



RESOLUTION NO. U-11385

1 A RESOLUTION related to Tacoma Water; authorizing the execution of an
2 Easement Agreement with Tacoma School District No. 10, for the
3 expansion of a sports complex.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Water
5 Division ("Tacoma Water") has requested authorization to enter into an
6 Easement Agreement ("Agreement") with the Tacoma School District No. 10,
7 for the expansion of a sports complex on the adjacent Lincoln High School
8 property (Tax Parcel Number 7470033981), and has requested an easement on
9 Tacoma Water property, in support of that expansion to include: surface use for
10 ingress/egress, parking, on-site traffic circulation, pedestrian pathways,
11 landscaping, and the construction of paving or other impervious surface in
12 connection with such use, together with subsurface use for junction boxes,
13 conduit, and electrical lines to serve the adjacent tennis courts, and
14

15
16 WHEREAS the easement would cover approximately 12,435 square feet
17 of Tacoma Water property and granting the easement would not impair, and
18 would be subject to, Tacoma Water's paramount rights for operation of its
19 municipal water supply and distribution system, and

20
21 WHEREAS the Agreement has been reviewed by the City Attorney's
22 Office, Tacoma Water and Real Property Services; and the proposed amount of
23 consideration for this easement is \$155,000, Now, therefore,

24 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

25 That the Public Utility Board of the City of Tacoma hereby authorizes
26 approval of an Easement Agreement with the Tacoma School District No. 10,



1 for the grant of an easement across 12,435 square feet of Tacoma Water
2 property identified as Pierce County Parcel No. 7470033982, for the expansion
3 of a sports complex located adjacent to Lincoln High School, in the amount of
4 \$155,000, and that the proper officers of the City are authorized to execute said
5 Agreement substantially in the form as on file with the Clerk and as approved by
6 the City Attorney's Office.
7

8 Approved as to form:

9 _____
10 /s/ _____
11 Chief Deputy City Attorney

_____ Chair

_____ Secretary

12 _____
13 Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Jesse Angel, Operations Manager, Water Design Support, Tacoma Water
Greg Muller, Senior Real Property Officer, Real Property Services
MEETING DATE: May 24, 2023
DATE: May 12, 2023

SUMMARY: Approve and authorize execution of an Easement Agreement (E2815) to grant an easement to the Tacoma School District No. 10 across approximately 12,435 square feet of Tacoma Water property located adjacent to Lincoln High School in the City of Tacoma, and identified as Pierce County Tax Parcel No.7470033982, for \$155,000.00.

BACKGROUND: No previous request has been submitted to Board in relation to this proposal. The Tacoma School District is expanding a sports complex on the adjacent Lincoln High School property (TPN 7470033981) and has requested the easement on the Tacoma Water property in support of that expansion to include surface use for ingress/egress, parking, on-site traffic circulation, pedestrian pathways, landscaping, and the construction of paving or other impervious surface in connection with such use, together with subsurface use for junction boxes, conduit, and electrical lines to serve the adjacent tennis courts. The grant of the easement will be subject to Tacoma Water's paramount rights for operation of its municipal water supply and distribution system. This transaction is subject to approval by the Public Utility Board, and the Easement Agreement was reviewed by the City Attorney's Office and approved by Tacoma Water management and Real Property Services.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No.

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.
N/A.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? N/A.

ATTACHMENTS: Easement Agreement; Location Map

CONTACT: Primary Contact: Greg Muller, Senior Real Property Officer, 253.337.3164
Supervisor: Dylan Harrison, Principal Real Property Officer, Ext 8836

TACOMA WATER EASEMENT AGREEMENT

WITH TACOMA SCHOOL DISTRICT NO. 10

PROPERTY LOCATION MAP

TAX PARCEL NO. 7470033982

12,435 ± SQUARE FEET

WEST SIDE OF SOUTH "G" STREET AT SOUTH DIVISION LANE

CITY OF TACOMA, WA.



