

*now called  
North Park Elem.*

LEASE AGREEMENT FOR  
GARFIELD ELEMENTARY SCHOOL ANNEX  
AND NORTH PARK COMMUNITY PARK

THIS LEASE AGREEMENT is entered into between THE CITY OF SAN DIEGO, a municipal corporation (hereinafter "CITY"), and the SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district and political subdivision of the State of California (hereinafter "DISTRICT").

RECITALS

WHEREAS, it is to the mutual benefit of CITY and DISTRICT to contribute jointly to the establishment of recreational facilities to serve the needs of both the DISTRICT and general public; and

WHEREAS, CITY is the owner of approximately an 8.42 acre parcel of land which is to be used by CITY for park purposes, and DISTRICT is the owner of approximately a contiguous .90 acre parcel which is to be used by DISTRICT for an elementary school, herein known as Garfield Annex; and

WHEREAS, CITY desires to provide approximately 2.63 acres of its property for a turf athletic fields, multi-use hardcourts and a portion of the kindergarten play area, and DISTRICT desires to provide approximately .24 acres of its property for a portion of the kindergarten play area, outdoor amphitheater and outdoor lunch area.

WHEREAS, CITY is agreeable to making its turf athletic fields, multi-use hardcourts, and playground available to DISTRICT for DISTRICT educational and recreational uses during school hours, and DISTRICT is agreeable to making its kindergarten play area, outdoor amphitheater and outdoor lunch area available for CITY recreational uses during nonschool hours.

NOW, THEREFORE, IT IS MUTUALLY AGREED BY THE PARTIES AS FOLLOWS:

1. Lease by City. CITY hereby leases to DISTRICT said above identified approximate 2.63 acre parcel, as more particularly described in Exhibit "A" attached hereto and made a part hereof, for a term of twenty-five (25) years commencing upon execution of this Lease Agreement by CITY; provided that if during said lease period CITY elects to sell or otherwise dispose of said property CITY shall provide DISTRICT written notice of such election. DISTRICT shall have the exclusive right during a two year period following the giving of such notice to purchase said property at its fair market value.

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FILED JUN 09 1997  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

2. Lease by District. DISTRICT hereby leases to CITY said above identified approximate .24 acre parcel, as more particularly described in Exhibit "A" attached hereto and made a part hereof, for a term of twenty-five (25) years commencing upon execution of this Lease Agreement by DISTRICT; provided that if during said lease period DISTRICT elects to sell or otherwise dispose of said property DISTRICT shall provide CITY written notice of such election. CITY shall have the exclusive right during a two year period following the giving of such notice to purchase said property at its fair market value.

3. Termination. If DISTRICT or CITY gives written notice of election to sell or otherwise dispose of their respective properties, as specified in paragraphs 1 and 2 above, this Lease Agreement shall terminate at the end of the two (2) year period following the giving of such notice, or upon the date that the party receiving such notice responds in writing that it does not intend to acquire the property.

4. 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.

5. Use of Property. The property herein described shall be used for the purpose of constructing and maintaining recreational facilities in accordance with plans and specifications approved by CITY and DISTRICT in advance of construction and for operation of public education and recreation programs. DISTRICT may, with CITY'S approval, place, or permit to be placed upon the DISTRICT'S leased area to the CITY, portable buildings, structures, equipment, and apparatus upon thirty (30) days written notification to the CITY. The placement of such items may be for the operation of public education programs or nonprofit child care facilities. In such an event, DISTRICT shall, at DISTRICT'S expense, make any necessary modifications to the irrigation system and other improvements installed at DISTRICT'S expense and at the completion of such use shall restore the improvements installed at DISTRICT'S expense to their original condition or to a condition satisfactory to the CITY.

6. City Use of Property. CITY shall have exclusive use of all outdoor facilities located upon the CITY and DISTRICT properties (hereinafter referred to as the "joint-use area") which are the subject of this Lease Agreement from thirty (30) minutes after the end of the school day until thirty (30) minutes before the beginning of the school day Monday through Friday on days that school is in session based on a traditional nine-month or single track year-round school year. CITY shall also have such exclusive use on holidays, weekends, and other days when school is not in session.

