

**GATEWAY IMPROVEMENTS FUNDING AGREEMENT**  
(Denver Connection West)

This **GATEWAY IMPROVEMENTS FUNDING AGREEMENT (DENVER CONNECTION WEST)** (this “**Agreement**”) is made by and between **DENVER CONNECTION WEST METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (the “**City**”). The City and the District are sometimes individually referred to herein as a “**Party**” and together as the “**Parties.**”

**RECITALS:**

The District is a quasi-municipal corporation and political subdivision of the State of Colorado and is located within and serves the Denver Connection West community in the northeast portion of the City. The City and the District, in accordance with the powers and purposes lawfully authorized to each, may construct road improvements and related improvements for the benefit of the surrounding community and the citizens of the City and County of Denver.

The District boundaries are depicted on **Exhibit A**, attached hereto and incorporated by reference.

The District is located within the “**Gateway Impact Fee Assessment Area**” as defined in the Gateway Impact Fee Ordinance referenced below.

Gateway Impact Fee Ordinance 863, Series 2000 (October 2000) (the “**Impact Fee Ordinance**”), provides for the collection of Impact Fees to finance regional infrastructure within the Gateway Impact Fee Assessment Area. The impact fees are designed to collect sufficient revenues to pay for each landowner’s proportional share of capital costs associated with specific facilities, such as major arterial roads, fire stations, regional parks and trails facilities and regional drainage improvements. The improvements to be financed with impact fees are for the benefit of more than one property.

A financing study related to the Gateway Impact Fee Assessment Area has been filed with the City Clerk at File No. 00-910-A on October 12, 2000, and contains an aggregation of sites into development sub-areas with development potential that would create the need for new capital improvements, standards for level of service for the capital facilities and infrastructure to be fully or partially funded with impact fees, proposed sub-area project lists, cost estimates and funding sources, and methodology and supporting documentation calculation impact fees (the “**Gateway Infrastructure Financing Study**”).

Section 50-59(b)(2) of the Revised Municipal Code provides for relevant special improvement districts or other governmental or quasi-governmental authority, such as the District, to provide for or finance the applicable regional infrastructure, or parts thereof, and to receive credit for same subject to an intergovernmental agreement with the City.

The District is located within the Gateway Impact Fee Assessment Area and has determined it is in the best interests of the District, its inhabitants and taxpayers, to exercise its authority to provide for or finance certain regional infrastructure generally described as follows and that will be delineated in the Project (defined hereinafter): the Green Valley Ranch Boulevard expansion improvements (the “**GVRB Improvements**”), and the Memphis Street traffic signal improvements (the “**Memphis Traffic Signal Improvements**,” and together with the GVRB Improvements, the “**Gateway Improvements**” or the “**Project**”), all of which are impact fee projects.

Portions of the Project for which the City is responsible are depicted on **Exhibit B** and comprise impact fee projects. In order to effectuate the intentions of the Parties, and in furtherance of the City’s impact fee projects and responsibility for constructing improvements within the Gateway Impact Fee Assessment Area, the City is prepared to reimburse the District for certain funds expended by the District for the purpose of undertaking construction of the Gateway Improvements when such funds are available.

Pursuant to the terms of this Agreement, the City shall appropriate certain funds allocated to construct the Gateway Improvements in the aggregate amount of \$1,543,979.67 (the “**Project Funds**”).

The District is qualified, experienced, willing, and able to undertake all liabilities, obligations, and responsibilities associated with completing the Gateway Improvements, as more particularly described herein, and under the terms and conditions specified in this Agreement.

#### **AGREEMENTS:**

In consideration of the above premises, and the mutual promises and covenants contained herein, the Parties agree as follows:

**1. COMPLIANCE WITH SECTION 50-59(b) OF THE REVISED MUNICIPAL CODE.**

(a) As required by Section 50-59(b)(1) of the Denver Revised Municipal Code, the District has been duly organized, and its Service Plan was approved by City Council on September 12, 2016.

