



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150  
Salem, OR 97301-2540  
(503) 373-0050  
Fax (503) 378-5518  
[www.lcd.state.or.us](http://www.lcd.state.or.us)

### NOTICE OF ADOPTED AMENDMENT

May 12, 2008



TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment  
DLCD File Number 011-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 28, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Mark Radabaugh, DLCD Regional Representative  
Amy Barry, City of Bend

<paa> ya

FORM 2

## DLCD

# Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

☐ In person ☐ electronic ☐ mailed

DATE  
STAMP

DEPT OF  
MAY 09 2008  
LAND CONSERVATION  
AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **City of Bend**

Local file number: **PZ 07-311**

Date of Adoption: **4/16/2008**

Date Mailed: **5/7/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 6/18/2007

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☒ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

A Rezone of the 2.84 acre subject site from Industrial Light (IL) to Commercial General (CG), in conformance with the Bend Urban Area General Plan.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from: **IL**

to: **CG**

Location: **East of Lava Road between Colorado and Arizona Ave**

Acres Involved: **2**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19  
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☒ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☒ No

DLCD #011-07 (16196)



**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

ODOT - Reviewed proposed signalization and lane reconfiguration mitigation at the northbound Parkway Ramp at Colorado St. Applicant is entering into a Development Agreement to construct the mitigation when signal warrants are met.

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Local Contact: **Amy Barry**

Phone: (541) 693-2114 Extension:

Address: **710 NW Wall Street**

Fax Number: **541-388-5519**

City: **Bend**

Zip: **97759-**

E-mail Address: **abarry@ci.bend.or.us**

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### **ADOPTION SUBMITTAL REQUIREMENTS**

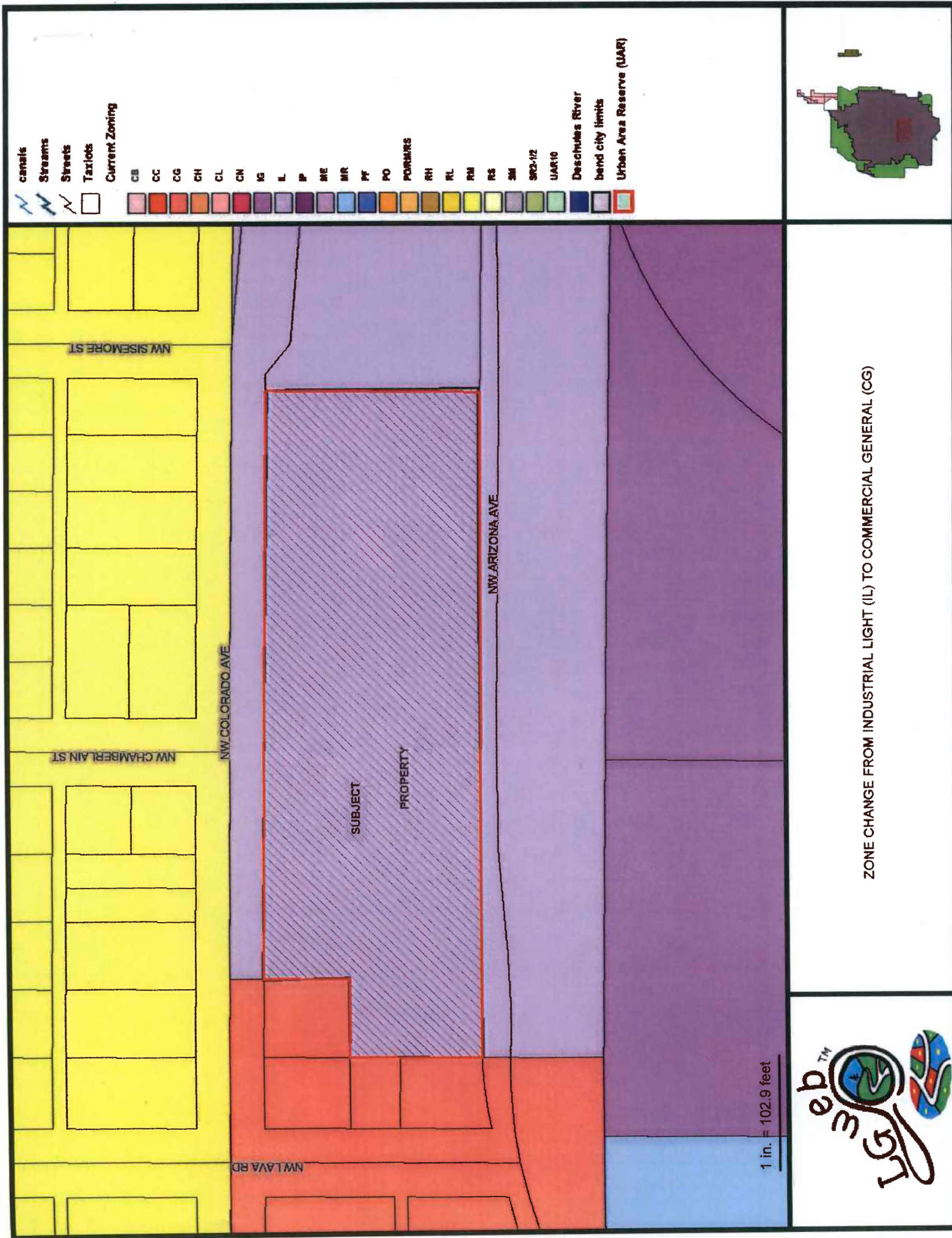
This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.







ORDINANCE NO. NS-2094

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEND AND COLORADO STREET DEVELOPMENT PARTNERS, LLC FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS FOR THE COLORADO STREET DEVELOPMENT.

WHEREAS, The City of Bend is authorized by ORS 94.504 to enter into Development Agreements with persons having legal or equitable interests in real property; and

WHEREAS, The attached Development Agreement describes the ways and means for accomplishing the objectives of the Development Agreement; and

WHEREAS, The attached Development Agreement includes documents that are assembled as part of a set of exhibits which support the Development Agreement; and

WHEREAS, The City of Bend has conducted public hearings and has considered the testimony and written public comment relating to the Development Agreement; and

WHEREAS, The Bend City Council finds that the Development Agreement listed in Section 1 of this ordinance complies with all applicable land use goals, laws, rules and regulations,

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

**SECTION 1.** That the attached "DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND AND COLORADO STREET DEVELOPMENT PARTNERS, LLC" RELATING TO THE CONSTRUCTION OF PUBLIC IMPROVEMENTS FOR THE COLORADO STREET DEVELOPMENT is hereby approved.