WHEN RECORDED RETURN TO:
Tacoma Public Utilities
Real Property Services
PO Box 11007, Tacoma, WA 98411

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
EASEMENT NO. 2815**

Reference No.: P2022-150 GWM
Grantor: City of Tacoma, Department of Public Utilities, Water Division
(d.b.a. Tacoma Water)
Grantee: Tacoma School District No. 10
Legal Description: PTN NW¼ of NW¼ SEC 16, T20N, R3E, W.M., PIERCE CO., WA
Complete Description: Exhibit A
Tax Parcel No.: 7470033982

THIS EASEMENT AGREEMENT, dated _____, is by and between CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION (d.b.a. Tacoma Water) ("Tacoma Water" or "Grantor") a municipal corporation of the State of Washington, and TACOMA SCHOOL DISTRICT NO. 10 ("School District" or "Grantee"), a school district of the State of Washington (collectively the "Parties").

BACKGROUND

- A.** The School District is the owner of record of Pierce County Assessor tax parcel number 7470033981, which is improved with School District facilities and operated as Lincoln High School.
- B.** Tacoma Water is the owner of record of Pierce County Assessor tax parcel number 7470033982, which is an operating property improved with Tacoma Water facilities, including a transmission main, underground vaults, manhole access points, and other appurtenances.
- C.** The School District has proposed a development on TPN 7470033981 and 7470033982 for expansion of a sports complex (the "Project"). In furtherance of the Project, the School District has requested an Easement be granted by Tacoma Water on TPN 7470033982 for the installation and operation of certain improvements (the "Improvements") in support of the Project, and as more particularly described in Section 2 below.

D. The School District and Tacoma Water desire to allow use of the Easement Area for the proposed Improvements.

IN CONSIDERATION of the matters described above and the value and obligations specified below, the Parties agree as follows:

1. Incorporation of Background Information. The foregoing background information is incorporated into this Easement Agreement as if fully written here.

2. Grant of Easement. Tacoma Water, for and in consideration of One Hundred and Fifty-Five Thousand Dollars (\$155,000.00), does hereby grant unto the School District, its successors and assigns, a non-exclusive easement, subject to the terms and conditions contained herein, for the following uses only:

Surface use for ingress/egress, parking, on-site traffic circulation, pedestrian pathways, landscaping, and the construction of paving or other impervious surface in connection with such use; together with subsurface use for junction boxes, conduit, and electrical lines to serve the adjacent tennis courts.

The foregoing uses are granted in, upon, under, along, through and across the real property (the "Easement Area") described as follows, to-wit:

As described in Exhibit "A" and depicted in Exhibit "B" attached hereto and by this reference incorporated herein.

Situate in the City of Tacoma, County of Pierce, State of Washington.

3. Grantor's Use of Easement Area. The Easement Area is a vital and integral part of Grantor's municipal water supply and distribution system, and Grantor's rights to use the Easement Area must remain paramount to any other uses including those granted to Grantee by this Easement Agreement. Grantor retains the paramount right to use the Easement Area at all times and for all purposes it deems necessary. Grantor shall not be liable to the Grantee for interference with the rights or authorized Improvements made in performance of Grantee's rights granted herein. The Grantor shall have authority to enter upon the Easement Area at any time to make improvements, alterations, excavations, or repairs on the Easement Area which are necessary to the Grantor's utility operations and to at all times maintain its infrastructure on said property, all without liability to the Grantee. The Grantor shall not be liable to Grantee for any damage done to any improvements of any type, including, but not limited to plants, shrubs, landscaping, surfacing, curbing, or structures, placed on the Easement Area which might be damaged by the construction, maintenance, alteration, excavation, or repairs necessitated by the operation or maintenance of the Grantor's utility infrastructure.