(b) As required by Section 50-59(b)(2) of the Denver Revised Municipal Code, the District duly held an election on November 8, 2016 to, among other things, authorize the execution of one or more intergovernmental agreements with one or more political subdivisions of the state, governmental units, governmentally owned enterprises, or other public entities for the purpose of jointly financing the costs of any public improvements, facilities, systems, programs or projects which the District may lawfully provide.

(c) This Agreement, upon approval by the District and the City, shall be provided by the District to the City satisfying the requirement provided in Section 50-59(b)(3) of the Denver Revised Municipal Code.

## 2. FUNDING OF GATEWAY IMPROVEMENTS.

(a) Costs. The cost of the Gateway Improvements is One Million Five Hundred Forty-Three Thousand Nine Hundred Seventy-Nine and 67/00 Dollars (\$1,543,979.67).

(b) Schedule of Completion . The Gateway Improvements are substantially complete and awaiting initial acceptance by the City.

(c) City Standards. The Gateway Improvements were completed to City standards as determined by the City's Manager of Public Works (the "**Manager**").

(d) Dedication. Upon initial acceptance, the Gateway Improvements shall be conveyed by the District to the City for ownership and maintenance. The District acknowledges that it shall warranty the Gateway Improvements per the City's construction permit requirements.

(e) Cooperation. The District shall cooperate with the City in relation to the City's review and inspections of the Gateway Improvements, and verification of the costs and time schedules, in order for the City to reach a determination that the Gateway Improvements are eligible improvements for purposes of 50-59(b) of the Denver Revised Municipal Code.

(f) City Funding. The City has determined that the amount of the applicable City contribution for the Gateway Improvements shall not exceed One Million Five Hundred Forty-Three Thousand Nine Hundred Seventy-Nine and 67/00 Dollars (\$1,543,979.67).

## 3. LIAISON.

(a) City Representative. The Manager is vested with the City's authority to act on behalf of the City under this Agreement. The Manager hereby designates the City Engineer as the City Project Manager for the purpose of directing and administering the City's involvement under this Agreement, including, if applicable, all approvals, inspections, and actions not expressly reserved herein to the Manager. The Manager of Public Works may change those designations at any time by providing written notice to the District of such change.

(b) District Representative. The District designates Robert Johnson as its representative under this Agreement who, as a result, is authorized to carry out the District's obligations and responsibilities and exercise its rights and powers under this Agreement, including all project administration, construction obligations and responsibilities (the "**District Representative**"). The identity of the District Representative may change at any time by providing written notice to the City of such change.

## 4. PROJECT FUNDING.

(a) Gateway Improvements Funds. After execution of this Agreement, and acceptance of the Gateway Improvements by the City, the City shall pay the District the amount equal to the total costs to construct the Gateway Improvements from funds it has for Gateway Improvements, in an amount not to exceed One Million Five Hundred Forty-Three Thousand Nine Hundred Seventy-Nine and 67/00 Dollars (\$1,543,979.67).

**5. PROJECT COMPLETION RESPONSIBILITIES.**

(a) In accordance with the terms and conditions of this Agreement, the District shall perform or cause to be performed all work necessary to complete the Gateway Improvements in accordance with the approved Project plans. Also in accordance with the terms and conditions of this Agreement, the District shall be solely responsible for ensuring that all work necessary to construct the Gateway Improvements is performed in a manner that complies with all applicable City, State and Federal laws, ordinances, rules and regulations and Department of Public Works design standards and that, upon completion, the Project is inspected and finally accepted by the City, as provided for herein (with the City being bound to proceed in accordance with its generally prevailing ordinances, rules, regulations and procedures that are applicable in that regard).

**6. TERM AND TERMINATION.**

(a) Term. The term of this Agreement shall commence on the Effective Date written on the City signature page, and shall expire, unless earlier terminated hereunder, upon completion and acceptance of the Gateway Improvements by the District and the City, and the completion of the required payments and credits hereunder to the District from the City; however, any construction warranty requirements hereunder applicable to the Gateway Improvements will survive the expiration of the term and remain in full force and effect thereafter.

