AGREEMENT FOR ASBESTOS INSPECTIONS, ABATEMENT
AND STRUCTURE CLEARINGS

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter called the DEPARTMENT) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter called the FIRM).

GENERAL RECITALS

WITNESSETH:

WHEREAS, the DEPARTMENT desires the assistance of a clearing firm in the performance of certain clearing services; and

WHEREAS, the FIRM has exhibited evidence of experience, ability, competence, and reputation to perform such clearing services; and

WHEREAS, the DEPARTMENT is authorized by North Carolina General Statute 136-28.1(f) to enter into an Agreement for performance of such services;

NOW THEREFORE, the DEPARTMENT and the FIRM, for consideration hereinafter stipulated, mutually agree as follows:

The FIRM agrees to perform the required Asbestos Inspection, Lab Analysis, Abatement, or Clearing at properties to be identified by the DEPARTMENT as the need arises throughout the State.

## ARTICLE I - CONTRACT DOCUMENTS

The contract documents comprising this Agreement shall be: (1) the Agreement for Asbestos Inspections, Abatement and Structure Clearings; (2) the Request for Proposal; (3) the contractor's response to the Request for Proposal; (4) the Rules & Regulations for Contracting with Private Firms for Asbestos Inspections, Abatements & Structure Clearings; (5) the plan sheets; (6) Sections 200, 210, 215, and 220 of the North Carolina DEPARTMENT of Transportation Standard Specifications for Roads and Structures dated January 1, 1990; (7) all attachments and amendments to the Agreement for Asbestos Inspections, Abatement and Structure Clearing; and (8) the contract bonds, if applicable.

ARTICLE II - SCOPE OF WORK

It is understood by all parties that the scope of work described hereinafter is intended to determine if structures contain asbestos products at sites to be designated within the proposed or existing Right of Way.

The services to be performed under the contract shall include, but not be limited to:

A. Inspections

1. An inspection of the structure by a North Carolina accredited inspector shall be made to determine the location, condition, and amounts of any asbestos containing materials (ACM) that may be present as required by 40 CFR 61.145.

2. If sampling is required, all samples are to be collected and analyzed in accordance with AHERA regulations, if applicable.

3. A copy of the laboratory analysis and written assessments of the condition of the ACM are to be furnished to the DEPARTMENT.

4. If it is determined that a specific structure does not contain asbestos, a letter so stating is to be furnished to the DEPARTMENT.

5. A final visual inspection of each abatement site shall be conducted by a North Carolina accredited air monitor to determine that all ACM has been properly removed.

6. Area air monitoring or final clearance sampling shall be performed, if required, by a North Carolina accredited air monitor. When such sampling is required, copies of laboratory results and a written statement as to the final status of the abatement project shall be supplied to the DEPARTMENT.

B. Abatements

1. The Firm shall be responsible for acquiring all state and local permits and furnishing a copy of these permits to the DEPARTMENT. This includes notification of the North Carolina Department Of Health And Human Services, Division Of Epidemiology, Health Hazards Control Branch, as well as any local agencies.

2. All abatements shall be conducted in accordance with all federal, state and local regulations.

3. The FIRM providing abatement services shall conduct all personal air sampling as required by 40 CFR 1926.58. Copies of air sampling results shall be supplied to the DEPARTMENT.

C. Clearings

1. The FIRM shall secure any necessary permits from local agencies and submit notifications to the Health Hazards Control Branch as required.

2. Clearings shall be accomplished in accordance with the most current North Carolina Department of Transportation Standard Specifications for Roads and Structures; sections 200, 210, 215 and 220. All clearings will be in accordance with Section 210 (with the exception of the provision for disposal by burning under Section 210-4), unless otherwise specified.

3. Upon completion of the assigned work, the Firm shall provide with its invoice a written verification that all structures have been removed from the right of way.

ARTICLE III - DATA AND SERVICES TO BE PROVIDED BY THE DEPARTMENT

For the work included in this Clearing Agreement, the DEPARTMENT will provide the following:

1. Right of Entry to the site to the same extent as provided by law for access by the DEPARTMENT. Said improvements will be located on property that has been secured by the Right of Way Branch.

B. Available information on the type, size and location of public utilities on the site or in the adjacent right of way.

ARTICLE IV - PROJECT SCHEDULE

A. The FIRM'S work will be assigned on an as needed basis by letter from the Right of Way Unit. Within five (5) work days after receipt of the assignment letter, the FIRM will provide the Right of Way Unit an estimate of the cost of the asbestos assessment and a brief work plan. It is agreed that the FIRM will be available to begin work within five (5) work days after written approval of the cost estimate and work plan is returned.

B. Approval of the FIRM'S cost estimate and work plan shall be considered the notice-to-proceed.

## ARTICLE V - COMPENSATION AND PAYMENT

A. Unit Costs

1. Unit cost for inspection and lab analysis, if any;

a. $ \_\_\_\_\_ per residential unit (800-2000 SF frame structure - Maximum of 8
 samples
b. $ \_\_\_\_\_ per miscellaneous non-residential unit less than 800 SF - Maximum of
 4 samples(out buildings, signs, barns, etc.)
c. $ \_\_\_\_\_ per commercial unit - 2,000 to 5,000 SF Maximum of 10 samples
d. Any units having areas greater than those listed above may be subject to
 adjustment of unit price, said adjustment to be approved by the DEPARTMENT.

