

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 43, SERIES 2016**

**A RESOLUTION APPROVING AGREEMENTS FOR THE ACQUISITION OF THE
WALKER MANUFACTURING PROPERTY**

WHEREAS, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, acquisition of the Walker Manufacturing Property as described in Exhibit A, attached hereto and incorporated herein (the “Walker Manufacturing Property”), is necessary to complete the Harmony Road Widening Project (the “Project”); and

WHEREAS, attached hereto as Exhibits A-D are the Memorandum of Understanding for Acquisition of Property for Public Project, Special Warranty Deed, Utility Easement, and Well Agreement regarding the Project (the “Agreements”) Between the Town and Walker Manufacturing Company (“Owner”) ; and

WHEREAS, the Town Council is familiar with the Agreements and finds them to be in the best interest of the Town, its residents, and the general public.


NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval

The Agreements are hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON JUNE 14TH, 2016.

TOWN OF TIMNATH, COLORADO



Bryan Voronin, Mayor Pro Tem

ATTEST:

Milissa Peters

Milissa Peters, CMC
Town Clerk



EXHIBIT A

Memorandum of Understanding for Acquisition of Property for Public Project

**AGREEMENT FOR ACQUISITION OF PROPERTY
FOR PUBLIC PROJECT**

Town of Timnath
4800 Goodman Drive
Timnath, Colorado 80547

Owner:	Walker Manufacturing Company 5925 East Harmony Road Ft. Collins, CO 80528	Project No.:	
		Project Name:	
		Location:	
		Parcel No.(s):	

This AGREEMENT FOR ACQUISITION OF PROPERTY FOR PUBLIC PROJECT (the "Agreement") is entered into effective this 14 day of June, 2016 (the "Effective Date"), between Walker Manufacturing Company ("Owner") and the TOWN OF TIMNATH, a municipal corporation of the State of Colorado (the "Town"), for the purchase of the Parcels, which are more specifically described and shown on **Exhibit A** attached hereto and made a part hereof:

<u>IN FEE SIMPLE:</u>	Parcel 1:	54,614 sq.ft, or 1.254 acres +/-
<u>PERMANENT EASEMENT:</u>	Parcel 2:	28,239 sq.ft, or 0.648 acres +/-

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is expressly acknowledged, the parties hereby agree as follows:

1. COMPENSATION. The total amount of money to be paid as compensation and other consideration to be given by the Town to Owner in full satisfaction of this Agreement, which have been established in accordance with applicable state laws and agreed upon between the Town and Owner as just compensation and fair market value is One Hundred Ninety-five Thousand Five Hundred Sixty and No/100 Dollars (\$195,560).
 - A. Full Compensation. Owner hereby agrees that the compensation outlined above, and to be paid by the Town to the Owner constitutes full compensation for Owner's entire interest, both present and future, in the Parcels, including compensation for the property rights conveyed and for any damages to the remainder.
 - B. Closing. Upon execution of this Agreement, the parties shall proceed to close the transaction contemplated herein as soon as reasonably practical. At closing, the Town shall provide good funds in the amount stated above, and Owner shall execute all documents reasonably necessary to effectuate the conveyance of the Parcels to the Town. Owner has agreed to complete the transaction as an alternative to possible future condemnation.
 - C. Conveyance; Method(s). Of the total Compensation, the sum of \$195,560, less \$3,000 (constituting Owner's agreed upon portion of the cost of the appraisal), shall be paid by the Town to Owner upon the execution by Owner, and delivery to the Town (i) a Special Warranty Deed conveying a fee interest in Parcel 1 subject to all liens, easements, encumbrances and restrictions of record, and (ii) a Deed of

Dedication of Easement for public utilities, underground to the extent possible, according to engineering standards and subject to reasonable cost limitations, in Parcel 2, subject to all liens, easements, encumbrances and restrictions of record.

