

DUPLICATE

AGREEMENT BETWEEN THE CITY OF SAN DIEGO
AND THE POWAY UNIFIED SCHOOL DISTRICT FOR
THE CONSTRUCTION, OPERATION, MAINTENANCE, AND
LEASE OF A MULTI-PURPOSE BUILDING AT
BLACK MOUNTAIN MIDDLE SCHOOL

THIS LEASE AGREEMENT is entered into between THE CITY OF SAN DIEGO, a municipal corporation (hereinafter referred to as CITY), and the POWAY UNIFIED SCHOOL DISTRICT OF SAN DIEGO COUNTY, CALIFORNIA, a political subdivision, in the State of California (hereinafter referred to as DISTRICT).

WITNESSETH

WHEREAS, the governing bodies of the City and the District are mutually interested in and concerned with the provision of adequate facilities and services for community recreation; and

WHEREAS, cities and school districts are authorized by Chapter 10 Part 7 of Division 1, Title 1 of the Education Code of the State of California (Section 10900 et. seq.) to organize, promote, and conduct a community recreation program and activities within or without their territorial limits; and

WHEREAS, said governing bodies are authorized by Government Code of the State of California, Chapter 5 (Section 6500 et. seq.) to enter into agreements with each other to promote the health and general welfare of the community and contribute to the attainment of education and recreation goals and objectives for children and adults within the community; and

WHEREAS, in the interest of providing the best public service, cooperation between the City and the District is necessary; and

WHEREAS, it is to the mutual benefit of City and District to contribute jointly to the establishment of adequate recreational facilities which can serve the needs of both the general public and District;

JUN 1 1950
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

NOW, THEREFORE, the City and the District agree as follows:

1. Term. District hereby grants to City a fifty (50)-year leasehold interest in the property hereinafter described, commencing on the date of execution hereof by District; provided, however, that if at any time during the fifty (50)-year period District should declare the property hereinafter described as no longer needed for school purposes and if District should propose to sell, lease or otherwise use the site in such a manner that facilities developed by City in the area hereinafter described would not be usable by City for recreation purposes, District shall so notify the City in writing and grant to City a two (2)-year option, commencing on the date of said notification, to purchase the hereinafter-described property at its fair market value exclusive of any value of improvements placed upon said property at City's expense. In the event of such notification, the Agreement shall terminate at the end of the two (2)-year option period or upon written notification by City that City does not intend to exercise its option. In the event City does not exercise its option to acquire the leased property, District agrees to reimburse City for the unamortized cost of the City-installed improvements. For the purpose of determining the unamortized cost, City and District agree that amortization shall be computed on a straight line basis over the fifty (50)-year term of the lease.

2. Property. The real property covered by this Agreement shall consist of a parcel more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein.

3. Consideration. Good, valuable, and adequate consideration exists in the mutual benefit enjoyed and the legal detriment incurred by City and District as a result of their entering into and fulfilling this Agreement.

4. Use of Property. The property herein described shall be used exclusively for the purpose of constructing and maintaining a multi-purpose building approximately 14,000 square feet in size in accord with plans and specifications approved by City and District in advance of construction, and for operation of public education and recreation programs and for no other purpose.

5. Joint Financial Participation. District will construct the Black Mountain Multi-Purpose Building, (herein referred to as "facility") on land provided by the District and leased to the City, with funds in the amount of NINE HUNDRED THOUSAND dollars (\$900,000) provided by City and THREE HUNDRED THOUSAND dollars (\$300,000) provided by District. District's funding may be adjusted by Board action upon determination of final cost.

6. District Responsibilities. District agrees to administer the design and construction of the facility in accordance with plans and specifications approved by District and City prior to the commencement of construction, and shall apply for and obtain all necessary permits and approvals for construction of facility as required including all utility and telephone hookups associated with the facility.

7. City Responsibilities. City agrees to pay the District an amount not to exceed NINE HUNDRED THOUSAND dollars (\$900,000) for construction of facility. City will remit payment to the District upon receipt of an invoice, from District to City, for all costs of design, construction, furnishings, equipment, inspection and reasonable contingencies as may be required. Upon completion of construction, excess funds, if any, shall be

returned to City as mutually agreed between City and District, and in proportion to the amounts indicated in paragraph 5.