**SECTION 2.** That the City Manager is authorized to execute each of the Development Agreements referred to in Section 1 of this Ordinance when all such Development Agreements are fully executed by each of the Property Owners listed in such Agreements and provided to the City of Bend.

Read for the first time the 2<sup>nd</sup> day of April, 2008.

Read for the second time the 16<sup>th</sup> day of April, 2008.

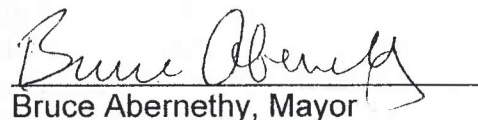
Placed upon its passage the 16<sup>th</sup> day of April, 2008.


YES: 5

NO: 0

ABSTAIN: 1

Authenticated by the Mayor the 16<sup>th</sup> day of April, 2008. .

  
Bruce Abernethy, Mayor

ATTEST:  
  
Recorder of the City of Bend



**DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND  
AND COLORADO STREET DEVELOPMENT PARTNERS, LLC**

This Development Agreement (this "Agreement") is dated as of the \_\_\_\_ day of April, 2008 (the "Effective Date"), by and between COLORADO STREET DEVELOPMENT PARTNERS, LLC, an Oregon limited liability company ("Developer"), and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Developer and the City are each hereinafter referred to as a "Party" and collectively as the "Parties."

**RECITALS**

**A. Purpose of Development Agreement.** The City Hearings Officer conditionally approved applications (PZ 07-310 & 07-311) to develop a mixed use development, including retail and residential uses (the "Project"), on property located south of Colorado, north of Arizona and east of Lava, as more particularly described on Exhibit A (the "Property"). In his decision, the Hearings Officer imposed certain conditions regarding infrastructure improvements that were to be secured by provisions contained in a development agreement. The purpose of this agreement is to implement the requirements of the Hearings Officer Decision regarding the required improvements at the intersection of Highway 97 and Colorado Avenue, and the construction of a segment of Sizemore Avenue between Colorado and Arizona.

**B. Conditions of Approval.** In approving the zone change request, the City Council elected to modify Condition of Approval No. 5 set forth in the Hearings Officer's decision and recommendation. This Development Agreement implements Conditions of Approval 5 (as amended by the City Council) and 7 in the Hearings Officer's decision and recommendation of the Project (PZ 07-310 & 07-311) (together, the "Approval").

**Condition 5 of the Hearings Officer's Decision and Recommendation, as amended by the City Council in adoption of Ordinance \_\_\_\_\_ provides that prior to the rezoning of the property:**

"The applicant shall be required to enter into a Development Agreement with the City to insure mitigation of the long term planning period traffic impacts resulting from the proposed zone change as identified in the TIA and the comments from the City of Bend Engineering Department. If the applicant elects to construct the improvements approved pursuant to Site Plan Approval (PZ 07-310) then the mitigation requirements are as follows:  
**Northbound Parkway Ramps at Colorado** – Addition of a westbound right turn lane onto the ramp, signalization of the intersection, and signal interconnect with the rail crossings to the east.

If the applicant or any successor in interest elects to pursue development that is materially different from the development approved pursuant to Site Plan Approval (PZ 07-310) then, prior to any development of the site, and as a part of site plan approval, the applicant shall be required to perform a new transportation impact study consistent with Bend Code Chapter 4.7 and the Transportation Planning Rule to determine whether the above described mitigation shall be modified or eliminated depending upon the traffic generated by the proposed alternate use and the background traffic using the facility at the time of the application for the alternate development proposal.

The TPR analysis shall be in addition to the analysis required by the alternate site plan proposal under the City's concurrency standards.

The development agreement referenced above shall include provisions allowing for the amendment of the development agreement if different transportation mitigation than listed above is required by the alternate development according to the TPR analysis."



**Condition 7 of the Hearings Officer's decision requires that prior to the issuance of building permits:**

"The driveway access to Colorado and Arizona Avenues are intended to be interim accesses until such time that Sisemore Street is constructed along the east boundary of the site, at which time the two arterial accesses must be eliminated and replaced with one access to Sisemore. The applicant shall provide a cost estimate for the cost of construction of Sisemore and reconstruction of the accesses. A cash deposit shall be paid to cover 120% of the cost of relocated the accesses, and ½ of the cost of construction of Sisemore between Colorado and Arizona Avenues. In lieu of providing said deposit, the applicant may enter into a Development Agreement with the City of Bend that insures funds remain available to complete the Sisemore Street improvements when sufficient right of way is available. The Development Agreement shall further require that the two temporary arterial accesses points be eliminated and replaced with a single Sisemore access upon completion of Sisemore improvements."

- C. **Timing of Improvements.** As set forth in the Approval, the improvements to the intersection of the northbound Parkway ramp and Colorado (the "Ramp Mitigation") is not required to be constructed at the time of development of the Project as a requirement of the City's concurrency requirement, but the Ramp Mitigation is necessary to satisfy the requirements of the Oregon Transportation Planning Rule (the "TPR"), and must be constructed on or before March 6, 2023 to satisfy the TPR, as further set forth in the Approval and in this Agreement. Because the Developer does not control the right-of-way for the new segment of Sisemore, it is unclear whether or when the new segment of Sisemore will be constructed.
- D. **Statutory Development Agreement.** ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration of up to fifteen years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. The Parties wish to definitively establish and discharge all of their respective obligations through this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1.0 Definitions:**

- 1.1 **"Agreement"** means this Development Agreement between and Developer and the City pursuant to ORS 94.504.
- 1.2 **"Project"** means the Developer's proposed project as approved by the City (PZ 07-310 & 07-311), that is to be constructed by Developer on the Property.
- 1.3 **"Ramp Mitigation"** means the improvements more particularly identified on Exhibit B, and which have been determined to be necessary by the Oregon Department of Transportation and the City under the TPR. The parties agree that the traffic signal shall be interconnected with the existing traffic signal at the southbound ramp to the west on Colorado.
- 1.4 **"Sisemore Improvements"** means the closure of the interim access points on Colorado and Arizona, including the construction of curbs, gutters and sidewalks to match adjacent improvements, and the



