

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



601B

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
July 27, 2010

SUBJECT: Eagle Canyon Dam, Project No. 6-0-00190
Cooperative Agreement

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District and the City of Cathedral City, and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which Eagle Canyon Dam is to be constructed by the District.

FINANCIAL:

N/A

WARREN D. WILLIAMS
General Manager-Chief Engineer

JPS:bjj:rlp

FINANCIAL DATA	Current F.Y. District Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	\$ N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

BY:
Jerry Norris

FORM APPROVED COUNTY COUNSEL
BY: DATE

Dept Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District: 4th

Agenda Number:

11.1

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Eagle Canyon Dam
Project No. 6-0-00190

Cooperative Agreement

SUBMITTAL DATE: July 27, 2010
Page 2

BACKGROUND (continued):

The District is funding all construction and construction inspection costs. Upon completion of project construction, the District will assume ownership, operation and maintenance of the dam, and associated debris basin.

The City is funding the environmental cleanup of the project site. The City is also providing no cost temporary construction easements upon lands owned or controlled by the City

County Counsel has approved the Agreement as to legal form and the City has executed the Agreement.

JPS:blj:rip

COOPERATIVE AGREEMENT
EAGLE CANYON DAM
(Project No. 6-0-00190)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF CATHEDRAL CITY, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. DISTRICT and CITY have cooperatively planned and budgeted for the design and construction of the Eagle Canyon Dam and Debris Basin consisting of the following discrete segments:

1. "DAM", consisting of an earthen fill embankment, as shown in concept in red on Exhibit "A" attached hereto and made a part hereof, located westerly and southerly from the intersection of East Palm Canyon Drive and Perez Road;

2. "DEBRIS BASIN", as shown in concept in blue on Exhibit "A", located upstream from DAM;

3. "OUTLET CHANNEL", as shown in concept in green on Exhibit "A", located downstream from DAM;

4. "SPILLWAY STRUCTURE", as shown in concept in orange on Exhibit "A", located northwesterly from DAM;

5. Construction of certain access roads, fencing, v-ditch, riprap, erosion control, collector channel, perforated PVC pipes, laterals, hereinafter altogether called "APPURTENANCES";

DAM, DEBRIS BASIN, OUTLET CHANNEL, SPILLWAY STRUCTURE and APPURTENANCES are hereinafter altogether called "DISTRICT DRAINAGE FACILITIES" ;

and

1 B. Multiple geotechnical and environmental assessments of the proposed Dam site
2 have been performed by various consultants during the past twenty-five years. All such
3 assessments have concluded that the site has been historically used as an illegal dump site which
4 will require an environmental cleanup.

5 C. CITY desires DISTRICT to include as part of its construction public works
6 contract for DISTRICT DRAINAGE FACILITIES the surface and underground environmental
7 cleanup which includes but is not limited to: (i) material excavation; (ii) material hauling; (iii)
8 material removal and proper disposal of non-natural waste materials such as broken concrete,
9 asphalt, glass, lumber, tires, cables, hoses, trash, demolition debris, refuse, unsuitable soil, or soil
10 co-mingled with refuse so as to render it unsuitable for use as embankment fill; and (iv)
11 excavation, hauling, removal and proper disposal of any hazardous material of uncertain
12 composition and quantity, as defined in the DISTRICT'S specifications and contract documents
13 for DISTRICT DRAINAGE FACILITIES, altogether hereinafter called "ENVIRONMENTAL
14 CLEANUP", shown as the yellow area on Exhibit "A", provided CITY (i) deposits with
15 DISTRICT at the time DISTRICT opens bids for the construction of DISTRICT DRAINAGE
16 FACILITIES, based upon bid prices, the full costs of ENVIRONMENTAL CLEANUP, which is
17 estimated to be one million five hundred thousand dollars (\$1,500,00.00), (ii) provides
18 DISTRICT at no cost with necessary temporary construction easements for DISTRICT
19 DRAINAGE FACILITIES within those lands owned or controlled by CITY, as shown in
20 concept cross hatched in red in Exhibit "B", attached hereto and made a part hereof, (iii) grants
21 DISTRICT where necessary the right to operate and maintain DISTRICT DRAINAGE
22 FACILITIES within CITY owned or controlled lands, and (iv) pays DISTRICT the actual total
23 costs of completing ENVIRONMENTAL CLEANUP in the event such costs exceed CITY'S
24 initial deposit for such work; and
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1 D. DISTRICT DRAINAGE FACILITIES are shown in detail on District Drawing
2 No. 6-358. DISTRICT DRAINAGE FACILITIES and ENVIRONMENTAL CLEANUP are
3 hereinafter together called "PROJECT"; and