8. Ownership and Grant of Joint Use. The fee ownership of the land underlying the facility shall at all times be retained by the District. City shall have only those rights herein provided by lease hereof by the District to the City. Ownership of the facility shall at all times belong to and be retained by the City. The City will make available to the District the use of the facility in accordance with the schedules indicated in paragraph 9 herein. District will make available to City those parking areas on District property adjacent to facility during City's primary use hours.

9. Scheduling of Use. Schedules shall be established by designated representatives of the Superintendent of the District and the City Manager of the City and may include members of community groups such as the Penasquitos Recreation Council. These schedules shall be established on an annual basis and reviewed on a quarterly basis for said use of joint facility. The following schedule shall govern the use of said facility by the District and the City:

Poway Unified School District Primary Use Hours

1. 7:30 a.m. to 5:00 p.m. Monday through Friday
Approximately September 1 - June 15 as determined by the annual school calendar as adopted by the Board.

City of San Diego Primary Use Hours

1. 5:00 p.m. to 10:00 p.m., Monday through Friday
Approximately September 1 - June 15 as determined by the annual school calendar as adopted by the Board.
2. 8:00 a.m. to 10:00 p.m. on days when school is not in session
(i.e. weekends, holidays, vacation, etc.)

The District and the City shall coordinate the scheduling of the joint use facility to ensure that the facility is used to its maximum capacity, including adjustments of up to twenty (20) days in scheduling time of use during the primary use hours of each entity.

10. Equipment and Improvements. The initial facility shall be equipped with common equipment such as clocks, trash cans, bulletin boards, nets, etc. Common equipment will be shared jointly, and stored in the facility. The replacement, maintenance and repair of common equipment will be accomplished jointly by the District and City under a separate agreement which will specify all common equipment. The City and the District shall provide, maintain, and replace any specialized equipment required for their respective programs. The City and District may, through scheduling procedures, utilize existing District-owned gymnastic equipment.

Either party may install equipment and improvements at the facility, subject to the mutual agreement of the City and the District. Any installation of equipment or improvements by the City shall be at the City's cost and meet standards established in the California Education and Administrative Code. Any installation of equipment or improvements by the District shall be at the District's cost. Title to such equipment or improvements shall remain in the entity owning said equipment.

11. Maintenance. The District shall maintain the facility and the surrounding grounds and landscaping with the following exceptions:

1. In the first year, while the facility is under guarantee, the District shall administer any said guarantee items.

2. Major facility maintenance and equipment replacement cost items such as re-roofing, air conditioning/heating system replacement, floor

replacement, etc., shall be shared by the City and District on an equal cost basis.

3. Standards of maintenance and repair shall be mutually established and incorporated in a separate agreement specific to maintenance subject to the provisions set forth in Section 13 of this agreement entitled, "Supplemental Agreement." The separate agreement is to be developed and adopted prior to filing of the notice of completion for the construction of the project.

12. Utilities. All gas, sewer, and water expenses associated with operating the facility shall be shared by the City and the District on an equal basis. Electrical usage for the multi-purpose building will be metered separately and costs to be shared equally or as determined necessary based upon consumption of each entity. The District shall pay monthly utility costs and City shall reimburse District annually for their share of the previous 12 months of utility expenses. Telephone costs will be paid by the City.

13. Security. The District will provide for all security expenses and issuance of keys to the facility. The intent shall be to limit the number of keys issued to both City and District personnel, and a list shall be maintained specifying persons to whom keys have been issued.

14. Custodial Services. The District shall provide custodial and general cleanup services subject to the provisions set forth in Section 23 of this Agreement entitled, "Supplemental Agreement." Mutually agreeable standards for services will be developed and adopted prior to the filing of the notice of completion for the construction of the project.

15. Facility Use Charges, Etc. The facility shall be made available to the District and City free of charge. Admission fees may be charged by

either party for events and programs, but only in an amount to cover the expenses incurred by the party for the conduct of the events and programs, including the salary of instructors. All monies so charged and collected shall be and remain the sole property of the collecting party.

7 The District and the City shall mutually establish any fees and insurance requirements they deem reasonable for use of the facilities by anyone other than for District/City sponsored events and programs.

The City and District shall coordinate the use of the concession area which use shall be limited to major City or District events.