- construction of a single access point on the new segment of Sisemore. The Sisemore improvements also include the Developer's obligation to pay for one-half of the costs to construct Sisemore between Colorado and Arizona.
- 2.0 Construction of Ramp Mitigation Condition No. 5:** The following provisions shall apply if the Developer elects to construct the Project consistent with the Approval. Should the Approval lapse, or should the Developer elect to construct other improvements on the Property, then consistent with the City Council's revisions to Condition No. 5, the provisions of Section 2.7 below shall apply.
- 2.1** Unless requested earlier by the City based upon increased traffic or accidents at this location, the Developer shall three years after the signing of this Agreement, and every two years thereafter, prepare an updated warrant analysis addressing the warrants for the development of the construction of the Ramp Mitigation. This analysis shall be submitted after completion to the City's Transportation Engineer and ODOT Region 4 Traffic Engineer. The warrant analysis shall be created according to ODOT's warrant standards, and include at a minimum those warrant criteria listed in Paragraph 2.2.
- 2.2** The Developer shall commence construction of the Ramp Mitigation on or before the earlier of i) the date that the Developer is notified by the City that the crash rate at the intersection of the northbound parkway ramps and Colorado has exceeded a rate of more than 1.0 crashes per million entering vehicles for a three year period; ii) the date that the Developer is notified by ODOT or the City that signal or volume warrants have been met for the northbound parkway ramps and Colorado intersection; or iii) March 6, 2023. For purposes of this Agreement the term "commence construction" shall mean that the Developer shall submit construction plans for ODOT and City approval and shall thereafter diligently complete construction of the Ramp Mitigation after approval by ODOT and the City. In no event shall the Developer have any obligation to pay for any additional improvements requested or required by ODOT or the City other than the Ramp Mitigation.
- 2.3 Compliance with Laws.** In constructing the Ramp Mitigation, the Developer shall comply with all applicable city, state and federal regulations, codes, ordinances and laws. Prior to construction the Developer shall have all construction plans approved by the City and the Oregon Department of Transportation in accordance with all applicable City and State laws, regulations and ordinances. The City and the Developer shall also comply with the parties' respective obligations set forth in Exhibit D.
- 2.4 The Developer shall be responsible for the entire cost of the design and construction of the Ramp Mitigation subject to the sharing of such costs by other developers whose development requires the Ramp Mitigation as outlined in this Paragraph.**
- 2.4.1 Contribution by Third Parties Prior to Construction.** Should any third party propose a development which would require the developer of such property to construct the Ramp Mitigation, or some portion thereof, and i) such improvements are not required at the time of development, and ii) such improvements are not required until after the Developer is obligated to construct the Ramp Mitigation, then the City shall collect from such third party developers their Proportionate Share of the Ramp Mitigation (the "Ramp Contributions") according to the formula outlined in Paragraph 2.6. The City shall retain the



Ramp Contributions until such time as the Ramp Mitigation is constructed. If the Ramp Mitigation is constructed by the Developer or its successors or assigns, then upon completion of the Ramp Mitigation, the City shall deliver the Ramp Contributions to the Developer as a form of reimbursement. To ensure that future developments pay their proportionate share of the Ramp Mitigation the City agrees and acknowledges that until such time as the Ramp Mitigation is constructed, the City will not permit applicants to rely on the future construction of the Ramp Mitigation as part of any transportation impact analysis until such time as the Ramp Mitigation is actually constructed, or unless the applicant pays its Contribution to the City as provided in this Section 2.4. The express intent of this Section 2.4 is to ensure that third parties pay their Proportionate Share of the Ramp Mitigation costs.

**2.4.2 Contribution by Third Parties After Construction.** Prior to the construction of the Ramp Mitigation by the Developer, at the request of the Developer, the City agrees to cooperate with the Developer in forming a reimbursement district under the then applicable provisions of the Bend Code to provide reimbursement to the Developer for the excess capacity created by the Ramp Mitigation. In addition, after construction of the Ramp Mitigation by the Developer, to the extent permitted by the Bend Code, the City shall collect Proportionate Share contributions from applicants proposing development in the area which will utilize the excess capacity created by the construction of the Ramp Mitigation.

**2.5 Local Improvement District.** In the event that the Developer fails to perform its obligations under this Agreement, the City may form a local improvement district for the purpose of constructing the Ramp Mitigation. In that regard, the Developer shall execute a "waiver of remonstrances" against the formation of a local improvement district (LID) to fund the design and construction of the Ramp Improvements as described in Exhibit B. In this regard, the Developer hereby waives its rights, as provided under Bend City Code, and ORS Sections 223.117, 223.118, 223.389 and ORS 223.391 to have its written or oral objection to a proposed local improvement counted for purposes of determining whether there are, by law, sufficient objections to force the relevant governing body to abandon the proposed improvement, including but not limited to the formation of a local improvement district. It is the intent of Developer that this waiver of remonstrance shall be a condition and covenant that shall run with the land.

The City will require future development that is subject to the ramp mitigation requirement to participate in a local improvement district to pay for the cost of the ramp mitigation. In that regard, subject future development will be required to execute waivers of remonstrance regarding the formation of a LID. When the warrants are met for the construction of the Ramp Improvements, the City will form the LID which will consist of those properties that have executed "waivers of remonstrances." The LID will allocate the cost of the Ramp Improvements according to the formula contained in Paragraph 2.6.