4 E. DISTRICT is willing to (i) prepare or cause to be prepared plans and
5 specifications for PROJECT, hereinafter called "IMPROVEMENT PLANS", (ii) secure all
6 permits, including environmental permits, for ENVIRONMENTAL CLEANUP and for
7 construction, operation and maintenance of DISTRICT DRAINAGE FACILITIES, (iii) acquire
8 all rights of way and temporary construction easements required for PROJECT, except those
9 temporary construction easements that can be provided by CITY, (iv) establish an account for
10 ENVIRONMENTAL CLEANUP of PROJECT site wherein CITY will deposit, based upon bid
11 prices, the actual costs of ENVIRONMENTAL CLEANUP, which is estimated to be one million
12 five hundred thousand dollars (\$1,500,00.00), (v) advertise, award and administer a public works
13 contract for the construction of PROJECT, (vi) provide all construction surveys, materials testing
14 and construction inspection necessary for construction of PROJECT, and (vii) upon completion
15 of the construction of PROJECT, assume ownership and sole responsibility for the operation and
16 maintenance of DISTRICT DRAINAGE FACILITIES; and

17 F. CITY is willing to (i) deposit with DISTRICT at the time DISTRICT approves
18 the low bidder for construction of PROJECT, based upon bid prices for PROJECT, the actual
19 costs of ENVIRONMENTAL CLEANUP, which is estimated to be one million five hundred
20 thousand dollars (\$1,500,00.00), (ii) provide DISTRICT at no cost with necessary temporary
21 construction easements for PROJECT within those lands owned or controlled by CITY, and (iii)
22 grant DISTRICT where necessary the right to operate and maintain DISTRICT DRAINAGE
23 FACILITIES within CITY owned or controlled lands; and

24 G. It is in the public interest to proceed with the construction of PROJECT.

25 NOW, THEREFORE, the parties hereto mutually agree as follows:
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SECTION I

1 DISTRICT shall:

2 1. Prepare or cause to be prepared at its sole cost and expense,
3 IMPROVEMENT PLANS in accordance with DISTRICT standards.
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5 2. Prepare contract documents for PROJECT such that all items and costs
6 associated with ENVIRONMENTAL CLEANUP are clearly separated and identified.

7 3. Secure, at its sole cost and expense, all environmental and regulatory
8 permits necessary to execute ENVIRONMENTAL CLEANUP and to construct
9 PROJECT, including the applicable National Pollutant Discharge Elimination System
10 General Permit for Stormwater Discharges Associated With Construction Activity.
11

12 4. Acquire, at its sole cost and expense, those rights of way, as shown in
13 concept cross hatched in blue on Exhibit "B", and temporary construction easements
14 required to construct, operate and maintain DISTRICT DRAINAGE FACILITIES,
15 except for those temporary construction easements, as shown in concept cross hatched in
16 red on Exhibit "B", that can be provided by CITY at no cost to DISTRICT.
17

18 5. Establish an account for ENVIRONMENTAL CLEANUP wherein CITY
19 will deposit, based upon bid prices, the actual costs of ENVIRONMENTAL CLEANUP,
20 which is estimated to be one million five hundred thousand dollars (\$1,500,000.00).