4. Grantee Assumption of Risk. Grantee, its agents, employees, assigns, contractors, customers and/or invitees expressly assume all risks associated with its activities, including maintenance, and/or operations within the Easement Area as well as all risks associated with

holding the property open to the public for recreational use. Storage of flammable materials or refueling of vehicles/equipment is prohibited within the Easement Area. Grantor shall not be liable for damage to Grantee's property and Improvements, or injury to persons, which might occur during Grantee's activities within the Easement Area, except to the extent such damage results from the sole negligence of Grantor.

5. Approvals. The Grantee shall not construct any buildings, structures or other improvements within the Easement Area except for those Improvements specifically allowed under Section 2 above. Prior to construction or alteration of the Improvements authorized by this Easement Agreement, Grantee shall submit to the Grantor for its written approval designs and specifications for said Improvements. Further, any improvements to be installed on the abutting lands shall maintain setbacks sufficient to avoid impacts to any existing or future Grantor infrastructure in the Easement Area.

Grantor's review, consent, or approval of any improvements, plans, specifications, or drawings shall not be deemed consent, authorization, acknowledgement, certification, warranty, or representation that Grantee has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards.

6. Maintenance. The Grantee shall notify the Grantor a minimum four (4) weeks prior to any scheduled maintenance to be performed within the Easement Area that may interfere with the Grantor's use or operations, provided that routine maintenance of paved surfaces including cleaning, striping, and repairs shall not require advance notice, and such work shall not involve subsurface disturbance or change in grade. It is agreed that if maintenance schedules result in a use conflict, the Grantor's schedule shall prevail. The Grantee shall notify the Grantor as soon as reasonably practicable if emergency maintenance is required and the Grantor shall take reasonable measures to accommodate such emergency maintenance. However, the Grantee shall reimburse the Grantor for any extraordinary costs incurred to accommodate such emergency maintenance.

7. Compliance. The Grantee shall obtain all required permits and approvals from federal, state, and local agencies prior to use of or construction within the Easement Area. The Grantor reserves the right to modify existing, and prescribe and modify additional, rules, policies, and regulations relating to the exercise of the rights, uses, and permissions granted by this Easement Agreement, provided that any such modifications or additional rules, policies and regulations within Grantor's sole control do not unreasonably interfere with Grantee's permitted use of the Easement Area. At all times, Grantee's use and operation of the Easement Area will comply with all applicable federal, state, and local laws, ordinances, codes, rules and regulations, including but not limited to laws prohibiting discrimination and Health and Safety Laws and Environmental Laws.

8. Wetlands and Water Quality. The Grantee shall not adversely impact any wetlands on the Easement Area. Runoff shall not be directed onto the Easement Area. Grantee shall prevent pooling of water, creation of wetlands in previously dry areas, and any and all actions which could impact the water quality of existing wetlands. Grantee shall not use herbicides on the Easement Area, and shall prevent use on adjoining lands, which could contaminate or

injure Grantor's land or facilities. If required, and subject to Grantor review and approval, Grantee shall provide appropriate surface water management for any of the improvements and impervious surfaces that they install on the Easement Area and shall not direct runoff onto adjoining lands except via legally permitted conveyances.

9. Disclaimers. The Grantee agrees that the Grantor has made no representation as to the present or future condition of the Easement Area, and Grantor expressly disclaims any representation or warranties regarding the Easement Area and its suitability for any uses or improvements. The Grantor does not warrant title to the Easement Area, nor does Grantor undertake to defend Grantee in the peaceable possession, use, or enjoyment thereof. Grantee shall secure any other rights needed by it for its lawful use of the Easement Area.

10. Assignment. This Easement is not assignable without the prior written consent of the Grantor. Any such unauthorized assignment shall be cause for revocation of this Easement with no liability on the part of the Grantor therefore. No portion of the Easement Area may be leased by Grantee to a third party without the prior review and approval of Grantor. Upon such Grantor approval, the Lessee shall in writing acknowledge the terms and conditions of this Easement Agreement and be bound to all Grantee duties and obligations specified herein.