**2.6 Construction by Third Party:** If, prior to construction of the Ramp Mitigation by the Developer, a third party or the City elect to construct the Ramp Mitigation, or improvements substantially similar to and not materially more expensive than the Ramp Mitigation, and which continue to satisfy the Developer's obligations with respect to the TPR as set forth in the Appraisal, then the Developer shall contribute to the City the Developer's Proportionate Share (as defined below) towards



**3.1 Sisemore Costs; Waiver of Remonstrance.** Prior to the issuance of building permits, the Developer shall pay to the City a lump sum payment equal to 120 % of one-half of the construction costs for Sisemore and 100% of the cost of closing the interim accesses. The payment of these sums shall satisfy the Developer's monetary obligations regarding Condition 7, except that the Developer shall also close the existing accesses referenced in the condition of approval. In

**3.0 SISEMORE CONDITION OF APPROVAL NO. 7**

**2.7.1 No Development without Site Plan Approval.** Consistent with the City Council's revision to Condition of Approval No. 5 as set forth above, if the Approval should lapse, or should the Developer elect to construct improvements on the Property other than as set forth in the Approvals, then the Developer acknowledges and agrees that no development may take place on the Property, and that no additional traffic shall be generated from the Property, unless and until the Applicant has received Site Plan approval from the City pursuant to the then applicable provisions of the Bend Code. Notwithstanding anything to the contrary in the Bend Code or the TPR, at the time of the Site Plan approval required by this Section 2.7.1, the Developer shall be required to complete a transportation impact analysis consistent with the then applicable substantive provisions of the TPR and the Bend Code. If required at the time of alternate development to comply with the TPR and the City's concurrency requirements, mitigation consistent with the requirements of the TPR and/or the City's concurrency requirements shall be required to ensure that alternate development of the Property, and any potential subsequent redevelopment, does not violate the TPR.

**2.7 Alternate Development of Property.** Should the Approval lapse, or should the Developer elect to construct other improvements on the Property other than those set forth in the Approval, then this Section 2.7 shall apply.

The numbers of trips for the proportional analysis shall be calculated according to the development approved in the respective land use applications.

Proportional Share = [Trips from each participating property using the intersection as determined by the site plan upon which the development is based / Total trips using this intersection by participating properties] X Estimated Construction Cost. Participating properties are those properties who have submitted a land use application that requires mitigation of the traffic impacts on this intersection.

Developer's proportional share shall be limited to its proportionate share of the costs of the Ramp Mitigation as provided herein. In no event shall the Developer's Proportional Share under this paragraph exceed that amount which the Developer would be required to expend if the Developer were constructing the Ramp Mitigation. For purposes of this Agreement, the term "Proportional Share" shall mean the following, as provided in Bend Code 4.7.500(B)(2007):

Proportional Share = [Trips from each participating property using the intersection as determined by the site plan upon which the development is based / Total trips using this intersection by participating properties] X Estimated Construction Cost. Participating properties are those properties who have submitted a land use application that requires mitigation of the traffic impacts on this intersection.

The numbers of trips for the proportional analysis shall be calculated according to the development approved in the respective land use applications.

**2.7 Alternate Development of Property.** Should the Approval lapse, or should the Developer elect to construct other improvements on the Property other than those set forth in the Approval, then this Section 2.7 shall apply.



the event that that this segment of Sisemore Street is not built within 15 years after the payment of the funds, the City shall return the funds to the Developer.

- 3.2 **Closure of Interim Access.** Within 30 days after the completion and opening of the new Sisemore segment between Colorado and Arizona, the Developer shall obtain any approvals necessary from the City for the closure of the interim access points on Colorado and Arizona, and shall thereafter diligently complete construction of a new single access from the property to the new segment of Sisemore. Upon completion of the new access point to Sisemore the Developer shall permanently close the interim access points and shall construct sidewalks, curbs, and gutters to match the existing adjacent improvements on Colorado and Arizona.
- 4.0 **Construction of Project; Modification of Approval.** The Developer's obligations under this Agreement for the Sisemore Improvements are solely contingent on the Developer's construction of the Project. Should Developer elect not to construct the Project as set forth in the Approvals, or should the Approvals expire prior to construction of the Project, the Developer shall have no obligations to pay the sums identified in Paragraph 3 of this Agreement. Pursuant to Section 2.7, should the Developer elect to construct substitute improvements on the Property pursuant to a new site plan approval, the City may impose a similar condition of approval regarding the Sisemore extension and the closure of any interim access points.
- 5.0 **Effective Date; Term of Agreement.** This Agreement shall be effective upon adoption of the City Council approving this Agreement pursuant to ORS 94.508. The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen years unless terminated sooner in accordance with the provisions contained herein.
- 6.0 **Schedule and Procedure for Compliance Review.** Notwithstanding the warrant analyses required in Paragraph 2.1, commencing on the first anniversary of the Effective Date and, if requested by the City, Developer shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary. To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of Developer, inconsistent with the substance, purpose, or conditions of this Agreement, then the local rule, ordinance, regulation or policy shall be applicable.
- 7.0 **This Agreement Runs with Land; Assignability of Agreement.** This Agreement is intended to and shall run with the land and shall be fully binding upon the Developer, and all future owners of the Property. Pursuant to the Approvals, the Developer intends to construct residential condominiums above the ground floor of the development of the Property. Notwithstanding the fact that this Agreement shall run with the land, this Agreement shall not bind any owner of any individual condominium unit in the development, but shall only bind the fee owner of the real property described on Exhibit A.

This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. Other than with respect to any individual condominium unit, if any portion (other than lot sales to individuals or builders) of the Property is sold, the duties, rights and interests of Developer under this Agreement shall become the duties, rights and responsibilities of the purchaser of the Property.



8.0 Defaults

8.1 A breach of a material provision of any part of this Agreement, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

8.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

8.3 Upon an event of default by either party, the non-defaulting party may pursue any legal or equitable remedy available to it, including the remedy of specific performance. In addition, should the Developer fail to perform any of its construction obligations as required by this Agreement, after providing the Developer with 30 days' prior written notice, the City may elect to construct such improvements at the sole cost and expense of the Developer. Upon a default, should the City elect to construct the any improvements required to be constructed by the Developer under this Agreement, the Developer shall be responsible for any and all costs associated with the construction of such improvements, which costs and expenses shall become a lien against the Property. The election of the City to construct the any improvements required to be constructed by the Developer shall not preclude the City from pursuing any other legal or equitable remedy available to it. In the event that the Developer defaults the City shall be entitled to recover its attorney fees associated with the establishment of an local improvement district and/or legal action prompted by the Developer's failure to perform.

