

**2001 OREGON TRANSPORTATION INVESTMENT ACT AGREEMENT
Corbett Hill Road Viaduct (Br.# 51C11)**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and MULTNOMAH COUNTY, a municipal subdivision of the State of Oregon, acting by and through its Elected Officials, hereinafter referred to as "Agency".

RECITALS

1. The 2001 Oregon Transportation Investment Act Program, hereinafter referred to as the "2001 OTIA Program", provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission.
2. The Oregon Transportation Commission selected the projects to be funded under the 2001 OTIA Program at its January 16, 2002 meeting. This selection included Agency's project, Corbett Hill Road Viaduct, as described in Exhibit A.
3. By the authority granted in ORS 190.110, 366.770 and 366.775, state agencies may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. Agency shall replace the Corbett Hill Road Viaduct structure, hereinafter referred to as "Project". A Project description and budget are shown on Exhibit "A", and a sketch map showing the location and approximate limits of the Project is shown on Exhibit "B", attached hereto and by this reference made a part hereof.
2. The total estimated cost of the Project is \$1,046,723. The budget is shown on Exhibit "A".

3. 2001 OTIA Program funds shall be limited to \$806,723. Agency shall provide \$240,000 for preliminary engineering and shall be responsible for all remaining costs in excess of the 2001 OTIA Program funded amount for this Project.

4. This agreement shall become effective on the date all required signatures are obtained and shall be completed according to the schedule outlined in Paragraph 4, Agency Obligations. Only work begun after the effective date of this agreement is eligible for reimbursement with OTIA funds.

5. The funds available under the 2001 OTIA Program are State Highway Funds. To be eligible for reimbursement under the 2001 OTIA Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.

6. Agency and ODOT have a joint obligation to ensure timely expenditure of 2001 OTIA Program monies and comply with the provisions of the bonds that finance the 2001 OTIA Program.

AGENCY OBLIGATIONS

1. Agency, or its consultant, shall conduct the necessary engineering and design work required to produce final plans, specifications and cost estimates; obtain all right-of-way, if any, required for Project in compliance with ORS 281.060, ORS 35.346, including certification by the Agency, or by its consultant on behalf of Agency; obtain all required permits; arrange for all utility relocations or reconstruction, if any, required for Project in compliance with the standards in Agency Obligations, Paragraph 13; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; advertise and award all contracts; provide Project management services; and other necessary functions for administration of the contract.

2. The Project shall be developed in conformance with Agency's standards. If Agency has not adopted standards of its own, the Project shall be developed in conformance with the current edition of *A Policy on Geometric Design of Highways and Streets* by the American Association of State Highway and Transportation Officials (AASHTO).

3. Agency shall provide ODOT with sufficient information to complete a project prospectus so that ODOT can track Project using ODOT's automated management system.

4. a. Agency shall submit documentation to ODOT's Project Liaison that shows that Agency has met Project key milestones. The Project key milestones, dates, and required documentation are shown below:

Right of Way Acquisition: October 13, 2004

Documentation: Letter from Agency's legal counsel certifying that 1) the right of way needed for the project has been obtained and 2) the right-of-way acquisition has been completed in accordance with those certain right of way requirements contained in Agency Obligations, paragraph 1, of this agreement.

Land Use Permits: October 13, 2004

Documentation: Letter from Agency indicating that all Land Use Permits required for final design have been obtained.

Final Plans / Biddable Engineering Documents: October 13, 2004

Documentation: A copy of completed Project plans, specifications and cost estimates.

Contract Advertisement and Award: January 19, 2005

Documentation: A copy of the Award of Contract submitted to the Bureau of Labor and Industries.

Construction Completion: January 18, 2006

Documentation: A letter from Agency indicating that construction is substantially complete.

Project Completion: January 23, 2006

Documentation: Letter from Agency indicating that the Project is complete and open to traffic, accompanied by Agency's final billing to ODOT.