11. Termination. This Easement Agreement and the Easement granted thereby may be terminated or cancelled by the Grantor upon delivery of written notice to the Grantee for failure of the Grantee to comply with any of the terms, conditions, or covenants specified herein, if prior thereto the Grantor has given ninety (90) days' written notice to the Grantee to correct any such default and the Grantee has failed to correct or remedy the default stated in the notice, in which event this Easement Agreement and the rights of the Grantee shall utterly cease and terminate, provided that if compliance is not possible due to circumstances beyond Grantee's control, then the 90-day cure period set forth above shall be extended to allow Grantee a reasonable opportunity to cure.

In the event the Grantee should cease the uses as provided in Section 2 herein for a term of at least twenty-four consecutive months, the Grantee will be responsible for the removal of all improvements then located on the Easement Area that exclusively supported the Project and shall restore the Easement Area to a condition reasonably acceptable to the Grantor.

Should Grantee vacate the use or occupation of the Easement Area, in whole or in part, the Grantor shall have no obligation to any party for a refund, in whole or in part, of the consideration received herein for this grant of easement.

12. Indemnification. Grantee shall protect, defend, indemnify, and hold harmless Grantor its employees, agents, representatives, officers, directors, and governing bodies (hereinafter referred to collectively as "Indemnitees") from any and all costs, claims, judgments, and /or rewards of damages (both to persons and/or property), arising out of, or in any way resulting from, Grantee's use of the Easement Area or the use of the Easement Area by the general public. Grantee shall not be required to indemnify, defend, or hold Indemnitees harmless if the costs, claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the Indemnitees; provided that, if such claims,

suits, or actions result from the concurrent negligence of (a) the Indemnitees, invitees, or Indemnitees' contractors and (b) the Grantee or its contractors or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each party, its employees, authorized agents, invitees, and/or contractors. Grantee specifically assumes potential liability for actions brought by the Grantee's own employees against the Grantor and arising from the Grantee's negligence, and solely for the purpose of this indemnification and defense, the Grantee specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

12a. Recreational Use. To the extent that the Recreational Land Use Statute, RCW 4.24.200-210, or other applicable law provides immunity to the Grantor and the Grantee, the Parties do not intend that the indemnity in this Section 12 to act as a waiver to such immunity nor do the Parties intend that the applicability of the above statute will act as an exception to said indemnity in the event liability is determined to exist as provided in the statute.

13. Taxes. The Grantee shall pay or cause to be paid to the Grantor or on the Grantor's behalf the following taxes, fees, charges, levies, and assessments to the extent that any is determined to be due as a result of this grant of easement or use thereof:

- any and all Washington State leasehold excise tax;
- any and all surface water or other governmental charges and assessments (special and general) of every kind and nature levied or assessed;
- any and all taxes levied or assessed in lieu of the foregoing, in whole or in part.

Should such taxes, fees, charges, levies or assessments be imposed and Grantor is notified by the relevant authority of such imposition, Grantor shall provide reasonable notice of the same to Grantee, who thereafter may protest or appeal imposition of the same, at Grantee's sole cost.

14. Environmental Liability. By accepting this grant of Easement, Grantee assumes no liability for existing site conditions including any Hazardous Substances that may be present on, in, or under the Easement Area prior to the execution of this Easement Agreement; except that to the extent Grantee removes any soil, Grantee shall pay for the removal of and disposal of such soil, whether or not it contains Hazardous Substances. Grantee assumes sole liability and shall be responsible for any remedial action costs incurred due to the release, or exacerbation of the release, of Hazardous Substances by Grantee, its officers, agents, employees, volunteers, subcontractors, invitees, licensees, or guests. A "Hazardous Substance" as used in this Easement Agreement shall mean the presence of any substance or group of substances around, above, on or in the soil of the Easement Area which, by its presence, triggers a remedial investigation or action, or which requires any excavated materials to be disposed of as anything other than clean fill. The meaning of "Hazardous Substance" shall also include without limitation, any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup. The terms of this Hazardous Substances provision have been mutually negotiated.