2 Final Visual Inspection for abated improvements $ \_\_\_\_\_ per unit including air monitoring.

3. Abatement price: (200 SF - 200 LF)
a. Non-Friable Asbestos
 i. $ \_\_\_\_\_\_ per square foot of asbestos materials.
 ii. $ \_\_\_\_\_\_\_ per linear foot of asbestos materials.

 b. Friable Asbestos (200 SF - 200 LF)
 i. $ \_\_\_\_\_ per square foot of asbestos materials.

 ii. $ \_\_\_\_\_ per linear foot of asbestos materials.

4. Unit cost of general clearing will be paid for as a unit price.

a. Residential (1500 SF)
i. $ \_\_\_\_ per SF - frame.

 ii. $ \_\_\_\_\_ per SF - masonry or other.

b. Commercial (3000 SF)
i. $\_\_\_\_\_\_ per SF - frame.

 ii. $ \_\_\_\_\_\_ per SF - masonry or other.

5. The DEPARTMENT will reimburse actual cost for landfill permits, acceptance fees charged at landfill, and for any applicable permits required by the Asbestos Hazardous Management Branch.

6. The FIRM will provide all utilities needed to provide assessment services.

7. All bids should be based on job sites within one hundred (100) mile radius of office of operations.

8. The FIRM will be limited to a $250,000.00 contract per year.

B. Total payment will be made to the FIRM upon completion of each work assignment for asbestos assessments, abatements and clearings on a project upon submission of an invoice accompanied by proper supporting documentation and upon approval by the Right of Way Branch and the Fiscal Section.

C. This contract will expire one (1) year from the date of execution by the DEPARTMENT or when the not-to-exceed amount has been depleted. If it appears, during the progress of the work, that the not-to-exceed amount payable will be exceeded, the FIRM will immediately notify the DEPARTMENT in writing and the FIRM shall not proceed beyond the maximum amount without prior written approval by the DEPARTMENT. The maximum amount payable shall not be exceeded except by written supplement to this Agreement.

D. In the event unforeseen or specialized services are required that are outside of the unit cost provisions of Article V. A., the Firm may be given written notice to proceed based upon an agreed rate for the service.

E Upon approval by the DEPARTMENT of any work assignment, the FIRM shall secure a performance and payment bond in the amount of the total of the abatement and clearing costs. In lieu of a performance bond or cash bond, the DEPARTMENT will accept an irrevocable standby letter of credit from a bank approved by the DEPARTMENT.

F. The FIRM shall pay any subcontractors for work performed within 7 days after the FIRM receives payment from the DEPARTMENT for work performed by the subcontractor. This requirement must be incorporated into all subcontract agreements. Failure to comply with the 7-day requirement may cause the DEPARTMENT to withhold payments to the FIRM and the DEPARTMENT may suspend work until the subcontractor is paid.

ARTICLE VI - TERMINATION

The DEPARTMENT reserves the right to terminate THIS AGREEMENT, in whole or in part, at any time upon fifteen (15) days advance written notice to the firm, by the end of which period the FIRM shall, unless the notice directs otherwise, discontinue all work and services.

If THE AGREEMENT is so terminated, the FIRM shall be paid for the actual cost of work and services performed up to the date of termination and all work completed or partially completed by the FIRM at the date of termination shall be delivered to the DEPARTMENT.

In any dispute in connection with the work under this agreement or compensation thereof, the FIRM shall submit in writing to the DEPARTMENT a written statement of its claim. The statement must be submitted within thirty (30) days of the event giving rise to the claim. The DEPARTMENT will render a decision on the claim which will be final, subject to review in accordance with Chapter 150B of the North Carolina General Statutes.

ARTICLE VII – EQUAL OPPORTUNITY

1. Selection of Labor:
During the performance of THIS AGREEMENT, the FIRM shall not discriminate against labor from any other state, possession, or territory of the United States.