2. REPAIR AND RESTORATION.

- A. Following the completion of construction of public improvements and public utilities (the "Project"), the Town shall restore, to substantially its original condition, any property of Owner's that is damaged by such construction, excluding changes to the Parcels that are allowed by the Town's lawful use of the Parcels.
- B. There exists a line of 15' deciduous trees on Owner's property outside of, but near, the boundary of Parcel 2. If any of the existing trees are removed or destroyed during and as a result of the Town's construction activities, the Town shall pay the value of any such trees based on a value assessment by a licensed arborist, mutually agreed upon by the parties, using a certified methodology to establish value.
- C. If the Town or any public utility provider, in the course of construction, operation, repair or maintenance of any public improvements, damages or destroys Owner's irrigation well located in or near the Easement Area (as defined in the Deed of Dedication of Easement), or Owner's irrigation well near the right of way conveyed by the Special Warranty Deed, or any related facilities, the Town or such public utility provider shall immediately restore or replace the irrigation well and any related facilities to full working condition.
- D. The provisions of this paragraph 2 shall survive closing and the delivery of the instruments of conveyance to the Parcels.

3. INSURANCE. The Town shall require the contractor for the Project to secure and carry insurance with reasonable coverage for public liability which might occur as a result of the negligence of the contractor within the construction area during the time of construction. The Town's contractor shall name the Owner as an additional insured on its insurance coverage for this Project. The provisions of this paragraph 3 shall survive closing and shall be enforceable during the Project construction work.

4. AUTHORITY. Owner represents and warrants: (i) that the person(s) executing this Agreement on behalf of Owner has full right and authority to execute and deliver this Agreement; (ii) that it has all power and authority to enter into this Agreement and to perform the terms set forth herein; (iii) that it has taken all requisite action in order to authorize the same; (iv) that upon such execution and delivery, this Agreement will be enforceable against Owner in accordance with its terms; and (v) that by entering into this Agreement and performing the obligations hereunder, Owner will not violate any contracts, lease or other third-party agreement to which Owner may be subject. The Provisions of this paragraph 4 shall survive the closing and the delivery of the instruments of conveyance to the Parcels.

5. OWNER TO COMPLETE TRANSACTION. In addition to the obligations of Owner set forth herein, Owner shall perform, or to cause to be performed, on or after closing, any and all further acts as may be reasonably necessary to consummate the transactions

contemplated hereby. In the event Owner fails to perform any act required herein including, but not limited to, conveying the Parcels as set forth above, the Town shall have the right, but not the obligation, to obtain specific performance thereof in addition to any other remedy available under applicable law.

6. GENERAL PROVISIONS.

- A. Entire Agreement. This Agreement, along with the Special Warranty Deed and the Deed of Dedication of Easement, embodies the whole agreement between the parties, and there are no promises, terms, conditions or obligations referring to the subject matter hereof, other than as herein contained.
- B. Binding Agreement; Assignment. This Agreement shall be deemed a contract extending to and binding upon the parties and upon their respective heirs, devisees, executors, administrators, legal representative, successors and assigns; provided, however, that any assignment of this Agreement may occur only upon the Town's prior written consent.
- C. Governing Law and Venue; Attorney Fees. This Agreement shall be interpreted and enforced under the laws and judicial decisions of the State of Colorado. The parties agree and stipulate that the County and District Courts situated in Larimer County, Colorado, shall have jurisdiction over any and all disputes which may arise under this Agreement and the enforcement hereof and that venue in such courts shall be proper. In the event any action or other proceeding is commenced to enforce the terms hereof, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred in connection with such action or proceeding.
- D. No Third-Party Beneficiaries. It is expressly understood and agreed 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 parties. It is the express intention of the parties that any person other than the Town and Owner shall be deemed to be only an incidental beneficiary under this Agreement.
- E. No Waiver. The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement.
- F. Electronic Disposition of Agreement. The parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.
- G. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