9.0 **Force Majeure.** In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

10.0 **Notices.** Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to Developer: Colorado Street Development Partners, LLC  
480 San Antonio Road #205



Mountain View, California 94040  
Attn: John Gaston

With a copy to: Ball Janik LLP  
15 SW Colorado, Suite 3  
Bend, Oregon 97702  
Attn: Steve Hultberg

If to City: City of Bend  
Development Services  
710 N.W. Wall  
Bend, OR 97701  
Attn: Development Services Director

#### 11.0 **Miscellaneous.**

- 11.1 **City Funding.** The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.
- 11.2 **Waivers.** No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.
- 11.3 **Entire Agreement/Modifications.** This Agreement, along with all exhibits incorporated therein constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. To the extent required under Section 2.7 and any subsequent conditions of approval applicable to the Property pursuant to alternate development of the Property under Section 2.7, the parties agree to cooperate and act in good faith in negotiating any amendments to this Agreement as may be necessary to comply with future conditions of approval and the provisions of Section 2.7.
- 11.4 **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.
- 11.5 **Captions.** The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.
- 11.6 **Gender/Singular/Plural.** Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.
- 11.7 **Severability.** Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.



11.8 **Time of Essence.** Time is of the essence of this Agreement.

11.9 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

**Signatures on Next Page**

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"Developer" COLORADO STREET DEVELOPMENT

PARTNERS, LLC  
an Oregon corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON  
( )  
(ss. )  
COUNTY OF DESCHUTES

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
as \_\_\_\_\_ Partners, LLC.

\_\_\_\_\_  
Signature of Notarial Officer  
My Commission Expires: \_\_\_\_\_

"CITY" CITY OF BEND, an Oregon Municipal Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON  
( )  
(ss. )  
COUNTY OF DESCHUTES

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
as \_\_\_\_\_ Bend.

\_\_\_\_\_  
Signature of Notarial Officer  
My Commission Expires: \_\_\_\_\_



**Development Agreement Exhibit A  
Property Legal Description**

**Parcel I:**

That part of the Southwest Quarter of the Southeast Quarter (SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows: Beginning at a point on the West line of the Southeast Quarter (SE  $\frac{1}{4}$ ) and located from the South Quarter corner of said Section 32, North 48 feet thence North on the West line of said Southeast Quarter (SE  $\frac{1}{4}$ ) 175.47 feet; thence East 70 feet; thence North 76 feet; thence East 230 feet; thence South 249.98 feet to a point in the North line of the right of way of the Oregon Trunk Railway; thence South  $89^{\circ} 43'$  West 300 feet to the point of beginning.

EXCEPTING THEREFROM that portion deeded to the City of Bend, a municipal corporation, of the State of Oregon, as described in a Deed recorded November 7, 2002 in Instrument No. 2002-62230 and re-recorded June 27, 2003 in Instrument No. 2003-43430 of Deschutes County Records.

**Parcel II:**

A tract of land lying and being in the Southwest Quarter of the Southeast Quarter (SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, more particularly described as follows: Beginning at a point on the South line of Colorado Avenue said point being 300 feet East of the West line of said Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 32; thence South 250 feet more or less to the North line of the right of way of the Oregon Trunk Railway; thence Easterly along the Northerly line of said right of way a distance 290 feet, to a point also being the Southwest corner of that tract of land conveyed to James O. Miller, by instrument recorded November 13, 1948 in Book 88, Page 308, Deed Records; thence North 260 feet, more or less, to a point on the South line of Colorado Avenue, said point also being the Northwest corner of said Miller tract; thence West 290 feet to the point of beginning.

EXCEPTING THEREFROM that portion deeded to the City of Bend, a municipal corporation, of the State of Oregon, as described in a Deed recorded November 7, 2002 in Instrument No. 2002-62230 and re-recorded June 27, 2003 in Instrument No. 2003-43430 of Deschutes County Records.

**Parcel III:**

Portion of Lots 1 and 2 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon, lying North of NW Arizona Avenue.

**Parcel IV:**

The South  $\frac{1}{3}$  of Lots 7 and 8 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon.

**Parcel V:**

Lots 7 and 8 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon.

EXCEPTING THEREFROM the South 38 feet of said lots.

**Parcel VI:**

A portion of the Southwest Quarter of the Southeast Quarter (SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Beginning at the Northeast corner of Lot 8 in Block 5 of DESCHUTES, now a part of the City of Bend, Deschutes County, Oregon; thence East along the South line of Colorado Avenue a distance of 70 feet; thence South at right angles a distance of 76 feet; thence West at right angles a distance of 70 feet to a point on the West line of the Southwest