2. Employment Practices:During the performance of THIS AGREEMENT, the FIRM agrees as follows:

1. The FIRM will not discriminate against any employee or any applicant for employment because of race, religion, color, sex, national origin, age or handicap the FIRM will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin, age or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The FIRM agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the DEPARTMENT setting forth the provisions of this nondiscrimination clause.
2. The FIRM will, in all solicitations or advertisements for employees placed by or on behalf of the FIRM state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, age or handicap.
3. The FIRM will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided By the DEPARTMENT advising the said labor union workers' representative of the FIRM's commitments under Employment Practices and shall post all copies of the notice in conspicuous places available to employees and applicants for employment.
4. The FIRM will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR PART 60) and relevant orders of the Secretary of Labor.
5. The FIRM will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the FIRM 's noncompliance with the nondiscrimination clauses of THIS AGREEMENT or with any of the said rules, regulations, or orders, THIS AGREEMENT may be canceled, terminated or suspended in whole or in part and the FIRM may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The FIRM will include the provisions of Employment Practices in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The FIRM will take such action with respect to any subcontract or purchase orders as the DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the FIRM becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by the Federal Highway Administration, the FIRM may request the United States to enter into such litigation to protect the interests of the United States.
8. Selection of Subconsultants, Procurement of Materials, and Leasing of Equipment: During the performance of THIS AGREEMENT, the FIRM, for itself, its assignees and successors in interest (herein referred to as " the FIRM ") agrees as follows:
9. Compliance with Regulations: the FIRM shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the DEPARTMENT of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of THIS AGREEMENT.
10. Nondiscrimination: The FIRM, with regard to the work performed by it during THIS AGREEMENT, shall not discriminate on the grounds of race, religion, color, sex, national origin, age or handicap in the selection and retention of subconsultants including procurements of materials and leases of equipment. The FIRM shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in appendix B of the Regulations.
11. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations the FIRM for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the FIRM of the FIRM 's obligations under THIS AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, national origin, age or handicap.
12. Information and Reports: The FIRM shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the FIRM is in the exclusive possession of another who fails or refuses to furnish this information, the FIRM shall so certify to the DEPARTMENT, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
13. Sanctions for Noncompliance: In the event of the FIRM's noncompliance with the nondiscrimination provisions of THIS AGREEMENT, the DEPARTMENT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

1. withholding of payments to the FIRM under THIS AGREEMENT until the FIRM complies, and/or

2. cancellation, termination or suspension of THIS AGREEMENT, in whole or in part.

f. Incorporation of Provisions: The FIRM shall include the provisions of this Section 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The FIRM shall take such action with respect to any subconsultant or procurement as the DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event the FIRM becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the FIRM may request the DEPARTMENT to enter into such litigation to protect the interests of the State, and, in addition, the FIRM may request the United States to enter into such litigation to protect the interest of the United States.

## ARTICLE VIII - NONSEGREGATED FACILITIES

(Applicable to Federal-aid contracts and related subcontracts exceeding $10,000 which are not exempt from the Equal Opportunity clause.)

By the execution of THIS AGREEMENT, the FIRM certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. It agrees that a breach of this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise. It agrees that, except where it has obtained identical certification from proposed subconsultants and material suppliers for specific time periods, it will obtain identical certification from proposed subconsultants or material suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that it will retain such certifications in its files.

TITLE IX - PARTICIPATION BY DISADVANTAGED AND WOMEN-OWNED BUSINESS
 ENTERPRISES IN DEPARTMENT OF TRANSPORTATION PROGRAMS,
 49 CFR Part 26 As Amended

It is the policy of the DEPARTMENT of Transportation that disadvantaged and women-owned business enterprises (DBE's and WBE's respectively) as defined in 49 CFR Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under THIS AGREEMENT. Consequently, the DBE and WBE requirements of 49 CFR Part 26, as amended, apply to THIS AGREEMENT.

The FIRM agrees to ensure that DBE's and WBE's as defined in 49 CFR Part 26, as amended, have maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under THIS AGREEMENT.

Further, the FIRM agrees to provide the DEPARTMENT with information on the dollar amount and name of each subconsultant who identifies itself as DBE or WBE.

In this regard the FIRM shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBE's and WBE's have the maximum opportunity to compete for and perform contracts. the FIRM shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

The FIRM agrees that failure to carry out the requirements set forth herein shall constitute a breach of contract and after the notification of the DEPARTMENT of Transportation, may result in termination of THIS AGREEMENT by the DEPARTMENT or such other remedy as the DEPARTMENT deems appropriate.

ARTICLE X - MISCELLANEOUS PROVISIONS

The FIRM agrees that the professional services required by the contract document will be performed in accordance with generally accepted standards, principles and practices in the industry and in compliance with all applicable federal, state, and local laws, regulations, and guidelines. The FIRM agrees to indemnify and reimburse the DEPARTMENT for all monetary penalties which may be assessed against the DEPARTMENT by any regulatory body as a result of the FIRM'S failure to perform in accordance with the contract documents.

The FIRM shall maintain all books, papers, accounting records and other documents generated in connection with any work assignment under this contract for a period of three (3) years from the date of receiving final payment on the work assignment. The DEPARTMENT shall have the right to inspect these records at all reasonable times during the contract period and for three years subsequent to the date of receipt of final payment for any work assignment under this contract.

This Agreement shall be governed by the laws of the State of North Carolina, and venue for any suit or cause of action shall be in Wake County, North Carolina.

IN TESTIMONY WHEREOF, the parties have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated:

EXECUTED by the DEPARTMENT this \_\_\_\_\_\_\_\_ day of , 2000

 NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

 By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Manager, Right of Way Branch

EXECUTED BY the FIRM this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2000

 Corporate Seal

 By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 ATTEST:

 By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Approved as to form and execution \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Approved by Board of Transportation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_