



AGENDA ITEM NO.

COUNCIL MEETING

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

February 6, 2007

FROM: JON R. RUIZ, Interim Public Works Director
Public Works Department

BY: SCOTT L. MOZIER, PE, Assistant Public Works Director
Public Works Department, Engineering Services

SUBJECT: APPROVE A RESOLUTION APPROVING A COOPERATIVE AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR CONSTRUCTION AND TRANSFER OF A PARCEL FOR A STORM WATER DRAINAGE BASIN AT MARKS AVENUE AND AUTHORIZING THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO SIGN THE AGREEMENT AND ALL RELATED DOCUMENTS ON BEHALF OF THE CITY OF FRESNO

KEY RESULT AREA

Public Safety

RECOMMENDATION

Approve a resolution approving a Cooperative Agreement for construction and transfer of a storm drainage basin at Marks Avenue required by the construction of Freeway 180 West , in the City of Fresno, from Brawley Avenue to West Avenue and authorizing the Public Works Director or his designee to sign the agreement on behalf of the City of Fresno.

EXECUTIVE SUMMARY

The attached Cooperative Agreement identifies where the State will construct pipelines and a new storm water drainage basin to replace the existing (old) City owned storm water drainage basin that will be obliterated during the construction of Freeway 180 West at Marks Avenue. The existing pipelines and old basin were constructed by the Redevelopment Agency as part of the Marks Avenue widening project in association with development of the Roeding Business Park, in order to remove and store rainfall runoff originating from Marks Avenue.

The new storm drainage basin which will be about 2.5 acres in area will be fenced by the State. The State will transfer title to the City on or before the December 31, 2008, Agreement termination date, whereupon it will be operated and maintained by the City until such time as permanent Fresno Metropolitan Flood Control District Master Planned facilities have been constructed, at which time the City will be free to either use the property for another purpose or sell the property.

The agreement with the California Department of Transportation also stipulates that in exchange for the new storm water drainage basin, the City will execute a Grant Deed transferring ownership of the existing old basin to the State. The old basin lies in the path of the Freeway 180 West freeway extension project, so the State needs to obliterate the basin to clear the right of way of obstacles.

KEY OBJECTIVE BALANCE

The recommendation provides emphasis to Financial Management and Customer Satisfaction. By partnering with the California Department of Transportation we are able to facilitate the extension of Freeway 180 West from West Avenue to Brawley Avenue. The new storm drainage basin will assure that storm water runoff is not allowed to pond on Marks Avenue and negatively impact the public's use. The Freeway extension will also provide the area with a portion of the Circulation Element of the City's General Plan. Employee Satisfaction will be achieved through Council approval and completion of a complex and lengthy process.

BACKGROUND

When the Fresno Redevelopment Agency developed the Roeding Business Park, a part of the overall project plan required the widening and improvement of Marks Avenue near the future Freeway 180 West alignment. In order to remove storm water runoff from Marks Avenue, the Redevelopment Agency had to construct a temporary storm drainage basin. Now, that the State is preparing to construct the next segment of Freeway 180 West from West Avenue to Brawley Avenue, the temporary storm drainage basin, which lies within the freeway alignment, will have to be obliterated and a new basin provided to store the rainfall runoff, until such time as permanent Fresno Metropolitan Flood Control District Master Planned facilities are constructed.

FISCAL IMPACT

Entering into this Cooperative Agreement will not impact the City General Fund. This Cooperative Agreement identifies the locations of old and new temporary storm drainage basins and transfers ownership of the new basin from the State to the City and the old basin to the State. All maintenance and upkeep costs associated with the City's ownership of the basin should be insignificant and more than offset by the sale of the new basin property after Fresno Metropolitan Flood Control District permanent facilities are constructed.