16. Education Code Limitations. In the use of the facility subject to this Agreement, City agrees to comply with all of the requirements of the Education Code of the State of California setting forth the limitations, requirements and restrictions on the use of school facilities.

17. Employment Relationships and Obligations. For the purposes of this Agreement, all persons employed in the performance of services and functions for City shall be deemed City employees and no City employee shall be considered as an employee of the District or under jurisdiction of the District, nor shall such City employees have any District pension, civil service, or other status while an employee of the City. The District shall not be responsible for the payment of any salary, wage or other compensation to any City personnel performing services hereunder for City. The City shall not be liable for compensation or indemnity to any District employee for injury or sickness or wages arising out of his/her employment with District. For purposes of this agreement, all persons employed in the performance of services and functions for District shall be deemed District employees and no employees have any City pension, civil service, or other status while an employee of the District. The City shall not be responsible

for the payment of any salary, wage or other compensation to any District personnel performing services hereunder for District. District shall not be liable for compensation or indemnity to any City employee for injury or sickness or wages arising out of his/her employment with City.

13. Indemnity and Hold Harmless. The District shall indemnify, defend, and hold harmless the City, members of the City Council, Boards or Commissions, its employees, officers and agents, from any and all loss, damage or expense which may arise by reason of injury to property or injury to or death of persons, received or suffered by reason of any defective or dangerous condition of any ground, site, building, equipment, play areas, recreation facilities or other improvements located upon or within the facility, regardless of the sponsorship of the event at which such injury or damage occurs.

The District shall indemnify, defend, and hold harmless the City, members of the City Council, Boards or Commissions, its employees, officers and agents, from any and all loss, damage, or expense which may arise by reason of injury to property or injury to or death of persons, received or suffered by reason of any use of the facility other than events or programs sponsored solely by the City or jointly by the District and the City.

The City shall indemnify, defend, and hold harmless the District, members of the Board of Trustees, its employees, officers and agents, from any and all loss, damage or expense which may arise by reason of injury to property or injury to or death of persons, received or suffered by reason of any use of the facility sponsored by the City.

In the event the District and City jointly sponsor any event or program, neither shall be obligated to defend, indemnify, or hold harmless the other from any loss, damage, or expense which may arise by reason of

injury to property or injury to or death of persons received or suffered at such event or program, provided, however, that the City and District shall be liable to each other proportionately for any liability established as a result of any joint or concurrent negligence.

19. Insurance. During the term of this agreement, each party shall obtain and maintain in full force and effect the following insurance coverage:

A. Worker's Compensation Insurance. Full worker's compensation insurance shall be provided that is necessary in connection with the performance of this Agreement to protect itself and its employees under the Worker's Compensation Act.

B. Liability Insurance. Each party hereto shall carry property damage and public liability insurance or self insurance that covers the areas and activities set forth in this Agreement. The property damage and public liability insurance or self insurance shall include all areas and activities set forth in this Agreement under their insurance program. Each party shall be added as insured to the respective policies.

C. Certificate of Insurance. Each party shall deliver within fifteen (15) days of the demand by the other party, certificates of insurance or self insurance which shall provide that no cancellation, major change in coverage, or nonrenewal will be made during the term of this Agreement, without thirty (30) days written notice to the other party prior to the effective date of such cancellation or, change in coverage.

20. Term. The term of this Agreement shall be fifty (50) years unless the parties mutually agree to extensions or cancellation.

21. Amendment. The provisions of this Agreement may be amended or modified only by mutual consent and written agreement of the respective parties, as permitted by law.

22. Dispute Resolution. In the event of any dispute or difference arising from this Agreement or from the use or proposed use of the facility, then, in this event, said dispute or difference shall be settled and arbitrated jointly by the City Manager and Superintendent. In the event that the dispute cannot be resolved the City Manager and Superintendent may agree to a procedure for arbitration whereby each party will select an arbitrator of their choice and the two arbitrators so selected shall then select a third arbitrator. The decision for resolution of the dispute shall be made by at least two of the three arbitrators selected.

23. Supplemental Agreement. The City and District may enter into? supplemental agreements to provide more specific detail regarding the operation and maintenance of the facility. If there is any conflict between the supplemental agreement and this Agreement, relative to operation and maintenance of the facility only, the supplemental agreement(s) shall govern.