15. Insurance. Grantee shall maintain through the term of this Easement Agreement adequate insurance or self-insurance. Grantee shall, upon request of Grantor, provide evidence of insurance or self-insurance. Grantee shall obtain insurance coverage to cover all claims including, but not limited to, bodily injury and property damage that may arise from the use of the Easement Area.

16. Taking. If the Easement Area, or any portion thereof, should be taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), this Easement shall terminate when the physical taking of the Easement Area occurs and the Grantor shall have no liability to the Grantee for its loss of use of the Easement Area. If any portion of the Easement Area is subject to a Taking, the Grantee may terminate occupation and use of such portion of the Easement Area, but continue use and occupation as to the remaining Easement Area but without abatement of any obligations due the Grantor herein. The Grantor shall receive the entire award for any Taking of the Easement Area or portion thereof, with no compensation due the Grantee.

17. Binding on Successors. The terms and conditions of this Easement Agreement shall constitute real covenants that run with the land and are binding upon the Parties and their heirs, successors and assigns.

18. Assignment. Grantee shall not assign, subcontract, delegate, or transfer any obligation, interest, or claim to or under this Easement Agreement without the prior written consent of Grantor.

19. Recording and Effective Date. Grantor will record this Easement Agreement in the real property records of Pierce County, Washington. This Easement shall become effective on the date it is recorded by the Pierce County Auditor's Office.

20. No Third-Party Beneficiaries. This Easement Agreement shall be for the sole benefit of the Parties hereto, and nothing contained herein shall create a property right or a cause of action in favor of a third party against either Party hereto.

21. Waiver. A waiver or failure by either Party to enforce any provision of this Easement Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Easement Agreement.

22. Severability. If any term, condition, or provision of this Easement Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable.

23. All Writings Contained Herein. This Easement Agreement, together with all exhibits, constitutes the complete and final agreement of the Parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter, and may only be modified by a writing signed by both Parties.

24. Applicable Laws; Reasonable Use. In exercising their rights under this Easement Agreement, each Party shall comply with all federal, state, county and municipal statutes, laws, codes, rules, regulations, ordinances, resolutions, permits and/or other requirements of any kind, type or nature whatsoever applicable to their respective uses of the Easement Area. Any use, entrance upon or movement within, over, across, and/or upon the Easement Area by any party shall be conducted such that it does not damage the Easement Area or any improvements thereon, or unreasonably interfere with the use thereof by the other Party. Grantor and Grantee shall maintain the Easement Area in a clean, neat and orderly manner and will not create or permit any nuisance or waste, or allow the Easement Area to be used for any immoral or unlawful purpose.

25. Disclaimers. Grantee acknowledges and agrees that Grantor has made no representation as to the present or future condition of the Easement Area and Grantor expressly disclaims any representation or warranties regarding the Easement Area and its suitability for any of Grantee's intended uses.

26. Restoration. Grantee Improvements shall be installed in a good and workmanlike manner and any disturbed premises shall be restored as nearly as practicable to the same condition it was in prior to Grantee disturbance of said premises. In the event that any of Grantor's improvements in the Easement Area are disturbed or damaged by Grantee's use of the Easement, at Grantor's sole discretion and approval, Grantee shall reimburse Grantor all costs reasonably necessary to repair or restore the damaged improvements to a condition as good as or better than that which existed prior to the use.

27. Access. Grantor shall have the right to access the Easement Area at any time as deemed necessary by Grantor; provided, however, that such access shall not unreasonably infringe upon or interfere with Grantee's use of the Easement Area as contemplated herein.

28. Non-Exclusive Use. The Easement granted herein and the use contemplated thereby shall be non-exclusive to use by Grantee, its agents, employees, assigns, contractors, customers and/or invitees and will be open to the general public during non-school hours for recreational use. The Grantee shall hold Grantor harmless from any diminished or lost immunities under RCW 4.24.210 resulting from closure of the Easement Area to the general public during regular school hours. Further, Grantor retains the right to grant easements, permits, or licenses to other parties, so long as any such additional grants do not unreasonably interfere with Grantee's intended permitted use of the Easement Area.