- b. If the Agency does not meet a Project milestone date within one month of the date specified in Agency Obligations, Paragraph 4.a, reimbursement of Agency's Project expense shall be changed to one-half of the rate specified in ODOT's Obligation's, Paragraph 1, until such time as the Project has completed the milestone and Project is back on schedule.
- c. Immediately upon missing a milestone date, Agency and ODOT shall establish a project review team including Agency's Project Liaison and ODOT's Project Liaison, at a minimum, and may include such other members as are deemed necessary. The project review team shall determine (a) if failure to complete the milestone in question will jeopardize successful completion of Project, (b) what steps must be taken by Agency to ensure successful completion of Project, and (c) revise the Project schedule, if changes are required.
- d. In the event that the Project schedule itemized in Agency Obligations 4.a. is revised pursuant to Agency Obligation 4.c, the Agency's Project Liaison and

ODOT's Project Liaison shall reduce the revision to writing. The Agency's Project Liaison and ODOT's Project Liaison shall incorporate the revised schedule into the intergovernmental agreement by entering into a formal amendment to this agreement.

- e. When the Project is back on schedule according to the milestones set out in Agency Obligations 4.a., including a revised schedule adopted by formal amendment, Agency shall receive any funds withheld by ODOT under the provisions of Paragraph 1.b. of ODOT's Obligations.

5. Agency shall present invoices for the eligible, actual costs incurred by Agency on behalf of the Project directly to ODOT's Project Liaison for review and approval. Such invoices shall be submitted in the form as shown on Exhibit "C", OTIA Progress Billing, attached hereto and by this reference made a part hereof. Invoices will identify the Project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not greater than one month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project.

6. Agency shall submit a billing at the time Agency documents that Construction Completion, as set out in Agency Obligations, Paragraph 4, is complete. The billing will indicate total Project costs incurred to date, whether there are unresolved claims, and the anticipated timeline for resolving claims and closing the Project.

7. Agency shall be responsible for any and all costs of Project which are not covered by OTIA funds, including costs of the Project when the maximum amount of OTIA funds obligated under this Agreement have been expended.

8. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference.

9. Agency shall perform the service under this agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

10. Agency, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, unless such employers are exempt under ORS

656.126. Agency shall ensure that each of its contractors complies with these requirements.

11. Agency will maintain the improvements made as a result of the Project at the same level as other similar facilities owned by Agency.

12. Agency agrees that the Project will be on the public right-of-way and will serve general transportation needs.

13. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:

- a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
- b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.

14. Agency certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that they will only submit invoices to ODOT for reimbursement on work that has been performed and paid for by Agency.

15. Agency shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, and the Oregon Department of Transportation and its officers and employees, from all claims, suits or actions of any nature arising out of activities of Agency, its consultant, its contractor, its officers, subcontractors, agents, or employees under this agreement.

16. Agency's Project Liaison for this agreement is Dan Brown, Multnomah County Transportation Division, 1600 SE 190th Ave, Portland Oregon 97233-5910. Phone (503) 988-5050 ex. 29633. Agency's Project Liaison is granted the authority to enter into and execute formal amendments to this agreement when revisions to the Project schedule are deemed necessary by the project review team.

17. Agency shall place signs that identify Project as "*Another Project Funded by 2001 Oregon Transportation Investment Act*" (ODOT approved design). Agency may affix additional signage that identifies local funds used for the Project.

18. Agency agrees that it will call attention to the Project and help make it visible to the public.

19. Agency agrees to provide progress information and photographs in a suitable format for posting on the OTIA web site maintained by ODOT and to provide appropriate links from Agency's web sites to the OTIA web site.

20. Agency agrees to comply with the conditions for Project approval adopted by the Oregon Transportation Commission, as set out in Exhibit "A", Special Conditions, which is attached and made part of this Agreement.