7. District Use of Property. DISTRICT shall have exclusive use of the joint-use area on CITY and DISTRICT properties from thirty (30) minutes before the beginning of the school day until thirty (30) minutes after the end of the school day Monday through Friday on days that school is in session based on a traditional nine-month or single track year-round school year. CITY shall have the right of entry for maintenance purposes during school hours upon such terms as are agreed upon by the parties.

**8. District Responsibilities.** DISTRICT shall, at DISTRICT'S sole cost and expense, be responsible for the following:

- a. Construct or cause to be constructed on DISTRICT and CITY property, recreational playground facilities which may include, but not be limited to, outdoor amphitheater, outdoor lunch area, kindergarten play area, art gates, multi-purpose hardscape between recreation center and school property, playground equipment, security lighting, underground electrical service lines and systems, drainage and street improvements, as required, and landscaping in accordance with plans and specifications approved by CITY and DISTRICT prior to the commencement of construction. DISTRICT shall be responsible for contracting with landscape architects, engineers and other professional consultants for the design of the aforementioned facilities. All such construction work on DISTRICT property shall be accomplished by DISTRICT employees or by DISTRICT'S contracting agents directly under control of DISTRICT. All construction shall meet the requirements and standards of CITY and DISTRICT who shall review and approve the plans.
- b. The cost of maintenance of turfed field in the joint-use area on CITY property which will be irrigated and maintained in accordance with standards mutually acceptable to CITY and DISTRICT. Maintenance includes mowing, fertilizing, pest control and equipment as appropriate. Payment by the DISTRICT will commence at the initiation of use of the fields by the school.
- c. One-half the cost of water for irrigating turfed fields in the joint-use area on CITY property.
- d. Maintenance of all joint-use areas on DISTRICT and CITY properties including kindergarten play area, outdoor amphitheater, outdoor lunch court, graphics on paving, trees, tree grates and associated irrigation, fencing, and walls to standards mutually acceptable to CITY and DISTRICT.
- e. The cost of electrical utilities for facilities in the joint-use area on DISTRICT property at all times.
- f. Litter collection and removal in the entire joint-use area during those hours when the school is using the facilities in the joint-use area.
- g. Maintenance of multi-use hardcourts on CITY property, including repaving and restriping, as necessary.
- h. Maintenance of the playground on CITY property including repair and replacement of equipment and resilient surfacing, as necessary.

9. City Responsibilities. CITY shall, at CITY'S sole cost and expense, be responsible for the following:

- a. Payment of \$470,000 to the DISTRICT as contribution toward the cost of the joint-use land area on DISTRICT property and related improvements on DISTRICT and CITY property. Payment shall be made after bid and award of the construction contract.
- b. Litter collection and removal in the entire joint-use area during those hours those facilities are not utilized by the school.
- c. One-half the cost of water for irrigation of the turfed fields in the joint-use area.
- d. The cost of electrical utilities for facilities in the joint-use area on CITY property at all times.

10. Joint Review. CITY and DISTRICT shall meet annually prior to January 1 of each year to review the joint-use of the leased premises. As a result of this review, the use schedule as identified in this Agreement may be revised upon the mutual consent of both CITY and DISTRICT. Said changes, when made, shall then become a part of this Agreement.

11. Commencement of Work. Should work not commence on the site described herein within three (3) years from the execution date of this Agreement, subject Agreement shall be voidable for all or separate parcels as mutually agreed by CITY and DISTRICT. Such date of commencement of work on the subject site shall be mutually agreed upon by CITY and DISTRICT. Upon completion of such work by DISTRICT, DISTRICT shall furnish CITY with complete "as-built" drawings.