- H. Acknowledgement of Open Records Act – Public Document. Owner hereby acknowledges that the Town is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and as such, this Agreement may be subject to public disclosure thereunder.
7. WELL AGREEMENT. As additional consideration for the transactions contemplated herein, the Town acknowledges the existence of and agrees to be bound by that certain Agreement Concerning Irrigation Well Riser in Platted Right of Way of Larimer County Road 38, between the Board of County Commissioners of Larimer County, Colorado, and Walker Manufacturing Company, dated June 17, 2002, attached hereto as **Exhibit B**, and made a part hereof (the “Well Agreement”), which Well Agreement was intended to be recorded by the County in the real estate records of the Larimer County Clerk and Recorder and to be a covenant which runs with the land, all as set forth in paragraph 8 thereof. The Well Agreement was not recorded and, since the time of the Well Agreement was executed, all or portions of County Road 38 adjacent to Owner’s property have been annexed into the Town of Timnath. The Town agrees that the existing irrigation well riser located within the right of way for County Road 38 adjacent to Owner’s property may remain in its current location until such time as the right-of-way is developed in that location, pursuant to the terms of the Well Agreement.

OWNER: Walker Manufacturing Company
a Colorado corporation

By: _____
Robert Walker, President

STATE OF COLORADO)
) §
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Robert Walker, President of Walker Manufacturing Company, owner.

Witness my hand and seal.

My commission expires: _____

[S E A L]

Notary Public

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

_____, Director
Department of Public Works

_____, Town Attorney

RECOMMENDED AND APPROVED AS TO CONTENT:

Eric Fuhrman, Right-of-Way Agent

_____, Finance Director

EXHIBIT A
Legal Descriptions

EXHIBIT B
Special Warranty Deed

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is executed and delivered this 14 day of June, 2016, by **WALKER MANUFACTURING COMPANY** (“**Grantor**”), in favor of the **TOWN OF TIMNATH**, a Colorado municipal corporation, whose address is 4800 Goodman Street, Timnath, CO 80547 (“**Grantee**”).

WITNESSETH, that Grantor, for and in consideration of One hundred sixty four thousand, one hundred forty-one and No/100 Dollars (\$164,141) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto Grantee, its heirs, successors and assigns forever, all the real property, together with all improvements, if any, situate, lying, and being located in the County of Larimer, State of Colorado, more particularly described as follows:

THAT PART OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO, AS DESCRIBED MORE FULLY AS **PARCEL 1** ON ATTACHED EXHIBIT A.

TOGETHER with all and singular the rights, tenements, easements, appendages, ways, hereditaments, privileges, and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments, easements, rights of way and appurtenances (collectively, the “**Property**”).

TO HAVE AND TO HOLD the Property above bargained and described with the appurtenances, unto Grantee, its heirs, successors and assigns forever. Grantor, for itself, and its successors and assigns, does covenant, grant, bargain and agree to and with the Grantee, its successors and assigns, that Grantor shall and will **WARRANT AND FOREVER DEFEND** the Property in the quiet and peaceable possession of Grantee, its heirs, successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof **BY, THROUGH OR UNDER** Grantor, subject, however, to taxes and assessments for the current year, and liens, easements, encumbrances and restrictions of record.

EXHIBIT A
REAL PROPERTY

EXHIBIT C
Utility Easement

DEED OF DEDICATION OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned **WALKER MANUFACTURING COMPANY** (“Grantor”), being the owner of certain real property in Larimer County, Colorado, in consideration of Thirty One Thousand Four Hundred Nineteen and No/100 Dollars (\$31,419.00) in hand paid, receipt of which is hereby acknowledged, and other good and valuable consideration, does hereby dedicate, transfer, and convey to the Town of Timnath, Colorado, a Municipal Corporation (“Town”), whose mailing address for purposes of this deed is 4800 Goodman Drive, Timnath CO, 80547, for public use forever a **permanent easement for utilities, to be placed underground to the extent possible, according to engineering standards and subject to reasonable cost limitations** (“Easement”) in the Town of Timnath, County of Larimer, State of Colorado, more particularly described as **Parcel 2 on Exhibit “A”** attached hereto and by this reference made a part hereof (the “Easement Area”), subject to all liens, easements, encumbrances and restrictions of record.

