or on behalf of a subcontract under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an adducement for the award of a subcontract or order.

§ 6. Representation of Contractor Concerning Contingent Fees: The Contractor hereby represents that it has not retained any person to solicit or secure government contracts upon an agreement or understanding for a commission percentage, brokerage or contingent fee except for the retention of a bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

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**§ 7. Contract Contingent on Appropriations in Future Fiscal Years.** Continued funding of this Contract beyond fiscal year 2007 is contingent on availability of funding in future years under then-currently effective Annual Appropriations Acts or an effective continuing appropriation pursuant to authority of 1CMC §7204(d). In the event that such funding does not become available, neither party to this contract will be obligated to continue performance.

**§ 8. Changes:**

- (1) **Change Order.** By a written order at any time, and without notice to Surety, the Procurement Officer or the Official with Expenditure Authority may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:
  - (a) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the commonwealth in accordance therewith;
  - (b) Method of shipment or packing; or
  - (c) Place of delivery.
- (2) **Adjustments of Price Or Time For Performance.** If any change order increases or decreases the Contractor's cost of, or the time required for the performance of any part of the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the Commonwealth promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- (3) **Time Period For Claim.** Within thirty (30) days after receipt of a written change order under paragraph (1) (Change Order) of this clause, unless such period is extended by the Chief Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the Commonwealth is prejudiced by the delay in notification.

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- (4) **Claims Barred After Final Payment.** No claim by the Contractor for adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.
- (5) **Other Claims Not Barred.** In absence of such a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based On an Official With Expenditure Authority's Actions or Omissions, Notice of Claim" clause, or for breach of contract.

**§ 9. Stop Work Order:**

- (1) **Order to Stop Work.** The Chief Procurement Officer may, by written order to the Contractor, at any time, and without notice to any Surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed the Chief Procurement Officer shall either: (a) cancel the stop work order; or (b) terminate the work covered by such order as provided in the "Termination For Default" clause or the "Termination For Convenience" clause of this contract.
- (2) **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule and/or the contract price shall be modified in writing accordingly, if:
  - (a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to, the performance of any part of this contract; and

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- (b) The contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any claim may be received and acted upon at any time prior to final payment under this contract.
- (3) Termination of Stop Work. If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable cost resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) Adjustment of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this contract.

**§ 10. Claims Based on the Official With Expenditure Authority's Actions or Omissions:**

- (1) Notice of Claim. If any action or omission on the part of the Official With Expenditure Authority, or designee of such official, requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced claim for additional compensation, damages, or an extension of time for completion, provided:
  - (a) The Contractor shall have given written notice to the Official With Expenditure Authority and Chief Procurement Officer, or designee of such officer:
    - (i) prior to the commencement of the work involved, if at that time, the Contractor knows of the occurrence of such action or omission.
    - (ii) within thirty (30) days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have knowledge prior to the commencement of the work; or
    - (iii) within such further time as may be allowed by the Chief Procurement Officer in writing.

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This notice shall state that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time. The Chief Procurement Officer or, designee of such officer, upon receipt of such notice, may rescind any action, remedy such omission, or take such other steps as may be advisable in the discretion of the Chief Procurement Officer or designee of such officer.

- (b) The notice required by subparagraph (a) of this paragraph describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
  - (c) The Contractor maintains and, upon request, makes available to the Chief Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.
- (2) **Limitations of Clause.** Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any Commonwealth officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.
  - (3) **Adjustment of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the "Price Adjust" clause of this contract.

**§ 11. Variation In Quantity:** Upon agreement of the parties, the quantity of supplies or services or both specified in this contract may be increased by a maximum of ten percent (10%) provided:

- (1) the unit prices will remain the same (except for any price adjustments otherwise applicable) ; and
- (2) the Chief Procurement Officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practicable to award another contract.

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**§ 12. Price Adjustment:**

- (1) **Price Adjustment Methods.** Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:
  - (a) **By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;**
  - (b) **By unit prices specified in the contract or subsequently agreed upon;**
  - (c) **By the cost attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract subsequently agreed upon;**
  - (d) **In such other manner as the parties may mutually agree; or**
  - (d) **In the absence of agreement between the parties, by a unilateral determination by the Chief Procurement Officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Chief Procurement Officer in accordance with generally accepted accounting principles.**
- (2) **Submission of Cost or Pricing Data.** The Contractor shall provide cost of pricing data for any adjustments.