12. Improvements. No improvements within the joint-use area shall be installed by CITY or DISTRICT nor shall construction on said improvements begin until plans and specifications for said improvements are reviewed, approved, and signed by both parties.

13. Quiet Possession. CITY and DISTRICT, subject to performing the covenants and agreements herein, shall at all times during the term of the Agreement peaceably and quietly have, hold, and enjoy the said property for the term aforesaid.

14. Entry and Inspection. CITY and DISTRICT reserves, and shall always have the right, to enter upon their respective real properties for the purpose of viewing and ascertaining the condition thereof.

15. Assignment. DISTRICT shall not assign this Agreement or any interest herein without the prior written consent of CITY and CITY shall not assign this Agreement or any interest herein without prior written consent of DISTRICT. Any such assignment without such consent shall be void.

16. Equal Opportunity Compliance. CITY and DISTRICT agrees to monitor any and all contractors, subcontractors, independent contractors and employees for compliance with Equal Opportunity and non-discrimination requirements and to hold each other harmless from any and all liability, claims, damages, or injuries to any person in connection with any acts or omissions rising therefrom. Compliance for construction on CITY property will be in accordance with CITY policies.

17. Compliance with Law. At their sole cost and expense CITY and DISTRICT shall comply, and shall secure compliance by persons within their respective control and authority, with all the requirements of state and federal authorities now in force, or which may hereafter be in force, pertaining to the said premises or the operations conducted thereon: and shall faithfully observe and secure observance of all state and federal statutes now in force or which may hereafter be in force, in the use of said premises by persons within their respective control and authority.

18. Assigns. Time is of the essence of each and all of the terms and provisions of this Agreements, and this Agreement shall inure to the benefit of and be binding upon the parties hereto and any successors thereof as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations, and agreements in the Agreement shall extend to and bind any successor(s) of the parties.

19. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition of this Agreement.

20. Administration of Agreement: Notices. Control and administration of this Agreement is under the jurisdiction of the Superintendent as to DISTRICT'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this Agreement or by law required to be given or served upon DISTRICT may be given or served by certified letter deposited in the United States mails, postage prepaid, and addressed to the San Diego Unified School District at 4100 Normal Street, San Diego, California 92103-2682, Attention: Superintendent, or may be personally served upon DISTRICT or any person hereafter authorized by DISTRICT to receive such notice. Any notice or notices provided for by this Agreement or by law to be given or served upon CITY may be given or served by depositing in the United States mails, postage prepaid, a certified letter addressed to the City Manager, City Administration Building, 202 C Street, M.S. 9A, San Diego, California 92101. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal services, or 48 hours after mailing in the manner required herein.

21. Remedies. In the event that either party shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by that party and shall fail to cure said default within one hundred twenty (120) days following the service on the defaulting party of a written notice from the second party specifying the default complained of, then the second party may, at its option, without further notice or demand upon the defaulting party or upon any person claiming through the defaulting party, immediately terminate this agreement and all rights of the defaulting party and of all persons claiming rights through the defaulting party. Notwithstanding the above provisions, in the event that any default cannot be cured within one hundred twenty (120) days after the service of written notice upon the defaulting party, the second party shall not terminate this Agreement pursuant to said default if the defaulting party immediately commences to cure said fault and diligently pursues such cure to completion.

22. Indemnity. CITY agrees to indemnify and save DISTRICT, its agents and employees harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of CITY, its agents or employees in connection with the performance of this agreement and the use of the subject parcels. DISTRICT agrees to indemnify and save CITY, its agents and employees harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of DISTRICT, its agents or employees in connection with the performance of this agreement and the use of the subject parcels.

23. Legal Proceedings. The parties agree that the law of the State of California shall be used in interpreting this Agreement and will govern all disputes under this Agreement and will determine all rights thereunder.

24. Verbal Agreements. This agreement contains the complete expression of the whole agreement between the parties hereto and there are no promises, representations, agreements, warranties, or inducements either expressed verbally or implied except as are fully set forth herein. This Agreement cannot be enlarged, modified, or changed in any respect except by written agreement between the said parties.