The Town’s rights under the Easement include the right to grade, install, operate, access, maintain, repair, reconstruct, remove and replace within the Easement Area public improvements to be placed underground to the extent possible, according to engineering standards and subject to reasonable cost limitations ; the right to install, maintain and use gates in any fences that cross the Easement Area; the right to mark the location of the Easement Area with suitable markers; and the right to permit other public utilities to exercise these same rights. Grantor reserves the right to use the Easement Area for purposes that do not interfere with the full enjoyment of the rights hereby granted.

In further consideration of the granting of this Easement, it is hereby agreed that all work performed by the Town, its successors and assigns, or by public utility providers, in connection with this Easement shall be done with reasonable care, and the surface of the Easement Area and all property owned by Grantor (“Grantor’s Property”) and any improvements or trees thereon, which are altered or damaged as a result of the Town’s or such public utility provider’s use of the Easement Area, shall be restored reasonably similar to its original condition prior to any such use, immediately upon completion of the construction, installation, maintenance or replacement of the municipal and public utility improvements.

The Town is responsible for maintenance of its own improvements and for repairing any damage caused by its activities in the Easement, but by acceptance of this dedication, the Town does not accept the duty of maintenance of the Easement, or of improvements in the Easement that are not owned by the Town. Grantor will maintain the surface of the Easement in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements.

Except as expressly permitted in an approved plan of development or other written agreement with the Town, or in existence as of the date this Easement is granted, Grantor will not install on the Easement, or permit the installation on the Easement, of any building, structure, improvement, fence, retaining wall, sidewalk, tree or other landscaping (other than usual and customary grasses and other ground cover). In the event such obstacles are installed in the Easement, the Town has the right to require the Grantor to remove such obstacles from the Easement. If Grantor does not remove such obstacles, the Town may remove such obstacles without any liability or obligation for repair and replacement thereof, and charge the Grantor the Town’s costs for such removal. If the Town chooses not to remove the obstacles, the Town will not be liable for any damage to the obstacles or any other property to which they are attached. Notwithstanding the foregoing, Grantor reserves the right to operate, maintain, repair and replace the existing irrigation well and related facilities within or near the Easement Area, and, if such irrigation well or related facilities are altered or damaged as a result of the Town’s or such public utility provider’s use of the Easement Area, they immediately shall be restored reasonably similar to their original condition prior to any such use.

Subject only to the foregoing, Grantor, for itself and its employees and customers, Grantor's tenants, and Grantor's tenant's employees and customers, reserves the right of ingress and egress over and across the existing and any future driveways that cross the Easement Area.

The rights granted to the Town by this Deed inure to the benefit of the Town's agents, licensees, permittees and assigns.

Witness our hands and seals this ___ day of _____, 2016.

ATTEST:

GRANTOR:

By: _____

By: _____

Title: _____

Title: _____

Name and Address:

State of _____)

) ss

County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____ as _____, and _____ as _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

This Deed of Dedication is accepted by the Town Manager of the Town of Timnath this 14 day of June, 2016.

ATTEST:

TOWN OF TIMNATH

Milissa Peters
Milissa Peters, Town Clerk

April Getchius
April Getchius, Town Manager

EXHIBIT D
Well Agreement

**AGREEMENT CONCERNING IRRIGATION WELL RISER
IN PLATTED RIGHT-OF-WAY
OF LARIMER COUNTY ROAD 38**

This Agreement is made this 17th day of June 2002 between the Board of County Commissioners of Larimer County, Colorado for the use and benefit of the Larimer County Engineering Department (County), Walker Manufacturing Company whose address is 5925 East Harmony Road, Fort Collins, Colorado 80528 (Owner), and Robert Walker (Walker).

RECITALS

A. Owner owns certain real property in Larimer County, Colorado more particularly described as Lot 1, Walker Subdivision, east half of the east half of Section 2, Township 6 North, Range 68 West of the 6th Principal Meridian with a street address of 5925 East Harmony Road, Fort Collins, Colorado 80528 (hereafter "Property").

B. There is an existing irrigation well riser for the Property located within the right-of-way of County Road 38 adjacent to the Property.