JRR/SLM/CJK/eam
Apprv Reso Coop Agrmt Storm Wtr Drainage Marks Ave 2-6-07

Attachments: Cooperative Agreement No. 06-1307 with Exhibits A & B
Resolution

RESOLUTION _____

RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO
(1) APPROVING A COOPERATIVE AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR CONSTRUCTION AND TRANSFER OF A PARCEL FOR A STORM DRAINAGE BASIN AT MARKS AVENUE AND (2) AUTHORIZING THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO SIGN THE AGREEMENT AND ALL RELATED DOCUMENTS ON BEHALF OF THE CITY OF FRESNO

WHEREAS, the California Department of Transportation is preparing to undertake the construction of Segment 2, of Freeway 180 West; and,

WHEREAS, said freeway construction will require the relocation, expansion, construction and modification of the drainage master plan of the Fresno Metropolitan Flood Control District; and,

WHEREAS, said freeway construction will also require the relocation of the existing City owned "Marks Avenue" storm water drainage basin; and,

WHEREAS, the California Department of Transportation will construct a new storm water drainage basin and associated pipelines to replace the City owned Marks Avenue storm water drainage basin and transfer, to the City, title to that parcel along with an access easement; and,

WHEREAS, the City is willing to execute a Grant Deed transferring ownership of the existing "Marks Avenue" storm water drainage basin (APN 326-150-13s) to the California Department of Transportation; and,

WHEREAS, the City of Fresno is willing to accept title to the transferred facilities upon terms and conditions in the Cooperative Agreement and approval of a good and sufficient Director's Deed and recording of said Director's Deed in the Fresno County Recorder's Office.

NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO AS FOLLOWS:

1. The City Council approves the Cooperative Agreement with the California Department of Transportation in substantially the form attached hereto for construction and transfer of a parcel for a storm drainage basin at Marks Avenue.
2. The City Council authorizes the Public Works Director or his designee to sign the Cooperative Agreement and all other related project documents on behalf of the City, subject to City Attorney approval to form.

STATE OF CALIFORNIA)
COUNTY OF FRESNO) SS.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2007.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2007

Mayor Approval/No Return: _____, 2007

Mayor Veto: _____, 2007

Council Override Veto: _____, 2007

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM

JAMES C. SANCHEZ
CITY ATTORNEY

BY: R
Deputy

06-Fre-180-PM R53.4/R55.9
(KP R86.0/R90.0)
180 West Freeway, Segment 2
in the City of Fresno from
Brawley Avenue to West Avenue
Construction of, and Transfer of Parcel
for, Drainage Basin at Marks Avenue
06-0245-34233_1
District Agreement No. 06-1307

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO AND EFFECTIVE ON _____, 2007, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

CITY OF FRESNO, a body politic and a municipal corporation of the State of California, referred to herein as "CITY".

RECITALS

1. STATE and the Fresno County Transportation Authority (AUTHORITY), a public corporation that is not a party to this Agreement, have undertaken construction of the State Route 180 (SR 180) West Freeway, Segment 2, on a new alignment in the City of Fresno from 0.3 kilometer (0.19 mile) west of Brawley Avenue to 0.4 kilometer (0.25 mile) east of West Avenue, hereinafter referred to as "PROJECT". Said construction has caused the relocation, expansion, construction and modification of the drainage master plan of the Fresno Metropolitan Flood Control District (DISTRICT). Construction of PROJECT will also cause the relocation of the existing CITY-owned "Marks Avenue" Basin (EXISTING BASIN), shown on Exhibit A, to the proposed new location and configuration (PROPOSED BASIN), also shown on Exhibit A. Exhibit A is attached to and made a part of this Agreement by this reference.
2. EXISTING BASIN is located on a CITY-owned parcel, Assessor's Parcel Number (APN) 326-150-13s, in the County of Fresno.