24. Binding Effect. This Agreement shall insure to the benefit of and shall be binding upon the City and the District and their respective successors and assigns.

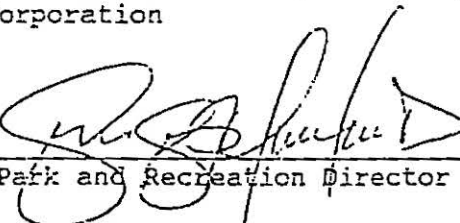
25. Nondiscrimination. District, City, and all others who from time to time may use the property and recreational facilities described herein with the permission and on the terms and conditions specified by both parties shall not discriminate in any manner against any person or persons on account of race, color, sex, creed, or national origin including, but not

limited to, the providing of goods, services, facilities, privileges, advantages, and the holding and obtaining of employment.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its City Manager pursuant to Resolution No. ^{Ordinance 15-} 0-17475 N.S. authorizing such execution and by the Poway Unified School District of San Diego County, California, acting by and through its Superintendent pursuant to a Resolution of its Board of Education this _____ day of _____, 1989. JUN 11 1990

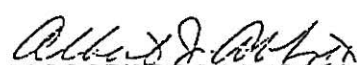
THE CITY OF SAN DIEGO, a Municipal Corporation

By


Park and Recreation Director

POWAY UNIFIED SCHOOL DISTRICT OF
SAN DIEGO COUNTY, CALIFORNIA

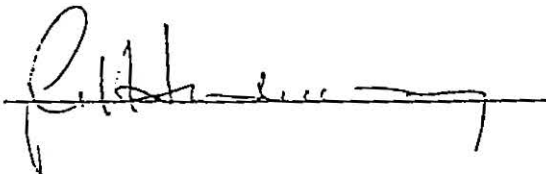
By

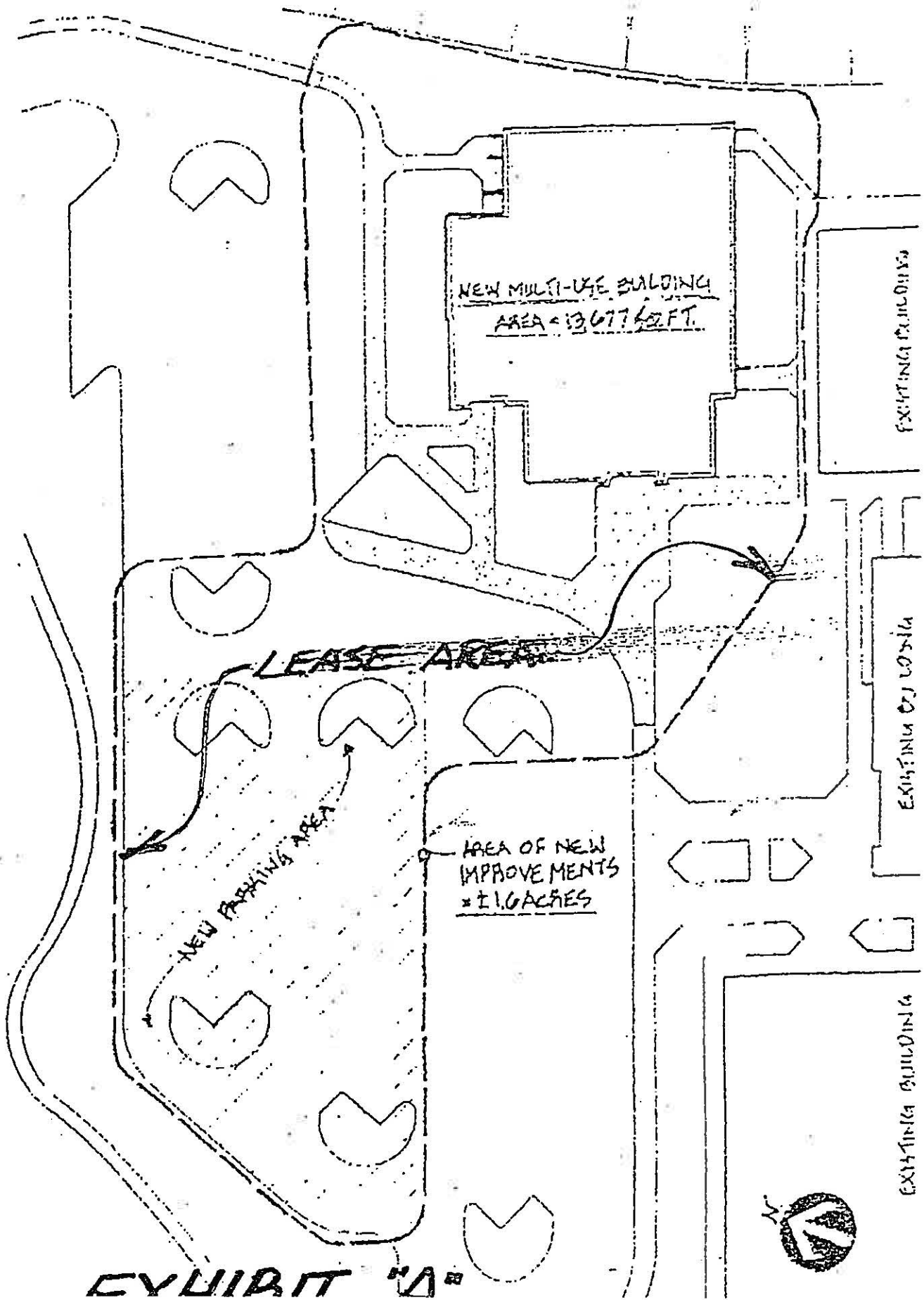
 679-2511
Albert J. Abbott, Assistant
Superintendent Business Services