21 6. Keep an accurate accounting of all costs associated with
22 ENVIRONMENTAL CLEANUP, and within forty-five (45) days after completion of
23 construction of PROJECT, submit a final cost statement to CITY. If at any time during
24 construction the scope of ENVIRONMENTAL CLEANUP changes, resulting in either
25 realized savings or requiring additional funds to complete the ENVIRONMENTAL
26 CLEANUP operation, DISTRICT shall respond accordingly by refunding to CITY an
27 amount equal to any realized savings or by invoicing CITY for such additional funds as
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1 deemed reasonably necessary by DISTRICT. If cost savings are realized during
2 ENVIRONMENTAL CLEANUP, DISTRICT shall refund to CITY the amount of such
3 cost savings within sixty (60) days after completion of construction of PROJECT. If
4 additional funds are deemed reasonably necessary by DISTRICT to complete
5 ENVIRONMENTAL CLEANUP, CITY shall pay such additional amount(s) within
6 thirty (30) days after receipt of billing from DISTRICT.

7 7. Upon DISTRICT approval of IMPROVEMENT PLANS, prepare the
8 necessary contract documents and solicit bids for PROJECT construction in accordance
9 with the provisions of the Public Contract Code at its sole cost and expense.

10 8. Construct PROJECT pursuant to a DISTRICT administered public works
11 contract and pay all costs associated with PROJECT'S construction, materials testing,
12 construction inspection and surveys, contract administration and all other PROJECT
13 costs except for those costs specifically agreed to by CITY as provided herein.

14 9. Upon DISTRICT'S acceptance of PROJECT construction as complete,
15 accept ownership and sole responsibility for the operation and maintenance of DISTRICT
16 DRAINAGE FACILITIES.
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18 SECTION II

19 CITY shall:

20 1. Provide DISTRICT at no cost with temporary construction easements as
21 needed upon lands owned or controlled by CITY.

22 2. Deposit with DISTRICT, at the time DISTRICT approves the low bidder
23 for construction of PROJECT, the actual costs associated with ENVIRONMENTAL
24 CLEANUP bid items.
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26 3. Pay DISTRICT within thirty (30) days of receipt of its invoice(s), for
27 additional ENVIRONMENTAL CLEANUP costs associated with change orders during
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1 the course of PROJECT construction which require additional funds in excess of the
2 deposit set forth in Section II.3.

3 4. By execution of this Agreement, grant DISTRICT all rights necessary to
4 construct, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY
5 owned or controlled lands.

6 SECTION III

7 It is further mutually agreed:

8 1. CITY personnel may observe and inspect all work being done on
9 ENVIRONMENTAL CLEANUP for PROJECT, but shall provide any comments to
10 DISTRICT personnel who shall be solely responsible for all communications with its
11 construction contractor(s).

12 2. Each party, as to any claim or liability arising out of any act or omission
13 with reference to any work to be performed by or authority delegated to such party as a
14 result of this Agreement, shall save, defend, indemnify and hold harmless the other party
15 and its officers and employees from all liability for death or injury to person, or damage
16 to property, or claim therefor. DISTRICT shall require its prime contractor to include
17 CITY as an additional insured under the liability insurance coverage required by
18 DISTRICT'S construction contract for PROJECT.

19 3. Any notices sent or required to be sent to either party shall be mailed to
20 the following addresses:

21 RIVERSIDE COUNTY FLOOD CONTROL
22 AND WATER CONSERVATION DISTRICT
23 1995 Market Street
24 Riverside, CA 92501

CITY OF CATHEDRAL CITY
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234
Attn: William O. Bayne

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4. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

5. This Agreement is to be construed in accordance with the laws of the State of California.

6. This Agreement is the result of negotiations between the parties hereto and with the advice and assistance of their respective counsel. No provision contained herein shall be construed against DISTRICT solely because, as a matter of convenience, it prepared this Agreement in final form.

7. Any waiver by DISTRICT or CITY of any breach by the other of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of DISTRICT or CITY to require from the other exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from enforcement hereof.

8. This Agreement is intended by the parties hereto as their final expression with respect to the matters herein, and is a complete and exclusive statement of the terms and conditions thereof. This Agreement shall not be changed or modified except by the written consent of both parties hereto.