3. Therefore, STATE, AUTHORITY and DISTRICT entered into a Cooperative Agreement (District Agreement No. 06-1336), incorporated herein, hereinafter AGREEMENT, to install storm drainage facilities (within the territorial jurisdiction of DISTRICT and CITY) during and as a part of STATE's and AUTHORITY's construction of the proposed PROJECT. CITY was not a party to AGREEMENT.
4. Under AGREEMENT (Recitals, Article 7), on completion and acceptance of PROJECT, STATE is to assume ownership, operation and maintenance of a few of the constructed storm drainage facilities, including the PROPOSED BASIN, until such time as those facilities are transferred to "other public agencies" by appropriate instruments.
5. While installing new storm drainage facilities, STATE intends to replace CITY's EXISTING BASIN and associated pipelines (as part of PROJECT) with PROPOSED BASIN and associated pipelines on a STATE-owned parcel of land and to transfer to CITY that parcel and the access easement as shown in Exhibit B, attached to and made a part of this Agreement, all of the above collectively referred to hereinafter as "TRANSFERRED FACILITIES".
6. CITY is willing to accept title to TRANSFERRED FACILITIES upon approval of a good and sufficient Director's Deed and STATE's recording of said Director's Deed in the County Recorder's Office.
7. STATE and CITY, pursuant to Streets and Highways Code sections 104.5 and 130, are authorized to enter into a Cooperative Agreement in order to exchange EXISTING BASIN (which is to be acquired for the development of PROJECT) within CITY's jurisdiction for TRANSFERRED FACILITIES.
8. CITY is willing to transfer all interest in APN 326-150-13s in exchange for the TRANSFERRED FACILITIES.
9. The parties hereto intend to define herein the terms and conditions under which TRANSFERRED FACILITIES are to be transferred by STATE to CITY and the means by which CITY conveys APN 326-150-13s to STATE.

SECTION I

STATE AGREES:

1. To convey to CITY, at no cost to CITY, TRANSFERRED FACILITIES, as shown in crosshatched pattern with schematic pipelines on Exhibit A, being constructed as part of PROJECT in accordance with standard STATE requirements, plans and specifications, and AGREEMENT, and pursuant to laws governing STATE in its performance of such work on or before the termination date mentioned in this Agreement.
2. To execute a proper Director's Deed to convey good and sufficient title to CITY for the property depicted on Exhibit B, as a temporary storm drainage facility (including access easement), on or before the termination date of this Agreement.
3. To record the fully executed Director's Deed in the appropriate County Recorder's Office, and to provide CITY with as-built drawings acceptable to CITY.
4. To prepare a Grant Deed, acceptable to CITY, for CITY to convey Assessor's Parcel No. 326-150-13s to STATE ownership.

SECTION II

CITY AGREES:

1. To approve project plans and specifications and to accept title to TRANSFERRED FACILITIES, once conveyed by STATE as provided in Section I, Article 2, herein.
2. To accept a good and sufficient Director's Deed for TRANSFERRED FACILITIES from STATE when properly recorded.
3. Upon conveyance of the TRANSFERRED FACILITIES shown with schematic pipelines on Exhibit A by STATE, CITY shall accept ownership and control of said TRANSFERRED FACILITIES to be operated and maintained at CITY's cost. CITY shall be obligated to operate and maintain TRANSFERRED FACILITIES as a storm drainage basin only until permanent storm drainage facilities are constructed by DISTRICT.

4. To approve a City Council Resolution to transfer ownership of APN 326-150-13s from CITY to STATE and to execute the Grant Deed, as described in Section I, Article 4.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of CITY under the terms of this Agreement are contingent upon the availability of CITY resources and allocation of sufficient funding in each CITY fiscal year hereunder.
2. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature in the Annual State Budget Act and the allocation of any required funds by the Fresno County Transportation Authority.
3. No alteration of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
4. The Conveyance of TRANSFERRED FACILITIES by STATE, as detailed in this Agreement and as shown on Exhibit A, shall fully discharge STATE's responsibilities for continuation of that portion of existing drainage patterns requiring pipelines consistent with CITY's existing Storm drainage system. Any future alteration, replacement or enlargement of said drainage facilities initiated by CITY shall be the sole responsibility of CITY.
5. Any notice, demand or request required or permitted to a party hereunder shall be made in writing and shall be deemed given when personally delivered or ten (10) days after deposit in the United States Mail, postage prepaid, and addressed to the receiving party at its address shown on the signature page below, or at such other address that may be designated by such party to the other by the means herein prescribed for giving notice.

6. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction undertaken by STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
7. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction undertaken by CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
8. Upon proper conveyance and acceptance of title to TRANSFERRED FACILITIES, the ownership, operation and maintenance of the same shall be solely a CITY responsibility.
9. This Agreement may be terminated or provisions contained herein may be altered, changed, or amended by mutual consent of the parties hereto.
10. This Agreement shall terminate upon the recording of the conveyance of the TRANSFERRED FACILITIES by STATE to CITY in the Appropriate County Recorder's Office, or on December 31, 2008, whichever is earlier in time, however, the ownership, operation, maintenance, indemnification, liability and claims clauses shall remain in effect until terminated or modified in writing by mutual agreement.

STATE OF CALIFORNIA

CITY OF FRESNO

Department of Transportation

WILL KEMPTON

Director

By: _____

MICHAEL T. KIRN

City Engineer

By: _____

MALCOLM X. DOUGHERTY

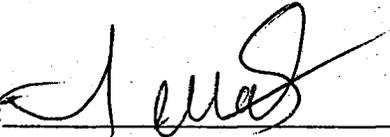
District 6 Director

Attest: _____

Deputy City Clerk

Approved as to form and procedure:

Approved as to form:

By:  _____

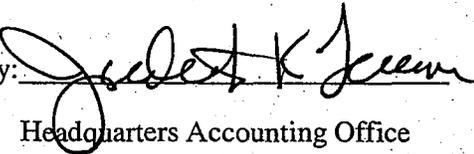
Attorney

Department of Transportation

By:  _____

City Attorney

Certified as to procedure:

By:  _____
Headquarters Accounting Office

Certified as to funds:

By: _____

ROBERT J. JOHNSON, Chief

District 6 Office of Budgets

STATE mailing address:

Chief, Office of Agreements
State of California
Department of Transportation
District 6
2105 E. Shields Avenue, Suite 100
Fresno, CA 93727-5428

Abdul El-Dahabi@dot.ca.gov
(559) 243-3445, FAX (559) 243-3426

CITY mailing address:

Michael T. Kim, City Engineer
Department of Public Works, Room 4064
City of Fresno
2600 Fresno Street, Fourth Floor
Fresno, CA 93721-3615