(b) Termination. The City may terminate this Agreement, on fifteen (15) days written notice for cause if the District fails to comply in any material respect with any term or condition contained herein, or if the District fails to exercise due diligence in the prosecution of the construction of the Gateway Improvements, subject to delays due to force majeure. The District shall have the right, however, to cure any such default or failure at any time before the expiration of fifteen (15) days following notice of such default or failure (or, if the default or failure cannot reasonably be cured within fifteen (15) days, then such longer period as may be reasonably necessary to cure such default or failure if the District commences such cure within such fifteen (15) days and diligently prosecutes it to completion thereafter).

**7. INSURANCE.**

(a) Types of Insurance. The District shall maintain insurance, or shall cause the contractor to maintain insurance, in amounts and coverage terms acceptable to the City's Risk Manager for the term of this Agreement, provided that the District will not be required to duplicate coverages maintained through the Contractors. Said insurance shall be consistent with the City's requirements for like construction contracts.

**8. NOTICES.** Any notice given hereunder shall be in writing and delivered by hand or sent by U.S. certified or registered mail, and shall be deemed given when hand delivery is completed or two (2) business days after deposit in the U.S. mail, as applicable, in each case to the applicable address(es) set forth below.

Any notice to the City shall be addressed to:

Office of the Mayor  
City and County of Denver  
1437 Bannock Street, Room 350  
Denver, Colorado 80202

With a copy to:

City Attorney  
City and County of Denver  
1437 Bannock Street, Room 353  
Denver, Colorado 80202

With a copy to:

Manager of Public Works  
City and County of Denver  
201 West Colfax Avenue, Dept. 509  
Denver, Colorado 80202

Any notice to the District shall be addressed to:

Denver Connection West Metropolitan District  
141 Union Blvd. #150  
Lakewood, Colorado 80228  
Attention: Lisa Johnson

With a copy to:

McGeady Becher P.C.  
450 East 17<sup>th</sup> Avenue, Suite 400  
Denver, Colorado 80203  
Attn: Elisabeth A. Cortese

Either Party may change its address from time to time by notice in writing to the other Party in accordance with the foregoing provisions.

**9. CONFLICT OF INTEREST.** The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the District further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

**10. NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed to that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the District, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the City and the District that any person other than the City and the District receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**11. SUBJECT TO LOCAL LAWS, VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and also the provisions of the Charter, Ordinances and Rules and Regulations adopted by the City that are not in conflict

with the terms of this Agreement. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

**12. DISPUTES.** All disputes of any nature whatsoever regarding this Agreement, including but not limited to disputes concerning payment or breach or default of this Agreement, shall be ultimately resolved by administrative hearing pursuant to D.R.M.C. Section 56-106. For the purposes of this procedure, the City official rendering a final determination shall be the Manager of Public Works.

**13. TIME IS OF THE ESSENCE.** The Parties agree that in the performance of the terms, conditions and requirements of this Agreement, time is of the essence.

**14. REASONABLENESS OF CONSENT OR APPROVAL.** Whenever under this Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of any Party hereto, such Party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

**15. SECTION HEADINGS.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**16. NO PERSONAL LIABILITY.** No elected official, director, officer, agent or employee of the City shall be charged personally or held contractually liable by or to another Party under any term or provision of this Agreement or because of any breach thereof, or for their errors or omissions in the performance thereof, or because of its or their execution, approval or attempted execution of this Agreement.

**17. EXECUTION OF AGREEMENT.** This Agreement is expressly subject to and shall not be or become effective or binding on the Parties until fully executed by all signatories of the Parties, as set forth in the signature blocks at the end hereof.

**18. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendments shall have any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective only when approved by the Parties and executed in the same manner as this Agreement.

**19. LEGAL AUTHORITY.** Each Party represents that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, and any other requisite approvals, to enter into this Agreement.