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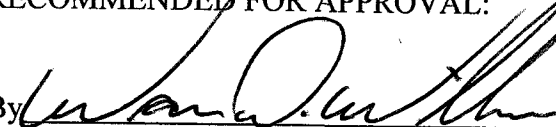
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by the Clerk of the Board)

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

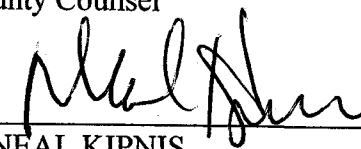
By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement:
Eagle Canyon Dam
Project No. 6-0-00190
JPS:rlp
8/12/09

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RECOMMENDED FOR APPROVAL:

CITY OF CATHEDRAL CITY

By W. O. Boyne
WILLIAM O. BAYNE
City Engineer

By Kathy DeRosa
KATHY DeROSA
Mayor

APPROVED AS TO FORM:

ATTEST

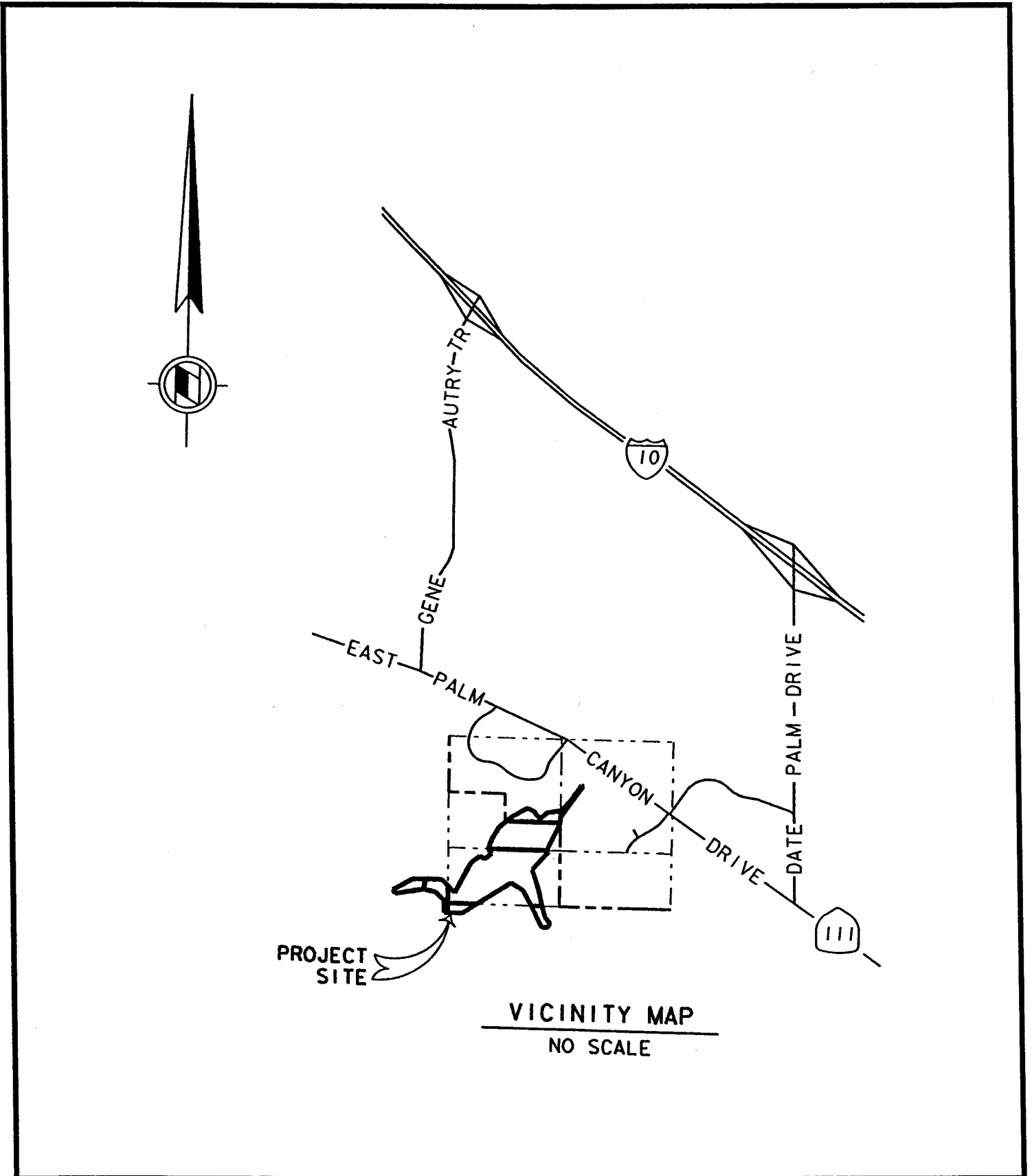
By Charles Green
CHARLES GREEN
City Attorney

