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February 21, 1974

Mr. James R. Leonard
James R. Leonard & Associates, Inc.
Suite 400
1601 Connecticut Avenue, N.W.
Washington, D. C. 20009

Dear Jim:

Enclosed is the memorandum you requested regarding start-up expenses for the public land corporation. I hope that this is sufficient for your purposes.

As I mentioned this morning, I am also enclosing two copies of preliminary notes which I have prepared attempting to outline proposed planning efforts in the government organization and legislative drafting areas. I would appreciate any comments or amendments which you and Bill might wish to suggest in these documents. I hope they will be useful in eliciting more informed responses to our requests for assistance in this area.

Sincerely,

Howard P. Willens

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February 20, 1974

MEMORANDUM FOR MR. LEONARD

Subject: Start-up Expenses for the Marianas Public
Land Corporation

At your request, I have reviewed the nature and extent of legal work involved in the creation of the Marianas Public Land Corporation to receive and administer public lands returned by the United States to the people of the Marianas. As you know some of this work has been substantially completed and other assignments have not yet begun. In connection with each item I will provide a rough estimate of the amount of lawyer time involved.

1. Study of Alternative Mechanisms to Receive and Administer Public Lands:

After promulgation of the U.S. Policy Statement of November 2, 1973, we undertook a study of the alternative means which might be used by the Marianas to receive and administer the public lands to be returned by the U.S. We looked at various forms of trusts, public corporations and private corporations (both profit and non-profit). In addition to reviewing the pertinent legal literature and precedents, we drew heavily on the firm's previous experience in helping to create and representing COMSAT and the National Corporation for Housing Partnerships. An extensive review of our research, with appropriate recommendations, was submitted to the Marianas Political Station Commission in advance of the third session of negotiations and was the basis for the Commission's decision to recommend the use of a private non-profit corporation to receive and administer public lands. The estimated lawyer time involved in this effort was approximately 20 days of associate time and five days of partner time.

2. Drafting and Implementing Legislation for the Congress of Micronesia:

Since the return of public lands cannot be effectuated without legislation by the Congress of Micronesia, lawyers from this firm have expended considerable effort in the drafting of such legislation. Both in Saipan and in Washington we have

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participated in several lengthy discussions with representatives of the Department of the Interior, TTPI and Office of Micronesian Status Negotiations on this subject. A draft bill originally prepared by U.S. representatives was reviewed in detail in this office and an alternative version prepared and submitted. In part because of these efforts, it is anticipated that appropriate legislation will be enacted by the Congress during this session, which will enable a private non-profit corporation to be designated as the legal entity to receive and administer the public lands returned to the Marianas. The estimated lawyer time for this project is approximately eight days of associate time and two days of partner time.

3. Preparation of Corporate Articles and By-laws:

We are presently preparing appropriate articles of incorporation and by-laws for the proposed new corporation. Once these papers are reviewed by the Commission and representatives of the Marianas District Legislature, we plan to identify incorporators who will file the necessary papers in the TTPI to secure a certificate of incorporation. Once incorporated, the corporation can then be designated by the Marianas District Legislature officially in accord with the provisions of the enabling legislation passed by the Congress of Micronesia. Preparation of the articles of incorporation has involved considerably more than the routine work associated with the creation of an ordinary corporation, since the articles of incorporation must address and resolve sensibly many sensitive issues regarding the membership and powers of the corporation. It is anticipated that these documents will have to be reviewed in considerable detail with the members of the Commission and some representatives of the Marianas District Legislature. Although the project is not yet completed, it is estimated that the lawyer time involved will be approximately 25 days of associate time and 10 days of partner time.

4. Preparation of Regulations for Non-profit Corporations:

In the course of working on this project we discovered that the TTPI does not presently have any regulations applicable to non-profit corporations. Since the absence of such regulations may serve to complicate the operation of any such non-profit corporation, and perhaps require that the corporation's articles and by-laws be overly

complicated, we have prepared a draft set of regulations for non-profit corporations. This draft was prepared after review of the comparable regulations adopted in the Trust Territory for other kinds of corporations and reflects an effort to adhere closely to the Model Non-profit Corporation Act published by the Committee of Corporate Laws of the American Bar Association. It is our intention to recommend that such regulations be adopted by the appropriate TTPI authorities and we anticipate the necessity of undertaking discussions with these officials in order to persuade them that adoption of such regulations is desirable. Although the project is not yet completed, the estimated lawyer time is expected to be approximately eight days of associate time and two days of partner time.

5. Enabling Legislation for Marianas District Legislature:

In order to obtain the return of public lands, the Marianas District Legislature is required to enact appropriate enabling legislation. This legislation will have to be consistent with the legislation passed by the Congress of Micronesia and fully satisfy the conditions set down by the TTPI. We plan to draft such legislation for presentation first to the Commission and subsequently to the District Legislature. It is estimated that the lawyer time involved will be approximately three days of associate time and two days of partner time.

6. Agreement with the United States to Transfer Public Lands:

Once the necessary legislation has been enacted and the corporation is established, some legal work is anticipated to effectuate the transfer of lands from the United States to the corporation. We anticipate that an official transfer should be negotiated with representatives of the United States, which clearly describes the land being transferred to the corporation and specifies the conditions upon which the transfer is being made. At the very least, this agreement must be drafted in full compliance with the U.S. Policy Statement and the implementing legislation passed by the Congress of Micronesia and the Marianas District Legislature. We are unable to predict at this time what kinds of problems might be encountered in the course of trying to prepare a document mutually acceptable to the corporation and the United States. Subject to these caveats, it is estimated that the lawyer time involved will be approximately eight days of associate time and four days of partner time.

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7. Negotiation of Leases with the United States to Satisfy Military Requirements:

It may be that this subject should not be appropriately considered as a start-up expense of the new corporation, but it is clearly a major legal responsibility which must be handled by the corporation during the first year or two of its operation. It is possible, of course, that some of the major provisions of the lease or leases of land for military purposes will be negotiated in the context of the official status negotiations between the Commission and the United States. It is very likely, however, that the detailed drafting of such leases, including any legal involvement in the problems of valuation, will be handled by the corporation after a status agreement is signed by the Commission and the U.S. Delegation. It will be up to the corporation, of course, to decide what lawyers should act on its behalf in negotiating these leases with the United States. If this firm is requested to undertake the assignment, we anticipate that the estimated lawyer time will be approximately 25 days of associate time and 10 days of partner time. If significant problems are encountered in the negotiation of such leases, substantially more time may be involved.

For purposes of estimating the cost of these projected legal expenses, I suggest that a day of associate time be valued at \$350 and a day of partner time be valued at \$600. The first six projects would total approximately \$40,200. If the seventh project is included, the total would be \$54,950.

Howard P. Willens

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