ODOT OBLIGATIONS

1.
 - a. ODOT shall reimburse Agency 100 % of eligible, actual costs incurred up to the maximum amount of OTIA funds committed for the Project specified in Terms of Agreement, Paragraph 3, provided that Agency is meeting the Project milestones set out in Agency Obligations, Paragraph 4. a. Under no conditions shall ODOT's total obligation exceed \$806,723, including all expenses.
 - b. In the event that Agency has not met a Project milestone, ODOT shall change its rate of reimbursement to Agency to be one-half of the rate specified in Paragraph 1.a. until such time as Project is back on schedule.
 - c. When the Project is back on schedule, according to the milestones set out in Agency Obligations 4.a., including a revised schedule adopted by formal amendment per Agency Obligations 4.d., ODOT shall pay Agency any funds withheld by ODOT under the provisions of Paragraph 1.b. of ODOT's Obligations.
 - d. ODOT agrees to comply with the provisions of ORS 293.462 with regard to timely payment.
2. ODOT certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within ODOT's current appropriation or limitation of current biennial budget.
3. ODOT's Project Liaison for this agreement is Sandy Van Bommel, 123 NW Flanders, Portland Or. 97209 (503-731-8504). ODOT's Liaison shall:
 - a. Receive any notices provided by Agency under this agreement.
 - b. Review and process for payment all eligible, actual Project costs incurred within 30 days of the date of receipt of Agency's invoices by ODOT.
 - c. Advise Agency at Agency's request on matters affecting the Project.
 - d. ODOT's Project Liaison is granted the authority to enter into and execute formal amendments to this agreement when revisions to the Project schedule are deemed necessary by the project review team.

4. ODOT shall review the documentation provided by Agency to ensure that the Project undertaken by Agency is the Project approved by the Oregon Transportation Commission at its January 16, 2002 meeting.

5. ODOT shall not be required to approve Agency's selection of contractors, right-of-way purchase, or engineering design documents, except as the Project design affects the state highway system or as required by the conditions of approval adopted by the Oregon Transportation Commission.

6. ODOT shall maintain a web site for the 2001 OTIA Program listing Project status and accomplishment information for Agency's Project.

GENERAL PROVISIONS

1. This agreement may be terminated by mutual consent of both parties.

2. ODOT may terminate this agreement effective upon delivery of written notice to Agency, or at such later date as may be established by ODOT, under any of the following conditions:

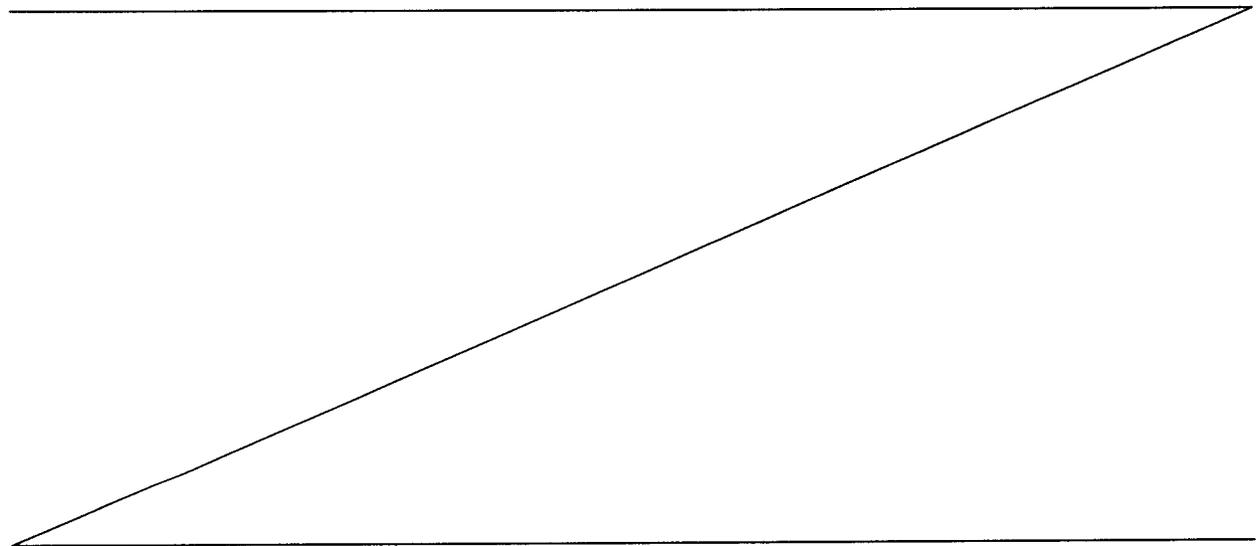
- a. If Agency fails to provide services called for by this agreement within the time specified herein or any extension thereof.
- b. If Agency fails to perform any of the other provisions of this agreement or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.
- c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the agreement.
- d. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.