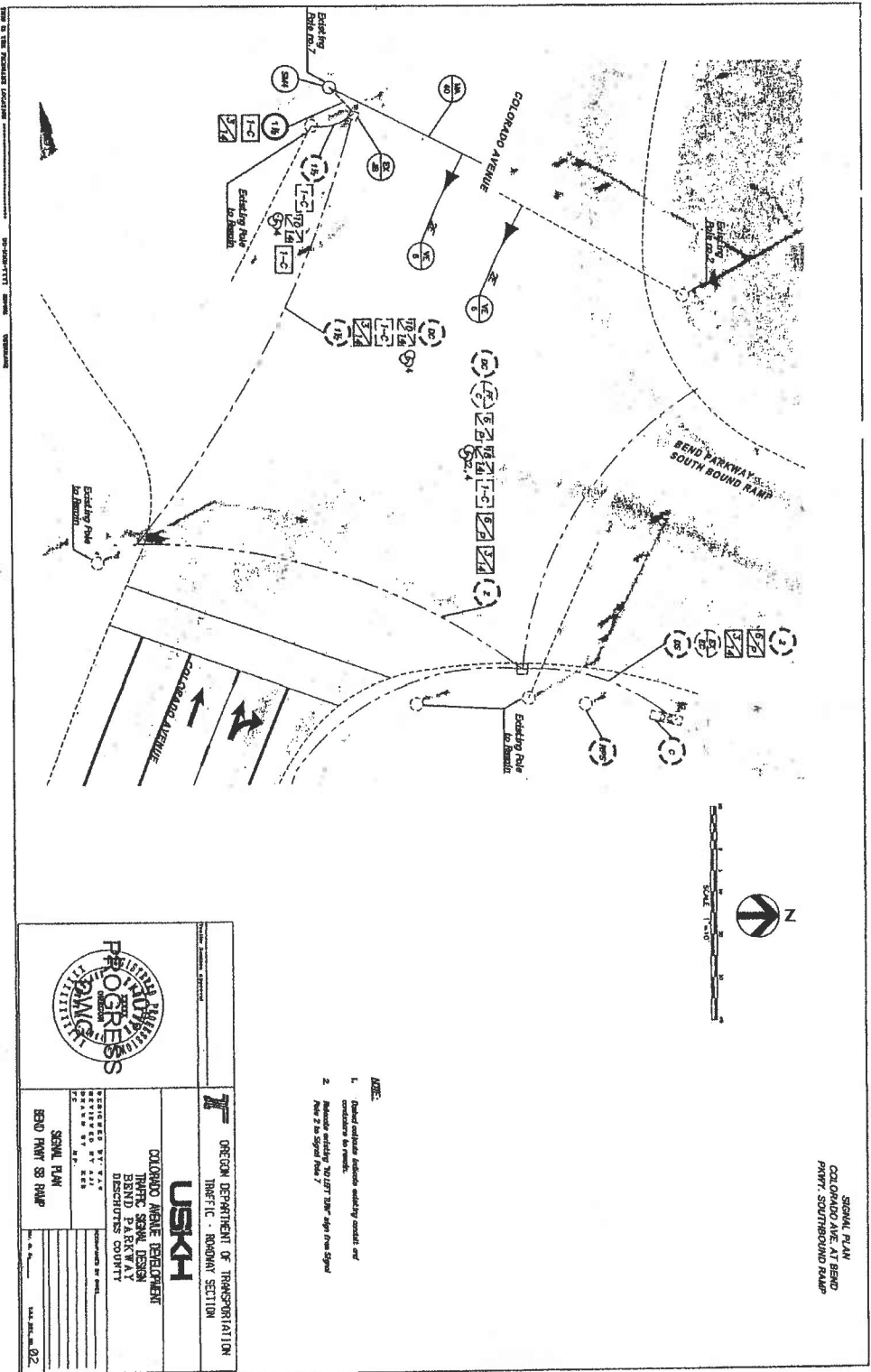
Quarter of the Southeast Quarter (SW 1/4 SE 1/4) of said Section 32; thence North along said West line a distance of 76 feet to the point of beginning.

