DATED:

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BETWEEN:

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THE AUSTRALIAN CAPITAL TERRITORY

("the Territory")

AND:

THE COMMONWEALTH OF AUSTRALIA

("the Commonwealth")

MEMORANDUM OF UNDERSTANDING - ASBESTOS REMOVAL PROGRAM

ACT Government Solicitor 1st Floor GIO House 250 City Walk CANBERRA CITY ACT 2601

Ref: DT/90-3-16216

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING BETWEEN THE AUSTRALIAN CAPITAL TERRITORY ("the Territory") AND THE COMMONWEALTH OF AUSTRALIA ("the Commonwealth") made the 7 Lday of 1991

1. PREAMBLE

- 1.1 In 1988 the Commonwealth developed and commenced conducting a program for the identification sealing and removal of loose asbestos fluff insulation from certain affected Territory residential properties ("the Program").
- 1.2 Responsibility for the conduct of the Program was transferred to the Territory upon self-government on the basis that the Commonwealth would contribute towards the funding of the Program.
- 1.3 This Memorandum records the funding arrangements for the Program as determined by the Commonwealth and the agreed arrangements between the Territory and the Commonwealth concerning administration of the Program.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Memorandum the following words shall, unless the context indicates otherwise, have the meanings shown below:

"Funding formula" means the following formula for funding the cost of the Program adopted by the Commonwealth on 10 October 1988 that:

- the Territory pay the first \$10 million of costs,
- the Territory and the Commonwealth share, dollar for dollar, the next \$20 million of costs; and
 - thereafter the costs to be apportioned \$2 to \$1 by the Commonwealth and the Territory respectively.

"Self-Government" means the date from which the Territory became a separate body politic namely 10 May 1989.

"Territory" means according to the context in which it appears either the geographical area known as the Australian Capital Territory or the body politic established under section 7 of the <u>Australian Capital Territory (Self-Government) Act 1988</u>.

2.2 Headings are for assistance only and shall be of no legal effect.

3. EXCLUSION

The parties agree that this Memorandum reflects the funding arrangements determined by the Commonwealth and nothing herein should be interpreted or construed as apportioning any liability between the Territory and the Commonwealth arising out of the installation of asbestos insulation in Territory dwellings.

4. ACKNOWLEDGEMENT

The parties acknowledge that conduct of the Program prior to the date of this Memorandum has been on the basis of the understandings set out in this Memorandum and that the Funding Formula set out in this Memorandum also applies to that part of the Program conducted before the date of this Memorandum. Commonwealth contributions to the program to the date of signing total \$12.96 million.

5. RESPONSIBILITIES

The parties agree that the Territory, through the Department of Urban Services will continue to be responsible for the implementation and administration of the Program and that the Commonwealth will contribute in accordance with the funding formula towards the cost of the Program.

6. LEVEL OF SERVICE

- 6.1 The level of service to be provided by the Territory under the Program is as follows:
 - the survey of all residential properties in the Territory built before 1980 to determine which residential properties have asbestos insulation, and
 - the sealing up of all affected residences and removal of all visible and accessible loose asbestos fluff insulation from affected residential properties in the Territory.
- In respect of the owners of residential properties affected by the Program who are assessed by the Territory to be suffering financial hardship the Territory may reimburse all or part of the cost of alternative accommodation for those owners during the period in which the owner's residential property was affected by the Program. The Territory will include in reports submitted under clause 8.3 relevant details of all such assessed cases.
- 6.3 The parties agree that should it become necessary at any time to expand the Program to further residential properties or to subsequently remove additional asbestos from properties previously subject to the Program ("the Additional Program"), all costs associated with the Additional Program will

be calculated in accordance with the terms and conditions of this Memorandum of Understanding.