If ODOT terminates this agreement for the reasons described in General Provisions, Paragraph 2. "a." or "b." above, Agency must reimburse ODOT for all Oregon Transportation Investment Act funds expended. If Agency fails to reimburse ODOT, ODOT may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse ODOT for costs incurred by such Agency breach.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

3. Agency acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

4. This agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this agreement shall not constitute a waiver by that party of that or any other provision.



IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission approved this Project on January 16, 2002.

The Oregon Transportation Commission on January 16, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

The Director on January 31, 2002, approved Subdelegation Order No. 2, which grants authority to the Deputy Director for the Oregon Transportation Investment Act to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, in the Oregon Transportation Investment Act project list, or in the approved biennial budget.

APPROVAL RECOMMENDED

STATE OF OREGON, by and through
Its Department of Transportation

By _____
Region 1 Manager

By _____
Deputy Director for Oregon Transportation
Investment Act

Date _____

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

MULTNOMAH COUNTY, By and through
its Elected Officials

By _____
Assistant Attorney General

By _____
Chair

Date _____

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

RETURN AGREEMENT TO AGENCY:

By _____
Agency Attorney

Contact: Dan Brown

Address: C/O Multnomah Co. Trans. Div.
1600 SE 190th Ave.
Portland, OR 97233

Date _____

EXHIBIT A
PROJECT DESCRIPTION
MULTNOMAH COUNTY TRANSPORTATION DIVISION
CORBETT HILL ROAD VIADUCT

The Corbett Hill Road Viaduct is a load limited structure that restricts commercial access to and from the community of Corbett. Cracking is evident in both the deck and beams. More stringent weight limits or even complete closure is likely if the structure is not replaced. Corbett Hill Road is one of only two routes to and from the community of Corbett. Closure of the Corbett Hill road to freight traffic would require trucks to access I-84 via either the Stark Street Bridge (which is weight limited), or through a clearance limited under-crossing at Jordan Interchange.

This Project will replace the structure with either a new viaduct or a retaining wall.

Project Cost Estimate			Project Financing		
Preliminary engineering & design	\$	350,000	Agency Contribution	\$240,000	23%
Right-of-way purchase	\$	0	OTIA	\$806,723	77%
Construction	\$	696,723			
Total	\$	1,046,723	Total	\$1,046,723	100%

SPECIAL CONDITIONS

The Oregon Transportation Commission approved Projects for funding under OTIA subject to certain conditions:

No Conditions of Approval are required on this Project.