25. Severance. If any part of the Agreement contained herein is found by a court of competent jurisdiction to be void or voidable, that portion which is so held to be defective shall be severed from the remainder hereof, the latter to remain in full force and effect.

26. Amendment or Renewal. This Agreement may be amended or renewed in writing by mutual consent of DISTRICT and CITY as permitted by law.

27. 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, 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 Ordinance No. **0-18412** authorizing such execution, and by the San Diego Unified School District of San Diego County, California, acting by and through its Superintendent or her designee pursuant to a Resolution of its Board of Education.

THE CITY OF SAN DIEGO,  
a Municipal Corporation

SAN DIEGO UNIFIED SCHOOL DISTRICT,  
a Public School District

By: *Maria C. Montel*

By: *Bertha O. Peridlatoti*

Title: *Director, Park & Recreation*

Title: **Bertha O. Peridlatoti  
Superintendent**

Date: *6/17/97*

Date: *5/28/97*

APPROVED AS TO FORM AND LEGALITY BY  
CASEY GWINN, CITY ATTORNEY

By: *Casey G. Winn*

Date: *6/24/97*

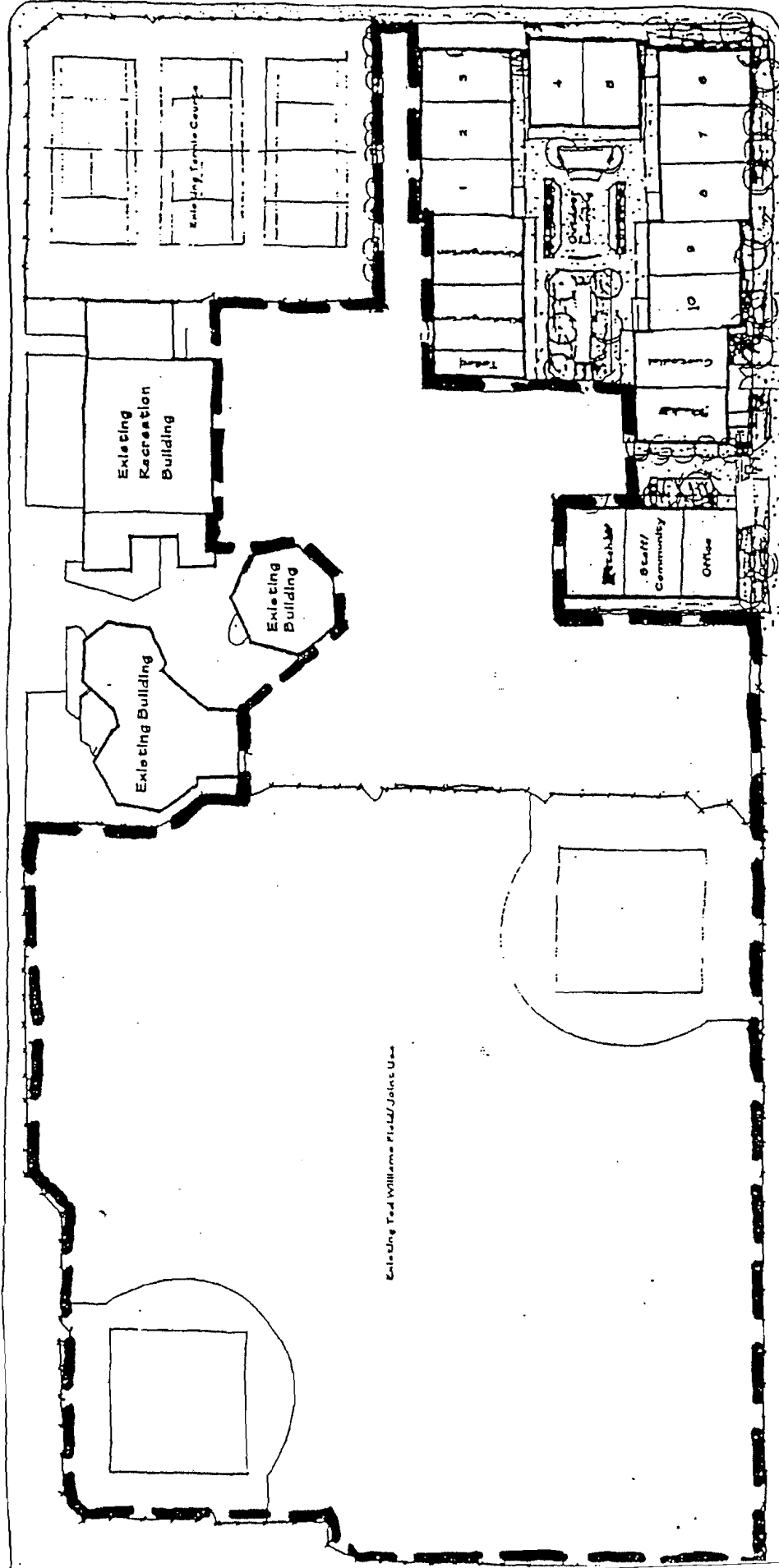
Approved in public meeting of the  
Board of Education of the San Diego  
Unified School District on *5/27/97*  
*Cheryl Ward*  
Cheryl Ward, Recording Secretary  
Board of Education