COSTS AND PAYMENTS

- 7.1 The Territory will provide to the Commonwealth estimates of fortnightly cash requirements under the program prior to the commencement of each financial year and at other times as reasonably requested by the Commonwealth.
- 7.2 Upon agreement by the Department of Arts, Sport, the Environment, Tourism and Territories that the estimates provided under 7.1 are reasonable and in accord with the agreed amount under 7.5, the Department of Arts, Sport, the Environment, Tourism and Territories will pay the Territory fortnightly in advance in accordance with the Funding Formula and the estimates of cash requirements provided to it by the Territory. Adjustments necessary as a result of quarterly reports of expenditure under 8.3 will be effected in subsequent payments.
- 7.3 Adjustments for over and under payments in a financial year shall be made in the ensuing financial year.
- 7.4 In paying the Territory the Commonwealth's share under the Funding Formula, the Commonwealth contribution will cover costs incurred by the Territory in the nature of:
 - costs directly involved in identification, removal and sealing of loose asbestos fluff insulation from residential properties in the Territory;
 - accommodation costs for assessed hardship cases; and
 - corporate overheads calculated in accordance with Attachment A to the "Guidelines for Costing of Government Activities" reduced by those items identified as direct expenses.
- 7.5 The parties agree that the amount to be paid by the Commonwealth under this Memorandum for subsequent financial years will be agreed annually and will take into account progress to date with the Program.

8. REPORTING

- 8.1 The Territory will provide to the Commonwealth a copy of an audited financial statement against the line items appearing at Annex A detailing receipts and expenditure associated with the administration of the Program.
- The statement referred to in clause 8.1 will be provided to the Commonwealth within 6 months after the end of each financial year.

- 8.3 The Territory will report quarterly on receipts and expenditure against the line items appearing at Annex A, and on progress of works under the Program.
- 8.4 The Commonwealth and the Territory may agree to amend cash flow estimates referred to in 7.3 as a consequence of information contained in the reports referred to in 8.1 and 8.3.

9. INDEMNITY

The Commonwealth hereby indemnifies and agrees that it will continue to indemnity the Territory, its servants and agents from and against all actions, claims, suits or demands brought, maintained or made against the Territory, its servants and agents arising out of or connected with the performance of the Program or any Additional Program together with any costs associated with defending or settling such actions, claims, suits or demands.

10. TERM OF MEMORANDUM

This Memorandum will commence on 10 May 1989 and will cease upon the completion of the Program or if the Program is extended under clause 6.2 upon the completion of the Additional Program.

11. VARIATIONS TO THE LEVEL AND TYPE OF SERVICES

- 11.1 The terms of this Memorandum may be varied or amended by written agreement between the Commonwealth and the Territory.
- 11.2 If any change in the Funding Formula referred to in this Memorandum is required by either party, it will be the subject of separate negotiations and agreement between the appropriate Ministers of the Territory and the Commonwealth.

12. NOTICES

- 12.1 Any correspondence to be given for the purposes of this Memorandum shall be deemed to have been duly given if delivered personally, or by being left at, or posted by ordinary prepaid mail or sent by facsimile transmission where appropriate to the following address or to the party's last known facsimile number:
 - (a) The Territory:

General Manager, City Operations Branch PO Box 574 KINGSTON ACT 2604 (Facsimile No: 295 6717) (b) The Commonwealth:

Director
National Functions Section
Department of the Arts, Sport the
Environment, Tourism and Territories
GPO Box 787

CANBERRA ACT 2601 (Facsimile No: 274 1368)

- 12.2 Payments under this Memorandum should be made to the Territory:
 - C/- Assistant Under Treasurer
 Capital Markets and Accounting
 ACT Treasury
 PO Box 293
 CIVIC SQUARE ACT 2608
- 12.3 A notice, payment or receipt:

if posted, shall be deemed to be received three days after posting; or

if sent by facsimile transmission, shall be deemed to be received upon completion of that transmission; or

if collected by hand, shall be deemed to be received at the time of collection.

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Bruce Dockrill Director City Services Group

City Services Group
Department of Urban Services

Signed for and on behalf of THE COMMONWEALTH OF AUSTRALIA in the presence of:

Witness

Calty Santonana

Cathy Santamaria
First Assistant Secretary
Corporate Management and
Territories Division
Department of the Arts, Sport,
the Environment, Tourism
and Territories

ANNEXURE A

<u>Salaries</u>

- above the line
- below the line

Wages

- above the line
- below the line

Superannuation"

- on salaries
- on wages.
- 3% productivity benefit

Workers Compensation

Office Accommodation

Payments to Contractors

Reimbursement to Residents

Other Operating Expenses (to be identified)

Corporate Support in accordance with clause 7.4(ii)

Less

Receipts (to be identified).