29. Relationship of the Parties. Nothing contained herein shall be construed as to make the parties hereto partners, associates, joint venturers, or participants in any legal relationship other than that of Grantor and Grantee with the rights, obligations, and duties specified herein. Neither party hereto shall have the power to contract or incur any obligation or liability in the name of the other party.

30. Survival. Obligations of the Grantee shall survive and remain in force as to the Parties should any portion of the Grantee's abutting lands be sold, leased, or otherwise conveyed.

31. Counterparts. This Easement Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

[Remainder of page intentionally left blank]

P2022-150 GWM / E2815

Authorized by Public Utility Board Resolution No. _____ adopted _____.

Executed on _____.

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES

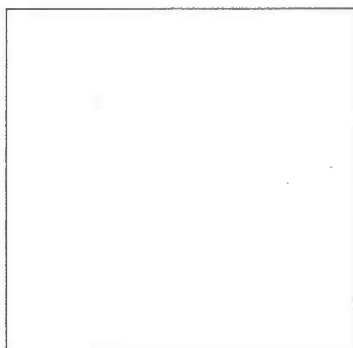
By: _____
Jackie Flowers, Director of Utilities

STATE OF WASHINGTON)
COUNTY OF PIERCE)

On _____, before me personally appeared Jackie Flowers, to me known to be the Director of Utilities of the City of Tacoma, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the City of Tacoma, for the uses and purposes herein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed is the corporate seal of the City of Tacoma.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Place Notary Seal in Box



Notary Public in and for the State of Washington

Residing in _____.

P2022-150 GWM / E2815

Authorized:

Scott Dewhirst, Water Superintendent

Reviewed:

Jesse Angel, Operations Manager, Water Planning and Engineering

Legal Description Reviewed By:

Paul Lennemann, Tacoma Power Surveying Manager

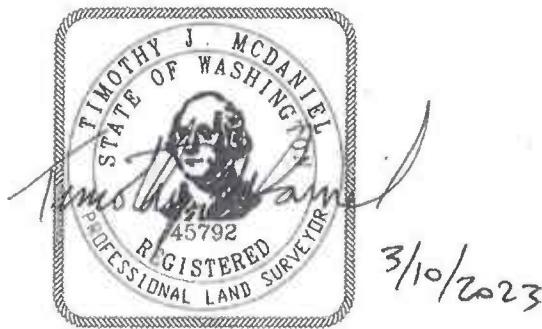
Form Approved:

Michael W. Smith, Deputy City Attorney

EXHIBIT A
EASEMENT LEGAL DESCRIPTION
(EASEMENT FROM TPU TO TPS)

THE NORTH 50 FEET OF BLOCK 110, AMENDED MAP OF FIRST SCHOOL LAND ADDITION TO THE CITY OF TACOMA, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK 7 OF PLATS AT PAGE 77, IN PIERCE COUNTY, WASHINGTON.