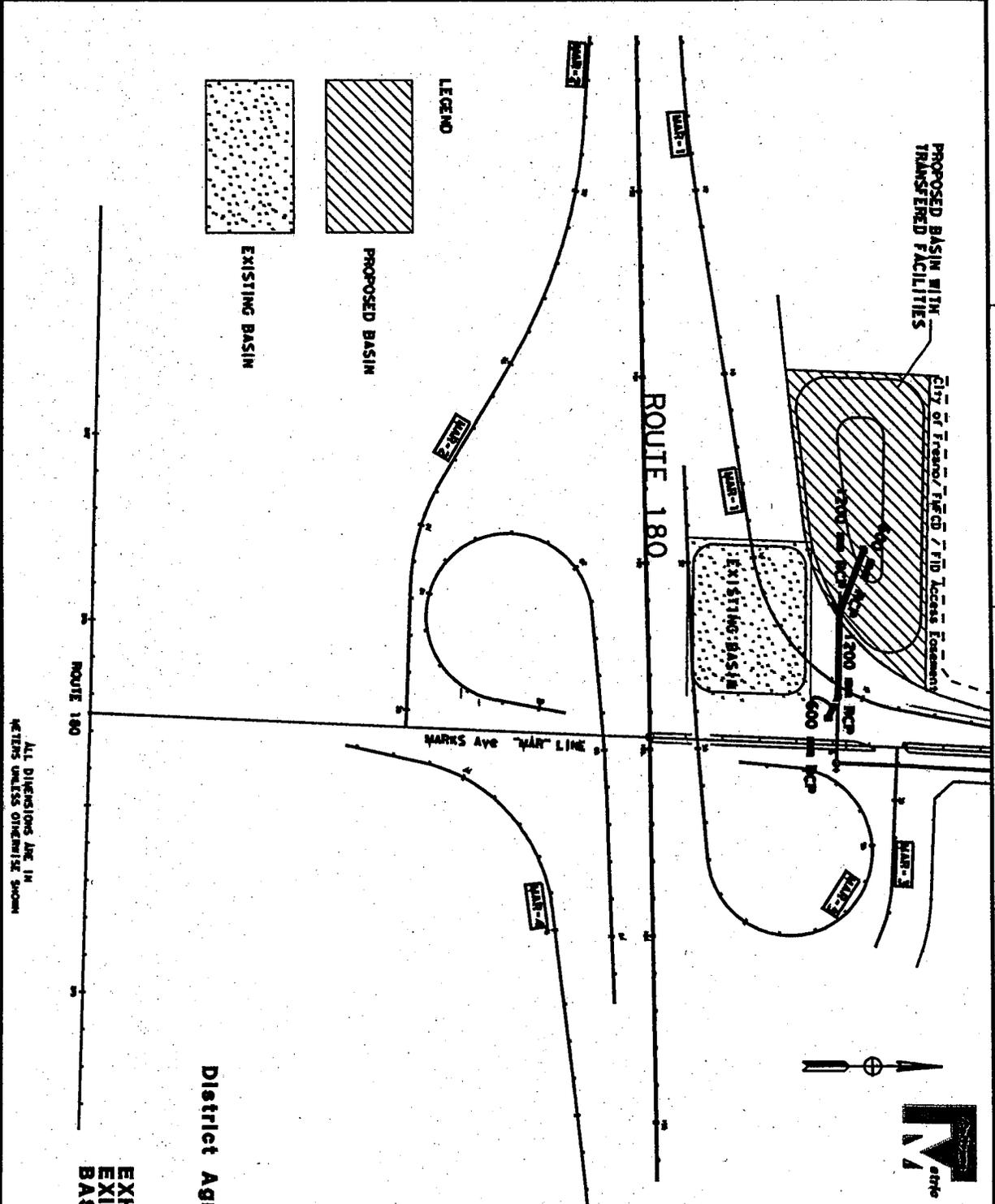
Mike.kim@ci.fresno.ca.us
(559) 621-8723, FAX (559) 488-1045

LIST OF AGREEMENT EXHIBITS

The following Exhibits, as listed below, are attached to and made a part of this Agreement.

EXHIBIT NO.	EXHIBIT DESCRIPTION
Exhibit A	Existing & Proposed Basin Locations
Exhibit B	Parcel and Access Easement

STATE OF CALIFORNIA - DEPARTMENT OF HIGHWAYS		PROJECT ENGINEER	CALCULATED/DESIGNED BY	DATE	REVISED BY				
PROJECT DEVELOPMENT		GARTH FERNANDEZ	CHECKED BY		DATE REVISED				