LEGALITY AND FORM APPROVED:  
*Jose Gonzales* *05-22-97*  
JOSE GONZALES, Assistant General Counsel  
San Diego Unified School District

# EXHIBIT A

Lincoln Avenue

Idaho Street



Oregon Street

JOINT USE AREA

Garfield Elementary School Annex Site Plan

ORDINANCE NUMBER O- **18412** (NEW SERIES)

ADOPTED ON **JUN 09 1997**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A 25-YEAR AGREEMENT WITH THE SAN DIEGO UNIFIED SCHOOL DISTRICT FOR THE CONSTRUCTION, OPERATION, MAINTENANCE AND LEASE OF A TURFED FIELD AND RECREATIONAL FACILITIES AT GARFIELD ELEMENTARY SCHOOL ANNEX AND NORTH PARK COMMUNITY PARK.

WHEREAS, The City of San Diego and San Diego Unified School District desire to contribute jointly to the establishment of recreational facilities at the Garfield Elementary School Annex and North Park Community Park, which will serve the needs of the District and the general public; NOW, THEREFORE,

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

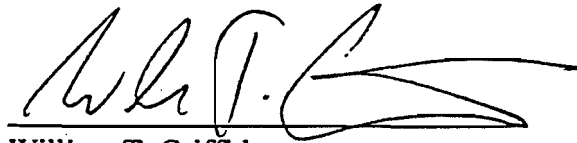
Section 1. That the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a 25-year agreement for the construction, operation, maintenance and lease of turfed field and recreation facilities at the Garfield Elementary School Annex and North Park Community Park sites, under the terms and conditions set forth in the lease agreement, a copy of which is on file in the office of the City Clerk as

Document No. OO- **18412**

Section. 2. That this ordinance shall take effect and be in force on the thirtieth day from  
and after its passage.

APPROVED: CASEY GWINN, City Attorney

By

A handwritten signature in black ink, appearing to read 'W. T. Griffith', written over a horizontal line.

William T. Griffith  
Deputy City Attorney

WTG:cdk  
04/29/97  
Or.Dept:Pk.&Rec.  
O-97-109

Passed and adopted by the Council of The City of San Diego on  
June 9, 1997 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS,  
MCCARTY, VARGAS, MAYOR GOLDING.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

SUSAN GOLDING  
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR  
City Clerk of The City of San Diego, California

(Seal)

By: Lori A. Witzel, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-18412 (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 27, 1997 and on June 9, 1997.

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

(Seal)

By: Lori A. Witzel, Deputy