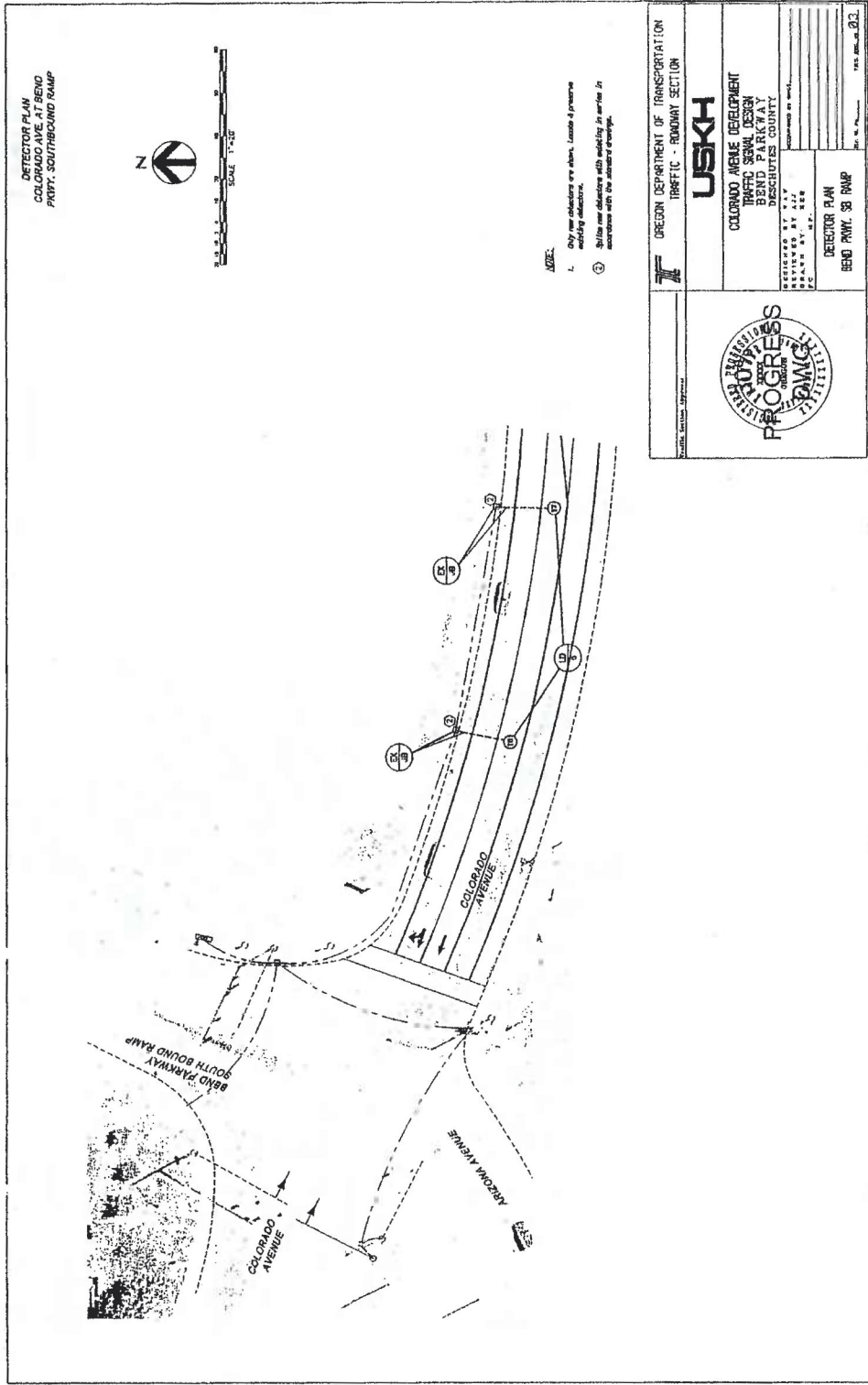


## Ordinance NS-2094

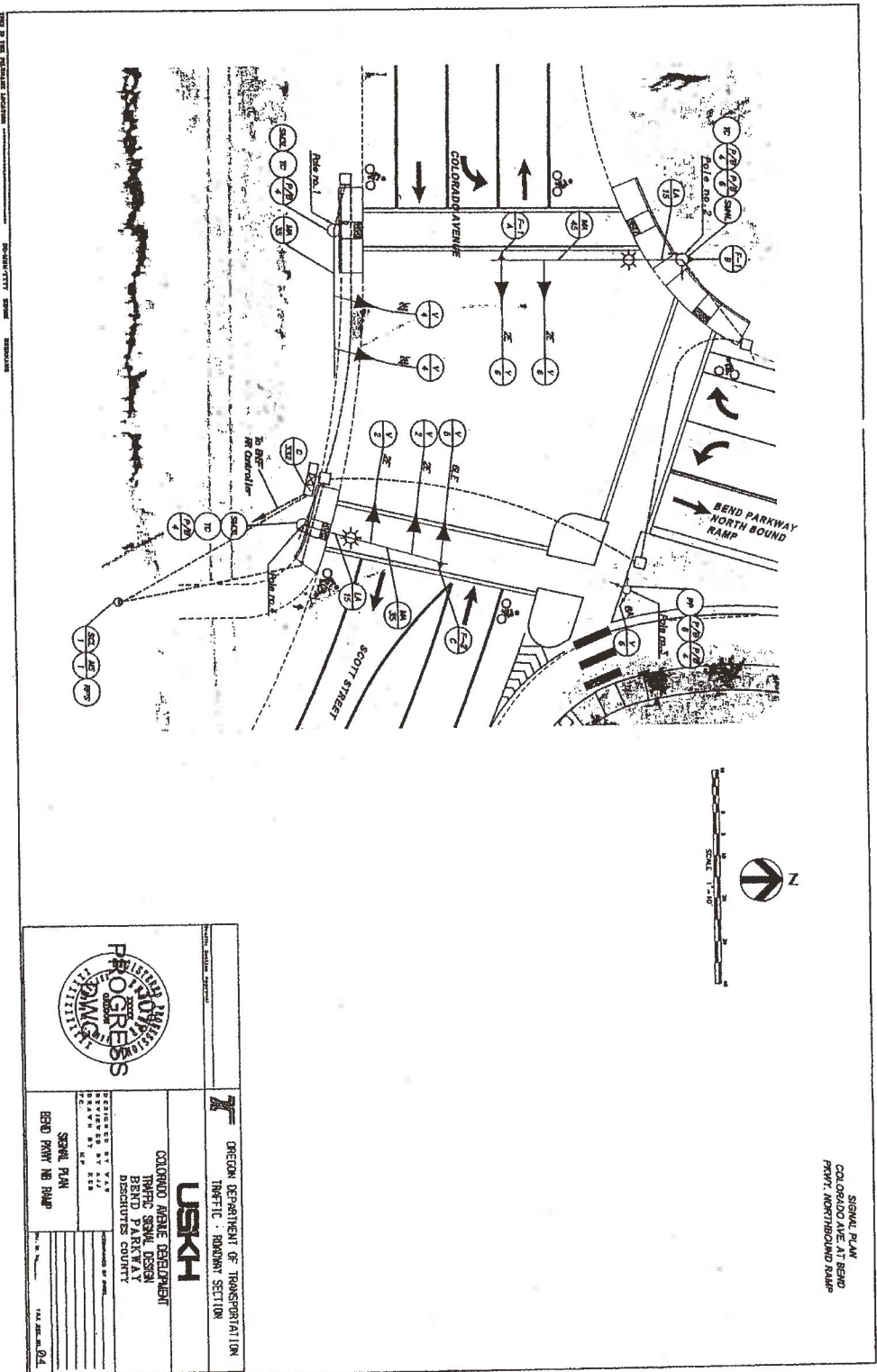
Ordinance NS-2094







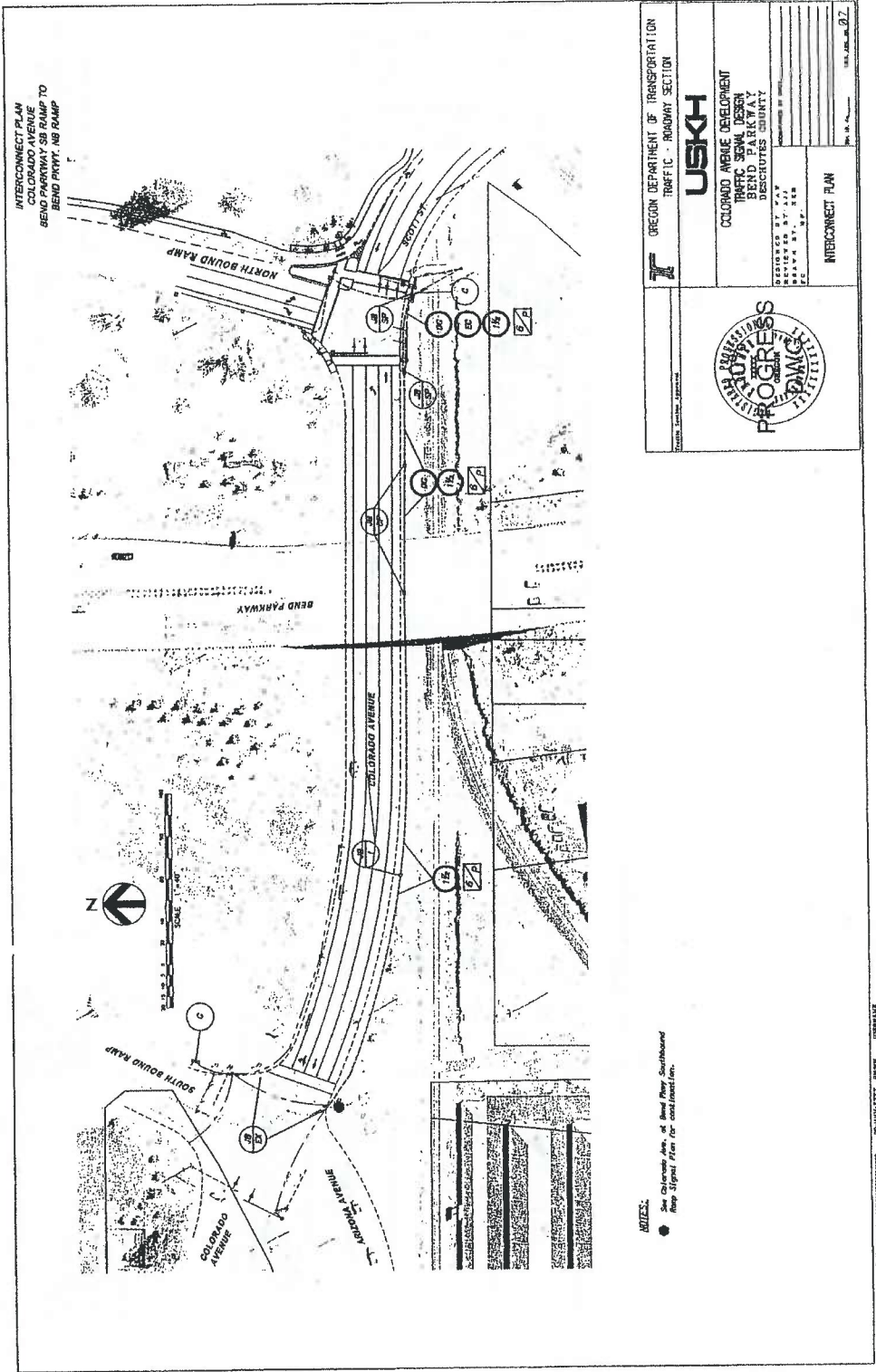




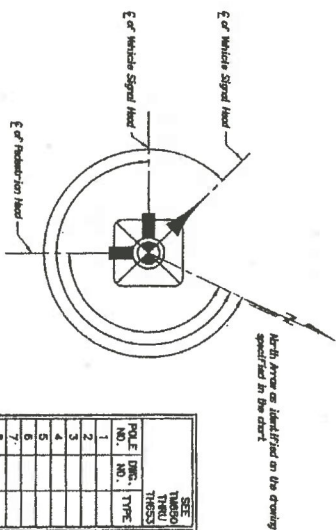




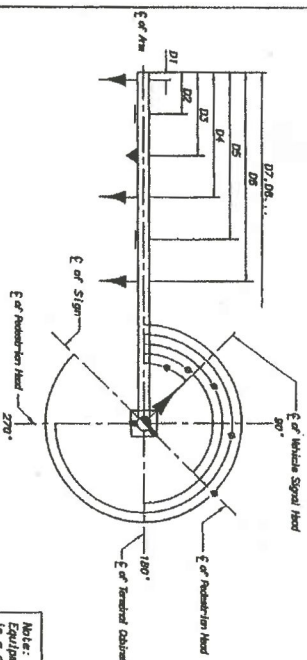








**Note:**  
Equipment shown on orientation diagram is a clarification of distance and angles of equipment that may be located on Pedestrian Pedestal or Vehicle Pedestal.

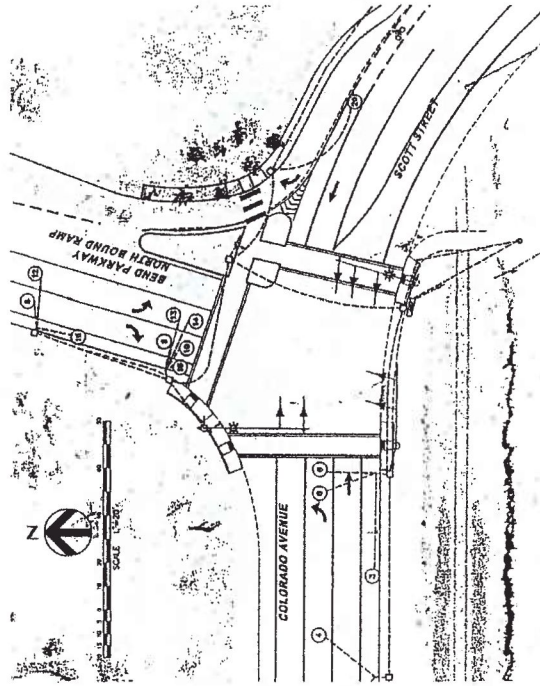
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### HAST ARM POLE ORIENTATION DIAGRAM

**Note:**  
Equipment shown on orientation diagram is a clarification of distance and angles of equipment that may be located on a Most Arm or Signal Pole.

[illegible]

EXISTING UTILITY PLAN  
 COLORADO AVE. AT BEND  
 PARKWAY, NORTHBOUND RAMP



 OREGON DEPARTMENT OF TRANSPORTATION TRAFFIC - ROADWAY SECTION	
<b>USKH</b>	
COLORADO AVENUE DEVELOPMENT TRAFFIC SIGNAL DESIGN BEND PARKWAY DESCHUTES COUNTY	
DESIGNED BY: J.A.J. DRAWN BY: J.E.B. CHECKED BY: J.E.B. APPROVED BY: J.E.B.	EXISTING UTILITY PLAN 13.5 10.0 0.0



THIS IS THE TELETYPE TRANSMISSION OF THE ORIGINAL DRAWING





## **Development Agreement Exhibit D**

### **Colorado Avenue/NB Parkway Ramp intersection Project Distribution of Duties**

#### **City of Bend:**

1. Notify applicant when ODOT determination has been made regarding intersection construction warrants.
2. Review submitted designs and plans in a timely fashion.
3. Forward submitted designs and plans in a timely fashion to ODOT.
4. Sign and approve permit applications as needed.
5. Cooperate with Developer on the preparation of documents for repayment in a timely fashion.

#### **Developer:**

1. Create final design plans for the intersection of Colorado Avenue/NB Parkway Ramp to ODOT standards and Specifications.
2. Obtain permits.
3. Construct Colorado Avenue/NB Parkway Ramp signal plus right turn lane or contribute applicant's allocated cost to intersection mitigation if mitigation is modified in the future.
4. Coordinate with City on change orders and cost controls.
5. Project management.



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**CITY OF BEND**  
**COMMUNITY DEVELOPMENT DEPARTMENT**  
710 NW WALL STREET  
BEND, OR 97701

TO:

Attn: Plan Amendment Specialist  
Dept of Land Cons & Dev  
635 Capitol St NE Ste 150  
Salem OR 97301-2540