By Pat Hammers
PAT HAMMERS
City Clerk

(SEAL)

Cooperative Agreement:
Eagle Canyon Dam
Project No. 6-0-00190
JPS:rlp
8/12/09

Exhibit A



Cooperative Agreement
Project No. 6-0-00190

Exhibit A

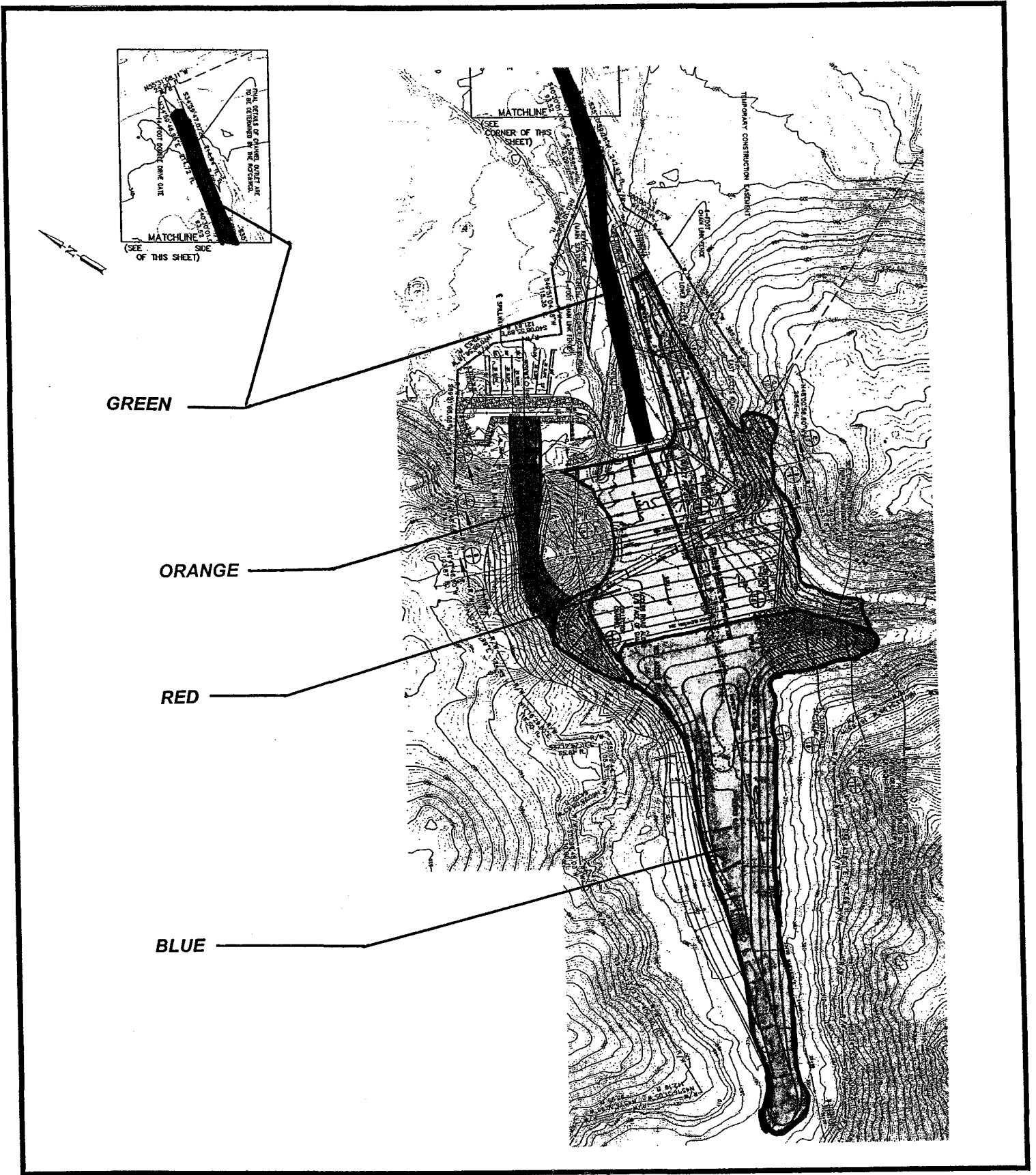
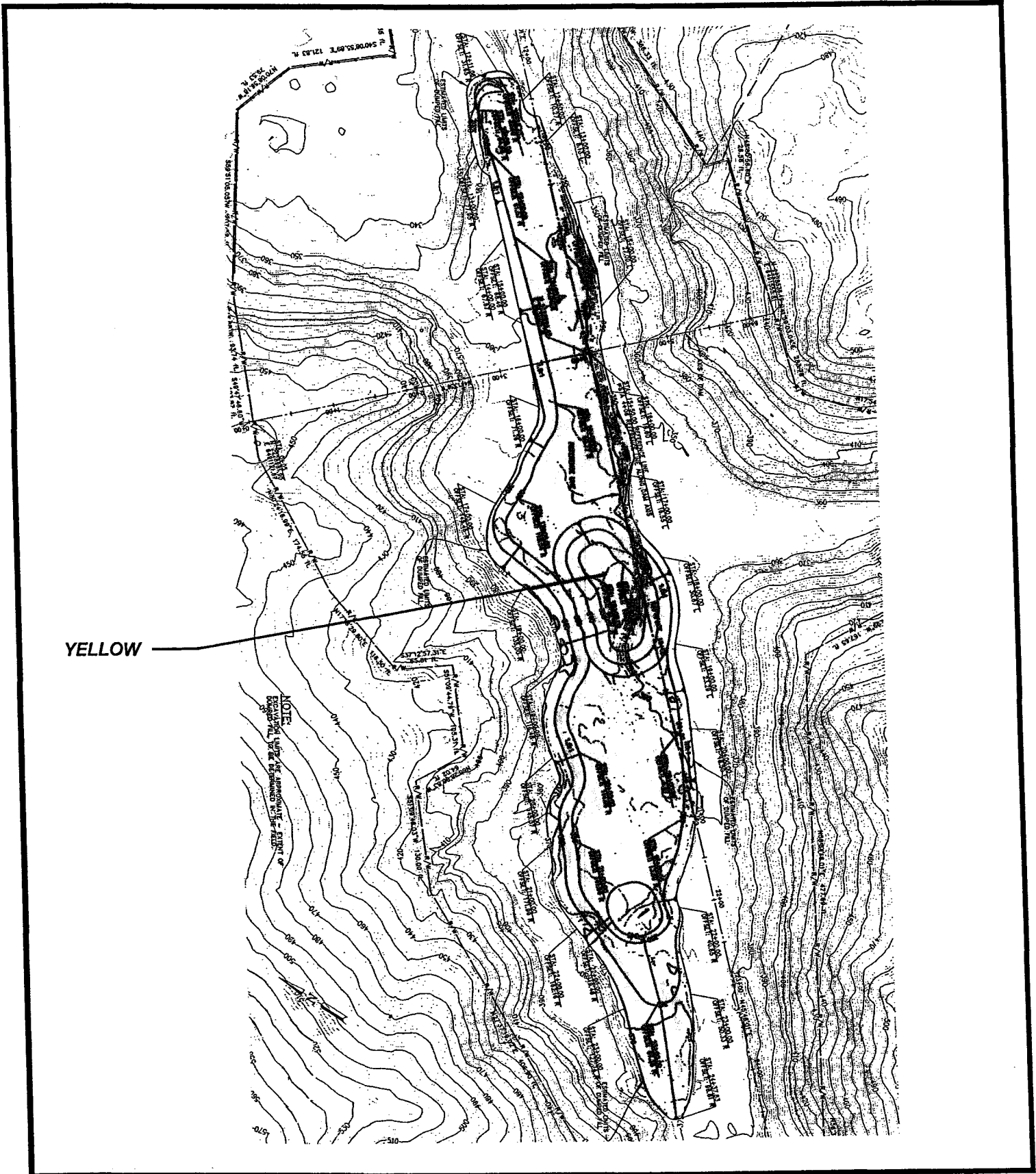
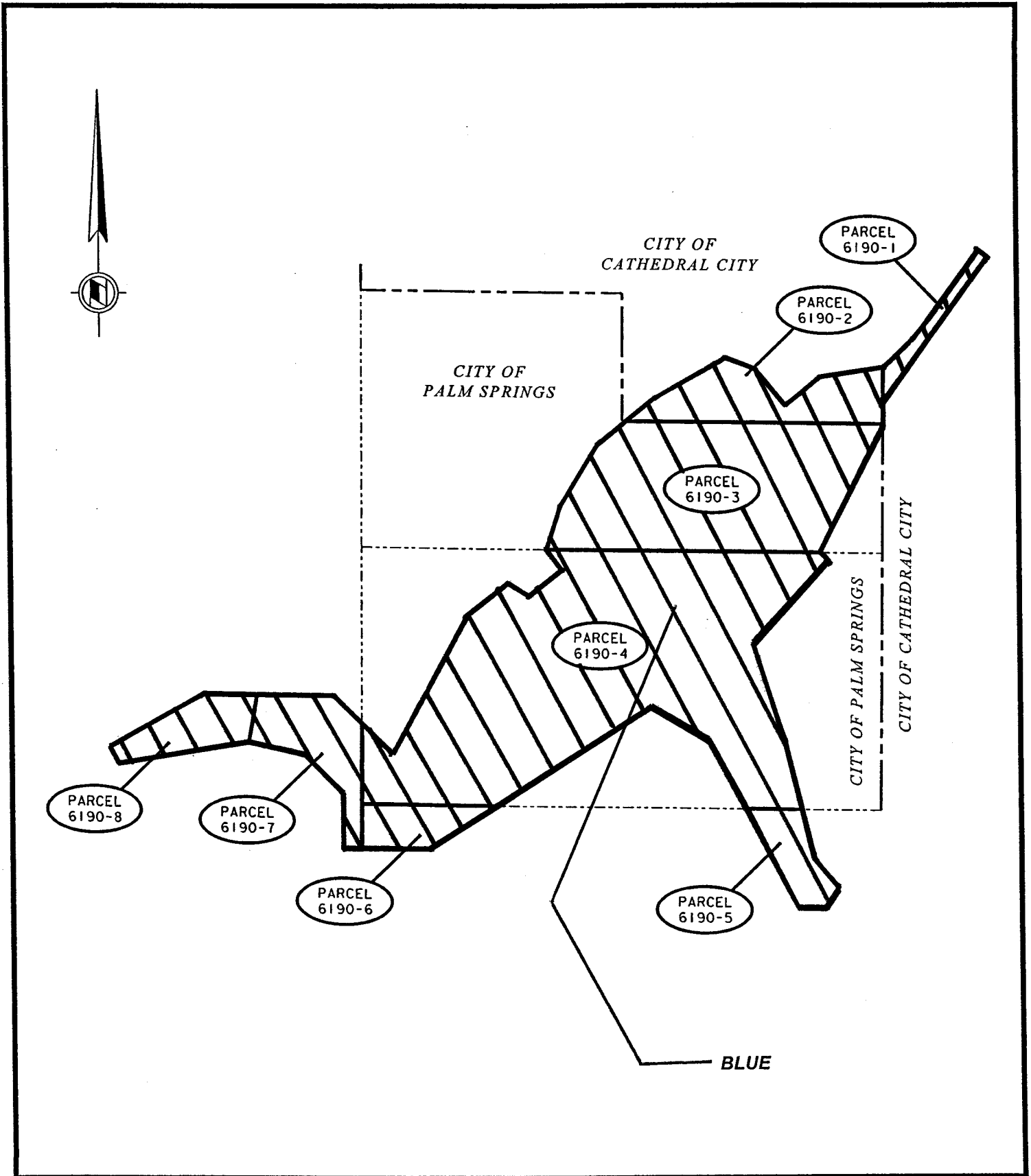


Exhibit A



Cooperative Agreement
Project No. 6-0-00190

Exhibit B



Cooperative Agreement

Project No. 6-0-00190

Exhibit B