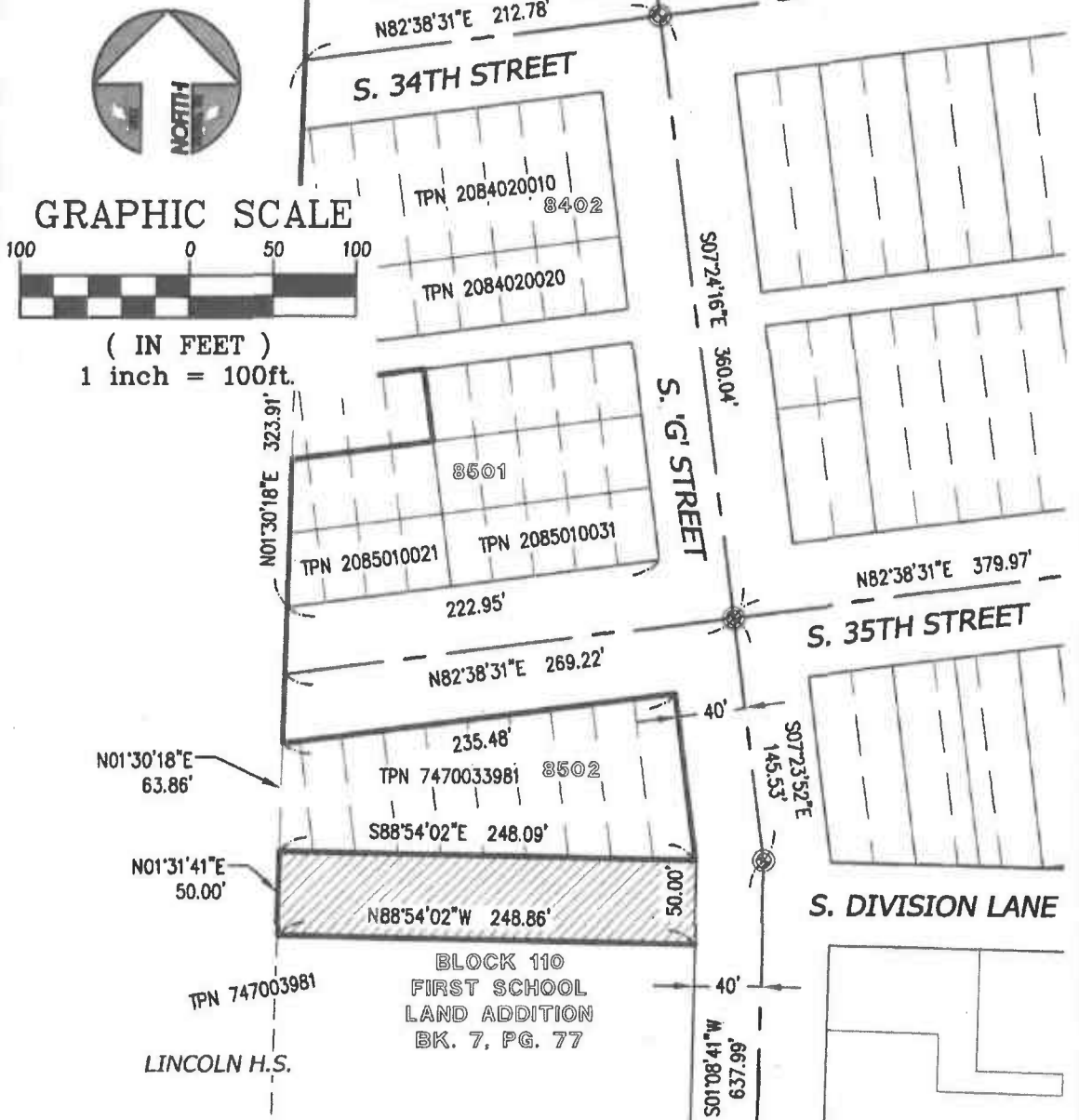
(CONTAINING 12,435 SQ. FT., MORE OR LESS)



TIMOTHY J. MCDANIEL, PLS
WASHINGTON STATE REGISTRATION NO. 45792

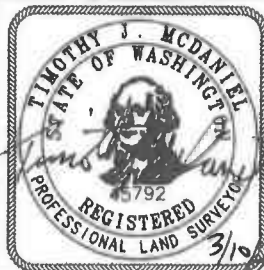
EXHIBIT B

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 5,
TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN,
PIERCE COUNTY, WASHINGTON



EASEMENT EXHIBIT FOR TPU PROPERTY NEAR LINCOLN HS

APEX JOB NO: 36290	DATE: 03/10/2023
DRAWN BY: NJG	CHECKED BY: TJM
DWG. NO: 36290-SV.DWG	SCALE: 1"=100'



Apex Engineering

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