District Agreement No. 06-1307

**EXHIBIT A
EXISTING & PROPOSED
BASIN LOCATIONS**

2151	CONTRACT	ROUTE	180	SECTION	06-1307
06	F-6	180	SECTION	06-1307	

REGISTERED CIVIL ENGINEER

DATE

TO get to the Office and also go to the Map/Investigator

REGISTERED CIVIL ENGINEER

DATE

TO get to the Office and also go to the Map/Investigator



District Agreement No. 06-1307

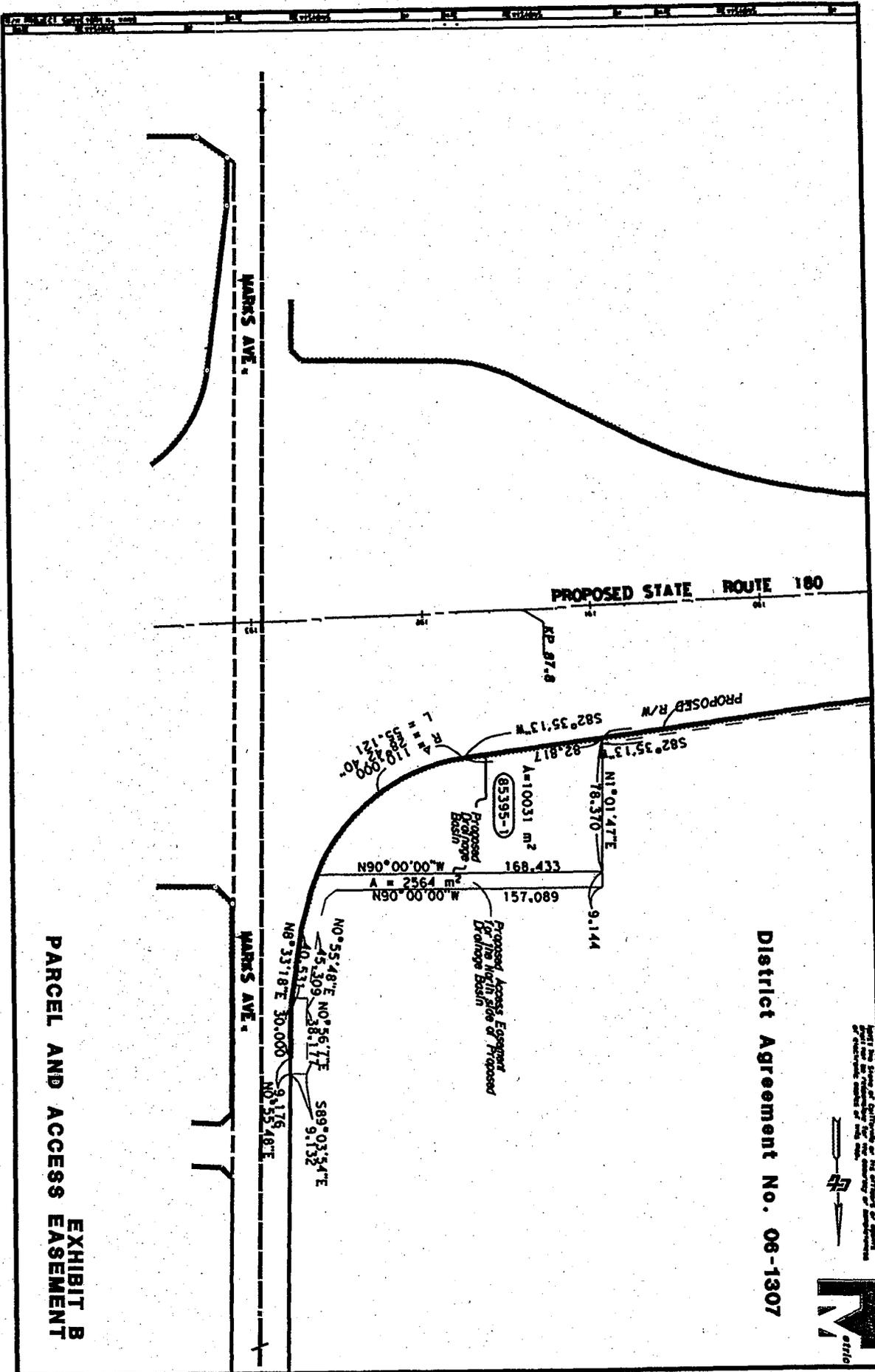


EXHIBIT B
PARCEL AND ACCESS EASEMENT