**§ 13. Termination For Default:**

- (1) **Default.** If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Chief Procurement Officer may notify the Contractor in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Chief Procurement Officer, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the Chief Procurement Officer may procure similar supplies or services, in a manner and upon terms deemed appropriate by the Chief Procurement Officer. The Contractor shall

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continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- (2) **Contractor's Disputes.** Notwithstanding termination of the contract and subject to any direction from the Chief Procurement Officer, the Contract shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the Commonwealth has an interest.
- (3) **Compensation.** Payment for completed supplies delivered and accepted by the Commonwealth shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Chief Procurement Officer; if the parties fail to agree, the Chief Procurement Officer shall set an amount. The Commonwealth may withhold from amounts due the Contractor such sums as the Chief Procurement Officer deems to be necessary to protect the Commonwealth against loss because of outstanding liens or claims of former lien holders and to reimburse the Commonwealth for the excess costs incurred in procuring similar goods and services.
- (4) **Excuse for Non-Performance or Delayed Performance.** Except with respect to defaults of subcontractors, the Contractor shall not be in accordance with its terms (including any failure of the Contractor to make progress in the protection of the work hereunder which endangers such performance) if the Contractor has notified the Chief Procurement Officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of god; acts of public enemy; acts of the Commonwealth and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemic; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failures arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Upon the request of the Contractor, the Chief Procurement Officer shall ascertain the facts and extent of such failure, and, if such Officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and

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performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the Commonwealth under the clause entitled "Termination For Convenience".

- (5) **Erroneous Termination For Default.** If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provision of paragraph 4 ("Excuse For Non-Performance Or Delayed Performance") of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause providing for Termination For Convenience of the Commonwealth.
- (6) **Additional Rights And Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

§ 14. Termination For Convenience:

- (1) **Termination.** The Chief Procurement Officer may, when the interests of the Commonwealth so require, terminate this contract in whole or in part, for the convenience of the Commonwealth. The Chief Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when the termination becomes effective.
- (2) **Contractor's Obligation.** The Contractor shall incur no further obligation in connection with the terminated work and on the date set in the notice of termination, the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as the relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Chief Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Commonwealth. The Contractor must still complete the work not terminated by the notice of termination and incur obligations as are necessary to do so.
- (3) **Right to Supplies.** The Chief Procurement Officer may require the Contractor to transfer title and deliver to the Commonwealth in the manner and to the extent directed by the Chief Procurement Officer.

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- (a) Any completed supplies; and
  - (b) Such partially completed supplies and materials, parts, tools, dyes, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of the Chief Procurement Officer, protect and preserve property in the possession of the Contractor in which the Commonwealth has an interest. If the Chief Procurement Officer does not exercise this right, the Contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of the Uniform Commercial Code of the Northern Marianas, 5 CMC § 2706. Utilization of this section in no way implies that the Commonwealth has breached the contract by exercise of the "Termination For Convenience" clause.
- (4) Compensation.
- (a) The Contractor shall submit a termination claim specifying the amounts due because of the Termination for convenience together with cost and pricing data to the extent required. If the contractor fails to file a termination claim within one (1) year from the effective date of the termination, the Chief Procurement Officer may pay the Contractor, if at all, an amount set in accordance with paragraph (c) of this paragraph.
  - (b) The Chief Procurement Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the Commonwealth, the proceeds of any sales and supplies and manufacturing materials under paragraph 3 of this clause, and the contract price of the work not terminated.
  - (c) Absent complete agreement under subparagraph (b) of this paragraph, the Chief Procurement Officer shall pay the Contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

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- (i) contract prices for supplies or services accepted under the contract.
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.
- (iii) cost of settling and paying claims arising out of termination of subcontracts or orders pursuant to paragraph (2) of this clause. These costs must not include cost paid in accordance with subparagraph (c) (ii) of this paragraph.
- (iv) the reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of the contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of the Contract. The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price plus reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made from the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

§ 15. Public Auditor: As required by Section 404 of Public Law No. 3-91, the Contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth of the Northern Mariana Islands with access to and the right to examine and copy any records, data or papers relevant to this contract or grant until three (3) years have passed since the final payment pursuant to this contract or grant.