**20. APPROPRIATIONS.** All obligations of the City under this Agreement are subject to the prior appropriation of funds by the City Council and encumbered and paid into the City Treasury for such purposes (the “City Appropriations”).

**21. REMEDIES.** If any Party is in default hereunder, the non-defaulting Party(ies) may seek specific performance, mandamus, or other appropriate relief, whether legal or equitable, to compel the performance and observance of the defaulting Party(ies) obligations

hereunder. Each Party waives any right to damages against the other Party(ies) so long as other remedies provide the full redress for injuries suffered.

**22. NO DISCRIMINATION.** In connection with the performance of work under this Agreement, the District agrees not to refuse to hire, nor to discharge, promote or demote, nor to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

**23. CITY EXECUTION OF AGREEMENT.** This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been approved by the Denver City Council and fully executed by all signatories of the City and County of Denver. This Agreement shall be effective as of the date set forth on the City signature page.

**24. EXAMINATION OF RECORDS.** The District agrees that any duly authorized representative of the City, including the City Auditor and any of his designated representatives, until the expiration of three (3) years after final payment or credit received under this Agreement, shall have access to and the right to examine any directly pertinent books, documents and records of the District and each of its contractors involving matters directly related to this Agreement.

**25. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The District consents to the use of electronic signatures by the City for the execution of this Agreement. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner determined by the City, and such electronic signature(s) will be binding on the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[REST OF PAGE INTENTIONALLY LEFT BLANK]**

**Contract Control Number:**

PWADM-201950524-00

**Contractor Name:**

Denver Connection West Metropolitan District

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_



**Contract Control Number:**  
**Contractor Name:**

PWADM-201950524-00  
Denver Connection West Metro District

By: 

Name: ROBERT A JOHNSON  
(please print)

Title: PRESIDENT  
(please print)

ATTEST: [if required]

By: 

Name: Elisabeth A. Cortese  
(please print)

Title: General Counsel  
(please print)

**EXHIBIT A**  
District Boundaries

**EXHIBIT A**

A PARCEL OF LAND LOCATED IN THE NORTH ONE-HALF OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 20, WHENCE THE NORTH ONE-QUARTER CORNER OF SAID SECTION 20 BEARS NORTH 89° 37' 46" EAST AT A DISTANCE OF 2652.47 FEET, SAID LINE ALSO BEING THE BASIS OF BEARINGS FOR THIS DESCRIPTION:

THENCE NORTH 89° 37' 46" EAST ALONG SAID NORTH LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 20, A DISTANCE OF 90.01 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF CHAMBERS ROAD,

THENCE SOUTH 00° 14' 04" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF CHAMBERS ROAD TO THE SOUTHERLY RIGHT-OF-WAY LINE OF GREEN VALLEY RANCH BOULEVARD, A DISTANCE OF 83.00 FEET TO THE TRUE POINT OF BEGINNING,

THENCE NORTH 89° 37' 46" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY, BEING PARALLEL WITH AND 83.00 FEET SOUTH OF SAID NORTH LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 20, A DISTANCE OF 2563.30 FEET TO A POINT ON THE NORTH-SOUTH CENTER-LINE OF SECTION 20 WHENCE THE NORTH ONE-QUARTER CORNER OF SAID SECTION 20 BEARS NORTH 00° 20' 10" WEST A DISTANCE OF 83.00 FEET,

THENCE NORTH 89° 37' 19" EAST CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY, BEING PARALLEL WITH AND 83.00 FEET SOUTH OF THE NORTH LINE OF NORTHEAST ONE-QUARTER OF SAID SECTION 20, A DISTANCE OF 746.46 FEET,