C. The existing elevation of the top of the irrigation well riser is not at the proposed grade of the County Road 38 improvements.

D. The location of the irrigation well riser or other structures within a platted right-of-way is not permitted unless specifically authorized by law and/or agreed to by the County Engineer.

E. By this Agreement, the parties wish to set forth the terms and conditions under which the County will allow the irrigation well riser to remain on the Property in its current location.

NOW, THEREFORE, in consideration of the above stated recitals and of the mutual covenants and promises contained herein, the parties agree as follows.

TERMS

1. The irrigation well riser may remain in its current location until such time as the right-of-way is developed.
2. At such time as the right-of-way is developed, Owner and Walker shall:
 - a. Relocate the irrigation well riser out of the right-of-way, OR
 - b. Remove the irrigation well riser entirely from the Property.

REC'D JUN 12 2002

REC'D JUN 29 2002

3. Owner and Walker shall relocate or remove the irrigation well riser as directed by the County Engineer within 30 days of the date on which written notice is mailed by the County Engineer to them or to the then current owner of the Property at the address of 5925 East Harmony Road, Fort Collins, CO 80528. All costs and expenses of the irrigation well riser relocation or irrigation well riser removal shall be paid by Owner and Walker.

4. In the event Owner and Walker fail to relocate or remove the irrigation well riser as directed by the County Engineer, the County may undertake to relocate or remove the irrigation well riser. All costs and expenses incurred by the County, including reasonable attorney fees, may be certified to the County Treasurer and shall become a lien against the Property collectible in the same manner and with the same priority as real property taxes.

5. No new structures shall be located within the right-of-way adjacent to the Property.

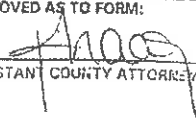
6. Owner and Walker shall modify the irrigation well riser to match the proposed grade of the County Road 38 improvements as shown on Exhibit A within 21 days of the date on which written notice is mailed by the County Engineer to them at the address of 5925 East Harmony Road, Fort Collins, CO 80528. All costs and expenses for the modification of the irrigation well riser shall be paid by Owner and Walker.

7. Other than as described in paragraph 6 above, the irrigation well riser shall not be improved, enlarged, altered, replaced or otherwise modified without the express written consent of the County.

8. This Agreement shall be recorded by the County in the real estate records of the Larimer County Clerk and Recorder and shall be a covenant which runs with the Property and shall be binding on all of Owners' successors, assigns, transferees, heirs and personal representatives. Should the well riser remain in its current location at the time Owner conveys the Property to a subsequent owner, Owner and Walker agree to provide to such subsequent owner a copy of this Agreement at the time of conveyance.

BOARD OF COUNTY COMMISSIONERS
OF LARIMER COUNTY, COLORADO
for the use and benefit of the Larimer County
Engineering Department

By: 
Glenn Gibson, Chair

DATE: 6-4-02
APPROVED AS TO FORM:

ASSISTANT COUNTY ATTORNEY

OWNER:

WALKER MANUFACTURING CO

By: ROBERT W. WALKER, PRES
Name Title

Robert W. Walker
Robert Walker

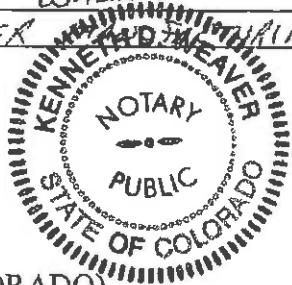
STATE OF COLORADO)
COUNTY OF LARIMER) ss.

Acknowledged before me this 25th day of June, 2002,
by Glenn Gibson as Chair of the Board of County Commissioners of Larimer County,
Colorado.

Paul M. Cookman
Notary Public
My commission expires: 6/28/04

STATE OF COLORADO)
COUNTY OF LARIMER) ss.

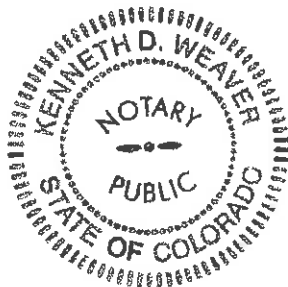
Acknowledged before me this 17th day of JUNE, 2002,
by ROBERT WALKER (name) as PRESIDENT (title)
of WALKER MANUFACTURING COMPANY (Owner).