I HEREBY APPROVE the form and legality of the foregoing Agreement this 21 day of June, 1989.

JOHN W. WITT, Attorney

By





NEW MULTI-USE BUILDING
AREA = 13,677 SQ. FT.

EXISTING BUILDING

EXISTING BUILDING

EXISTING BUILDING

LEASE AREA

NEW PARKING AREA

AREA OF NEW
IMPROVEMENTS
≈ 1.6 ACRES

EXHIBIT "A"



passed and adopted by the Council of The City of San Diego on June 11, 1990
by the following vote:

AS: Roberts, Hartley, Pratt, Bernhardt, Henderson, McCarty, Filner,

- O'Connor.

AYS: None.

NOT PRESENT: Wolfsheimer.

AUTHENTICATED BY:

MAURICE O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

(Seal)

City Clerk of The City of San Diego, California

By ELLEN BOVARD, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy
of ORDINANCE NO. O-17475 (New Series) of the City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar
days had elapsed between the day of its introduction and the day of its final
passage, to wit, on May 21, 1990, and on June 11, 1990

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with
by a vote of not less than a majority of the members elected to the Council, and
that there was available for the consideration of each member of the Council and
the public prior to the day of its passage a written or printed copy of said
ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By Ellen Bovard, Deputy

(Seal)

(O-90-176)

ORDINANCE NUMBER O-17475

(NEW SERIES)

ADOPTED ON JUN 11 1990

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

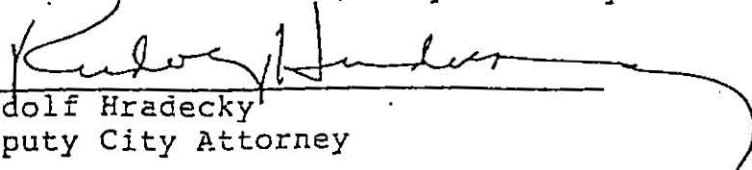
Section 1. The City Manager be and he is hereby authorized and empowered to execute, for and on behalf of the City, a fifty (50) year lease agreement with the Poway Unified School District of San Diego County for the lease, development, maintenance and operation of a multi-purpose community building at Black Mountain Middle School, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. JO-17475, together with any other reasonably necessary modifications or amendments thereto which do not increase project scope or cost which the City Manager shall deem necessary from time to time to carry out the purposes and intent of this project.

Section 2. The City Auditor and Comptroller is authorized to make payments in accordance with CIP No. 29-712, FBA Fund No. 79004, and the proposed amendment as funds become available.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Rudolf Hradecky
Deputy City Attorney

RH:mb
05/01/90
Aud.Cert:9000906
Or.Dept:Pk.&Rec.
O-90-176
Form=o.none