THENCE DEPARTING FROM SAID SOUTHERLY RIGHT-OF-WAY, SOUTH 44° 37' 19" WEST, A DISTANCE OF 21.35 FEET,

THENCE SOUTH 00° 22' 40" EAST, A DISTANCE OF 48.14 FEET,

THENCE SOUTH 12° 03' 45" WEST, A DISTANCE OF 60.34 FEET,

THENCE SOUTH 00° 22' 41" EAST, A DISTANCE OF 1388.21 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF BOLLING DRIVE, ALSO BEING THE NORTHERLY LINE OF GATEWAY PARK IV - DENVER FILING NO. 5 AS RECORDED APRIL 12, 2000 UNDER RECEPTION NO. 2000051305, WHENCE THE NORTHEAST CORNER OF SAID GATEWAY PARK IV - DENVER FILING NO. 5, BEARS NORTH 89° 22' 37" EAST A DISTANCE OF 925.19 FEET,

THENCE SOUTH 89° 22' 37" WEST ALONG SAID NORTHERLY LINE A DISTANCE OF 1854.03 FEET TO A NON-TANGENT CURVE,

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 07° 38' 49", A RADIUS OF 600.00 FEET AND AN ARC LENGTH OF 80.08 FEET, WHOSE CHORD BEARS SOUTH 68° 36' 19" EAST A DISTANCE OF 80.02 FEET TO A POINT ON THE NORTHERLY LINE OF THE GATEWAY PARK IV-DENVER FILING NO. 1 AS RECORDED APRIL 10, 1998 IN BOOK 32 AT PAGES 14-16,

THENCE ALONG SAID NORTHERLY LINE SOUTH 89° 22' 37" WEST, A DISTANCE OF 1518.59 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY FOR CHAMBERS ROAD,

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, NORTH 00° 14' 04" EAST, A DISTANCE OF 1554.90 FEET TO THE POINT OF BEGINNING:

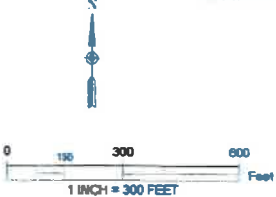
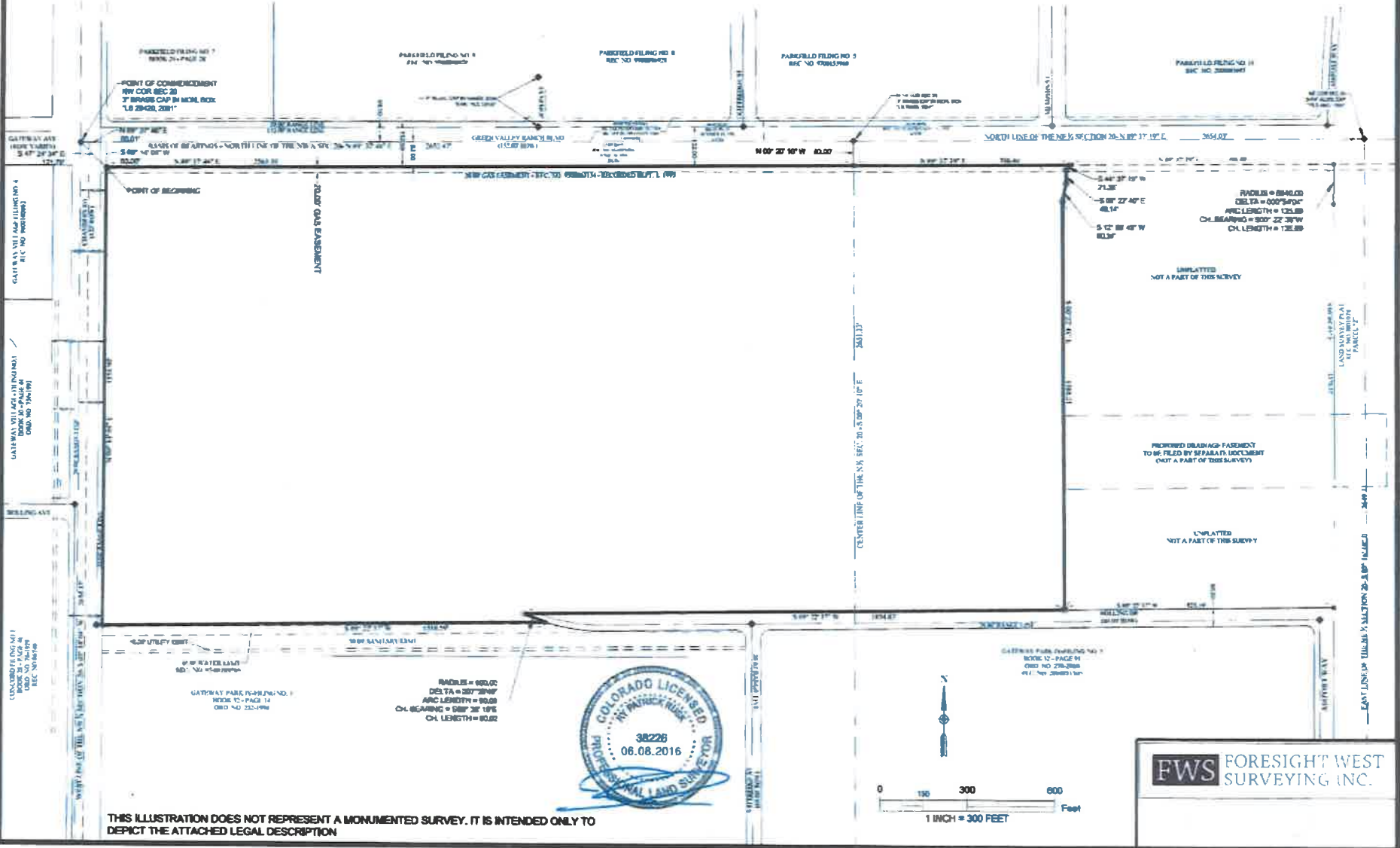
SAID PARCEL OF LAND CONTAINING 115.66 ACRES OR 5,038,109 SQUARE FEET, MORE OR LESS.