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**§ 16. Assurances: CODE OF FEDERAL REGULATIONS SECTION 43 PART 12**

**Note: Contractor shall comply with the assurances listed below. Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.**

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- 1. Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000.00 by grantees and their contractors or subgrantees)**
- 2. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)**
- 3. Compliance with the Davis Bacon Act (401 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000.00 awarded by grantees and subgrantees when required by Federal grant program legislation)**
- 4. Compliance with section 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000.00, and in excess of \$2,500.00 for other contracts which involve the employment of mechanics or laborers.**
- 5. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857 (h) ), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000.00)**
- 6. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).**

Contract # 462080-DC

**PROCUREMENT INFORMATION**

**For Government Use Only:**

1. Check method of source selection:

- |                              |  |
|------------------------------|--|
| <u>                    </u>  | Competitive Sealed Bids  |
| <u>                    </u>  | Competitive Sealed Proposals                                   |
| <u>                    </u>  | Expedited Procurement  |
| <u>  X                  </u> | Sole Source  |
| <u>                    </u>  | Emergency  |
| <u>  X                  </u> | Professional Services (Accountants, Physicians & Lawyers only) |
| <u>                    </u>  | Others   |

2. List government contracts numbers of all related contracts with same contractor:

Contract No. 452135-OC

Contract # 462080-OC

**SIGNATURES**

**(To be signed in order listed)**

**1. Official with Expenditure Authority**

**DECLARATION**

I declare that I have complied with the Procurement regulations in the procurement of this contract, that this contract is for public purpose, and that the contract does not waste or abuse public funds, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on

SEP 28 2006

\_\_\_\_\_ at Saipan, Commonwealth of the Northern Mariana Islands.

  
\_\_\_\_\_  
BENIGNO R. FITIAL, Governor  
Expenditure Authority

**2. CONTRACTING OFFICER:**

BY   
\_\_\_\_\_  
BENIGNO R. FITIAL, Governor  
Contracting Officer

DATE : 9-28-06

**3. Director, Procurement and Supply**

I hereby certify that to the best of my information and belief this contract is in compliance with the CNMI procurement regulation, is for a public purpose, and does not waste or abuse public funds.

DATE: 10-02-06

  
\_\_\_\_\_  
Herman S. Sablan  
Director, Procurement and Supply


Contract # 462080-OC

4. Secretary of Finance

ENTERED OCT 02 2006

I hereby certify that there are sufficient funds available in account number 1011.62060 for the execution of this contract.

DATE: OCT 02 2006

  
\_\_\_\_\_  
ELOY S. INOS  
Secretary of Finance

5. Attorney General

I hereby certify that this contract has been numbered, reviewed and approved as to form and legal capacity.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Matthew T. Gregory  
Attorney General

6. COMMONWEALTH:

  
\_\_\_\_\_  
BENIGNO R. FITIAL, Governor  
Commonwealth of the Northern Mariana Islands

DATE: 9-28-06

Contract # 462080-0C

7. CONTRACTOR:

\_\_\_\_\_  
HOWARD P. Willens  
Attorney at Law

Date; \_\_\_\_\_

8. CERTIFICATION OF CONTRACT COMPLETION

I hereby certify that this contract bears all required signatures and is therefore complete.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Herman S. Sablan  
Director, Procurement and Supply

Contract # 462080-OC

Attachment "A"

Sole Source Justification

The services to be performed by Contractor - the provision of professional legal services to assist the Office of the Governor in its legal affairs – can be and are procured using the sole source procurement method under Section 3-106(1)(f) of the CNMI Procurement Rules and Regulations, as amended.

Section 3-106(1)(f) of the CNMI Procurement Rules and Regulations, as amended, states, in pertinent part:

1. **A contract may be awarded for a supply, service or construction without competition when: ...**
  - f. **for legal services; or**
  - g. for policy consultants of the Governor, Lt. Governor, and presiding officers of the Legislature.

*See* CNMI Procurement Rules and Regulations, emergency repeal and re-enactment of Section 3-106, as published in the Commonwealth Register Volume 26, No. 2, dated February 23, 2004, and adopted by notice published Volume 26, No. 4, dated April 23, 2004.