Kenneth D. Weaver
Notary Public
My commission expires: MAY 15, 2006

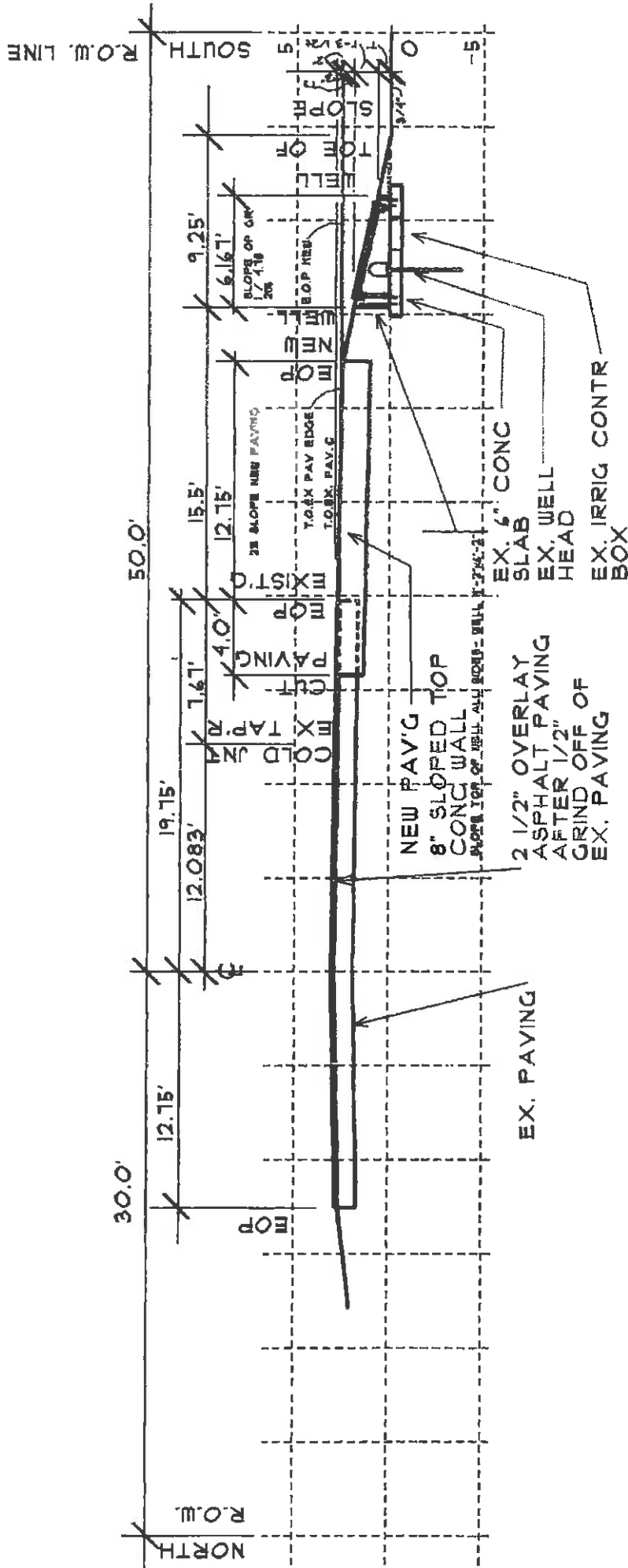
STATE OF COLORADO)
COUNTY OF LARIMER) ss.

Acknowledged before me this 17th day of JUNE, 2002 by
Robert Walker.



Kenneth D. Weaver
Notary Public
My commission expires:

EXHIBIT - A



HATTMAN ASSOCIATES
 ARCHITECTURE & PLANNING

WELL BOX W/ COVER

WALKER MANUFACTURING
 5.23/02

SCALE 1/8" = 1'-0"