ALL REFERENCES TO RECORDED DOCUMENTS ARE FILED AT THE CITY AND COUNTY OF DENVER CLERK AND RECORDER'S OFFICE.



RY PATRICK RUSK  
PLS No. 38226  
FORESIGHT WEST SURVEYING, INC.  
4955 IRIS STREET  
WHEAT RIDGE, CO 80033  
303.901.0479  
JUNE 8, 2016

# DENVER CONNECTION WEST METROPOLITAN DISTRICT



**FWS FORESIGHT WEST SURVEYING INC.**

THIS ILLUSTRATION DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED LEGAL DESCRIPTION

J:\Project #1018\July2016\1-4\Pages\Home-Green Valley South Blvd and Chautauque\2016011-001\Utility\Utility\Parcel District Documents\Parcel District Exhibit B.dwg, 11/17/2016, Author: POF, Tab: 1, 1

**EXHIBIT B**

Gateway Improvements

ASPHALT - GREEN VALLEY RANCH BLVD. IMPROVEMENTS

CHAMBERS ROAD

KITTRIDGE STREET

MEMPHIS STREET

FUTURE AIRPORT WAY

CONCRETE - GREEN VALLEY RANCH BLVD. IMPROVEMENTS

CHAMBERS ROAD

KITTRIDGE STREET

MEMPHIS STREET

FUTURE AIRPORT WAY

SIGNAGE AND STRIPING - GREEN VALLEY RANCH BLVD. IMPROVEMENTS

CHAMBERS ROAD

KITTRIDGE STREET

MEMPHIS STREET

FUTURE AIRPORT WAY

MEMPHIS STREET TRAFFIC SIGNAL IMPROVEMENTS

CHAMBERS ROAD

KITTRIDGE STREET

MEMPHIS STREET

FUTURE AIRPORT WAY

INCLUDED BUT NOT SHOWN:  
 TRAFFIC CONTROL, POTHOLES, SAWCUTTING,  
 REMOVALS, EARTHWORK, PERMITTING, EROSION  
 CONTROL, TESTING, STAKING, ENGINEERING, PLANNING,  
 INSURANCE, LEGAL, AND ELECTRIC RELOCATION