## BIOGRAPHICAL INFORMATION: HOWARD P. WILLENS

Howard P. Willens is a lawyer who has practiced in both the public and private sectors in Washington D.C. He received his undergraduate degree in political science from the University of Michigan and his law degree from Yale Law School. After military service he entered private practice, but soon thereafter went into public service. He served as Deputy Assistant Attorney General in the Criminal Division of the U.S. Department of Justice, Assistant Counsel to the President's Commission on the Assassination of President Kennedy, and Executive Director of the President's Commission on Crime in the District of Columbia.

Mr. Willens was a partner in the law firm of Wilmer, Cutler & Pickering from 1967 through 1994. His practice included complex litigation in federal and state courts and agencies, arbitration of disputes involving foreign governments and corporations, and appellate work in federal and state courts. He advised clients regarding alleged violations of U.S. criminal laws and conducted internal investigations of alleged criminal conduct by corporate employees. On the regulatory side, he represented clients before agencies administering U.S. antitrust, securities, anti-discrimination, automotive safety and emissions, anti-boycott and consumer protection laws.

Mr. Willens and his firm were retained by the Northern Marianas people in 1972 to represent them in negotiations with the United States regarding the terms under which they became U.S. citizens and a commonwealth under U.S. sovereignty. He served as lead counsel to the First Marianas Constitutional Convention in 1976 and the Third Marianas Constitutional Convention in 1995-96. He has represented the Commonwealth of the Northern Mariana Islands on status-related issues.

Mr. Willens and his co-author, Deanne C. Siemer, have written a law review article about the Marianas constitution in the Georgetown Law Journal (1977), "National Security and Self-Determination: United States Policy in Micronesia (1961-1972)" published by Praeger (June 2000), and "An Honorable Accord: The Covenant Between the Northern Mariana Islands and the United States" published by the University of Hawaii Press in November 2001. With Professor Dirk A. Ballendorf of the University of Guam as his co-author, Mr. Willens wrote "The Secret Guam Study" published by the CNMI Historic Preservation Office in 2005. With the financial assistance of the CNMI Council for the Humanities, Mr. Willens and Ms. Siemer have prepared several PowerPoint presentations on various aspects of Northern Marianas history and have lectured on these subjects for many years at the annual Teachers Training Institute sponsored by PSS and the Council for the Humanities for new teachers in the community.

As Managing Director of Wilsie Co. LLC, Mr. Willens continues to practice law and consult since his retirement from Wilmer, Cutler & Pickering, with his office at [REDACTED]



# Business License

DEPARTMENT OF FINANCE  
Division of Revenue and Taxation  
Commonwealth of the Northern Mariana Islands

IN COMPLIANCE WITH PUBLIC LAW 11-73, AND ALL OTHER APPLICABLE LAWS IN THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, THE LICENSEE

Howard P. Willens  
Wilsie Co.

LOCATED AT

Garapan

IS HEREBY LICENSED TO ENGAGE IN THE BUSINESS OF

Legal Services

54111

THE AUTHORITY OF WHICH TO OPERATE UNDER SECTION 503 (D)

THIS LICENSE IS NON-TRANSFERABLE AND SHALL COMMENCE ON 1/31/2006

AND EXPIRE ON 1/31/2007

16095 - 0001 - 1

NO.

1/31/2006

DATE OF ISSUE

*Howard P. Willens*  
SECRETARY OF FINANCE

(This license must be displayed in a conspicuous place)



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
BAR ASSOCIATION**

P.O. Box 504539, Saipan, MP 96950  
Telephone: (670) 235-4529 Facsimile: (670) 235-4528  
Email: CNMIbar@vzpacifica.net

Edward Manibusan, Esq.  
President

Teresa K. Kim, Esq.  
Vice-President

Jeanne H. Rayphand, Esq.  
Secretary

Victoria K. Taitano, Esq.  
Treasurer

VIA TELEFAX

January 31, 2006

Ms. Patricia Guerrero  
Legal Assistant – Governor’s Office  
Saipan, MP 96950

Dear Ms. Guerrero:

This is to confirm that Howard Willens, Bar No. F0123, is an active member of the CNMI Bar Association.

If you have any questions, please contact me.

Thank you.

Sincerely,

Mona Celia R. Mercado  
Executive Director

RECEIVED	
BY <i>Pat G.</i>	DATE <i>01.31.06</i>

*Gov.'s Special Legal  
Counsel's office*