EXHIBIT B
Project Location Map

MULTNOMAH COUNTY TRANSPORTATION DIVISION
CORBETT HILL ROAD VIADUCT

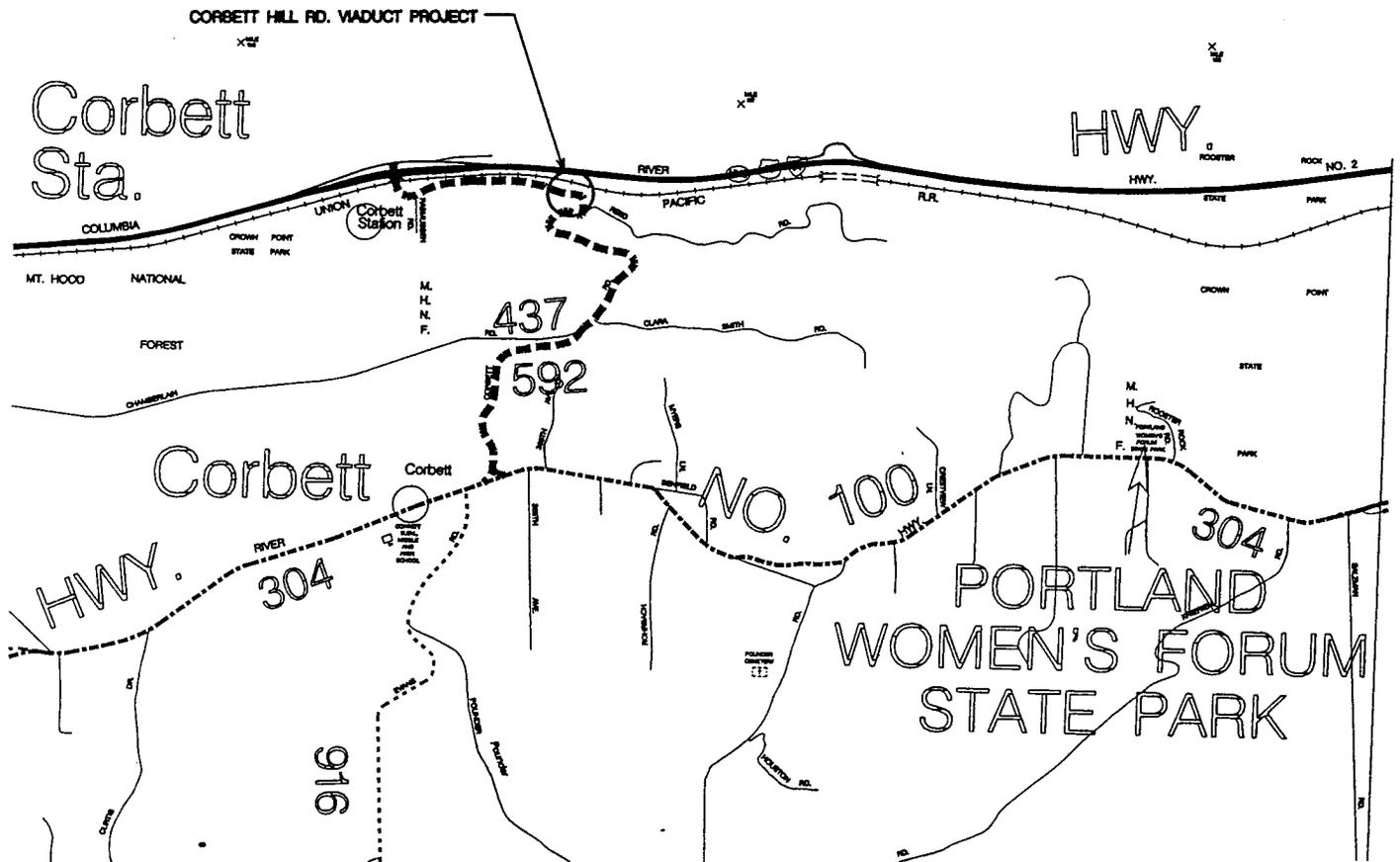


EXHIBIT C
Oregon Transportation Investment Act (OTIA)
Progress Billing
(form)

Agency: Multnomah County Transportation Division
 Project: Corbett Hill Road Viaduct
 Agreement No.: 19,473
 Billing Period: _____ to _____

	Costs Incurred This Period	Costs Billed Previously	Total Cost To Date	Participation Rate	Total Amount Claimed	Prior Total Claimed	Amount Claimed This Period	Percent Complete This Phase
Planning								
Engineering Design								
Right of Way								
Construction								
Total								

Submission of this request certifies that, in accordance with the laws of the State of Oregon and under the conditions of approval for the project identified above, actual costs claimed have been incurred and are eligible pursuant to the Intergovernmental Agreement between Agency and the Oregon Department of Transportation. Also, no other claims have been presented to, or payment made by, the State of Oregon for those costs claimed for reimbursement.

 Agency Project Liaison

Date
 (for ODOT use)
 I have reviewed the above project and related costs and, in my opinion, subject to audit, the costs reflect the progress to date and are eligible for reimbursement in the amount of \$ _____.

 ODOT Project Liaison

 Date