

METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. R45-09

**APPROVING THE SITING OF A HIGH SCHOOL AT POINT DEFIANCE PARK AND
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SHORT-TERM
GROUND LEASE AGREEMENT WITH THE TACOMA PUBLIC SCHOOL DISTRICT
TO ADDRESS SITING, DESIGN AND OPERATIONAL ISSUES RELATED TO THE
SCIENCE AND MATH INSTITUTE**

WHEREAS, Metro Parks Tacoma and the Tacoma School District have adopted a Master Agreement that recognizes and encourages continued collaboration and cooperation between agencies for enhanced efficiencies and benefits to the community; and

WHEREAS, there are many benefits to both parties and the public of locating the high school in a park, including: more security and increased activity in Point Defiance; enhanced programs for young adults to learn and appreciate their natural resource; increased opportunity for environmental related grants for program and/or capital upgrades; additional public use of public property; promotion of existing synergy between Metro Parks Tacoma and the Tacoma School District; and

WHEREAS, in an appropriate identified area of Point Defiance Park, that could accommodate an interim location for a high school; and if properly sited, designed and operated would enhance the park experience for the public and provide benefits to the park district; and Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma that:

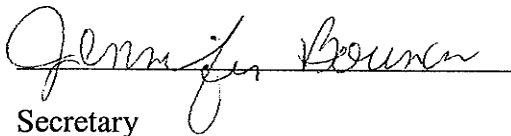
1. That a portion of Point Defiance Park described above is an appropriate site for the proposed high school; and
2. The Executive Director is authorized to execute the short-term ground lease agreement between the Tacoma Public School District and the Metropolitan Park District of Tacoma for the proper siting, design and operation of a high school in Point Defiance Park; and
3. Negotiate any additional administrative and operating terms via an addendum to the current master agreement between the Metropolitan Park District of Tacoma and Tacoma Public School District.

The forgoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on June 22 2009.

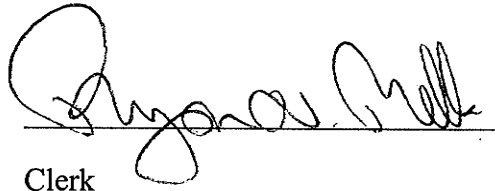


President

ATTEST:



Secretary



Clerk

LEASE FOR SCIENCE AND MATH INSTITUTE

THIS LEASE ("Lease") is made as of June _____, 2009 by and between the Metropolitan Park District of Tacoma ("Landlord") and the Tacoma School District ("Tenant").

1. PREMISES AND TERM.

1.1 In consideration of the terms and covenants of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property within Point Defiance Park described on Exhibit "A" attached and depicted on Exhibit "B" attached (collectively the "Premises") located in Tacoma, Washington. The taking of possession by Tenant under this Lease shall be deemed conclusively to establish that the Premises are in good and satisfactory condition, as of when possession was so taken. Tenant acknowledges that no representations as to the condition of the Premises have been made by Landlord and Tenant accepts the Premises "as is," having had a full and complete opportunity to inspect the same.

1.2 The Agreement Term shall commence on June 29, 2009 (the "Commencement Date") and shall terminate on July 1, 2014 ("Agreement Term").

2. RENT. Tenant shall pay to Landlord rent for the Premises, in advance, without demand, deduction or set off, for the entire Term at the rate of one dollar (\$1.00) payable on the first day Tenant takes possession of the Premises. In addition, Tenant shall pay to Landlord any and all leasehold excise taxes, real and personal property taxes, regular and special assessments, license fees and other taxes or charges of any kind and nature payable by Landlord as a result of any public or quasi-public authority, private party, or owner's association levy, assessment or imposition against, or arising out of this Lease or Landlord's ownership of or interest in the Premises (collectively referred to as the "Charges"). Landlord will provide Tenant from time to time with invoices for the Charges. Tenant shall pay to Landlord the amount of the Charges set forth on such invoices on or before ten (10) business days after receipt of Landlord's invoice. Tenant's failure to timely pay the amount of the Charges shall constitute a default hereunder and Tenant shall be responsible for any penalties, fines or other charges imposed on Landlord in connection with delinquent payment of the Charges. All payments required to be made by Tenant to Landlord shall be payable to Landlord at the address set forth in Section 11 or at such other address as Landlord may specify from time to time by written notice.

3. USE / IMPROVEMENTS.

3.1 The Premises shall be used only for the purposes of construction and operation of a school district teaching facility known as "The Science and Math Institute" (SAMI) and shall not be used by Tenant for any other purpose. Tenant shall at its own cost and expense obtain all licenses and permits necessary for its use of the Premises. The parking depicted on Exhibit B shall be available to the public after school hours during the term of this Lease.

3.2 The Landlord hereby approves the commencement of site development in accordance with the site plan attached as Exhibit C. Prior to construction of any improvements, Tenant shall submit detailed plans of those improvements for Landlord's review and approval (the "Improvements"). Said approval may only be granted by the Executive Director. At the time of such approval, the parties shall attempt to determine if the Improvements shall become permanent or shall be removed upon termination of the Lease. The landscaping and maintenance of the Premises shall be consistent with the adjacent Metro Parks' properties.

3.3 Tenant understands and agrees that some of the utilities serving Point Defiance Park lack capacity to support any improvements that may be contemplated by the Tenant. Consequently, the Tenant shall provide and pay for all utilities necessary to serve any improvements at the Premises including all costs associated with the use of such utilities.

4. OWNERSHIP OF CITY IMPROVEMENTS.

4.1 Ownership During Lease Term. Landlord and Tenant acknowledge, covenant, and agree that the Improvements and additions thereto constructed at any time within or upon the Premises shall be and become the property of and belong to the Tenant, unless otherwise agreed to between the parties as provided in paragraph 3.2 above.

4.2 Ownership on Termination of Lease Upon termination of this Lease, the Improvements on the Premises shall be removed by the Tenant not later than July 1, 2014 unless otherwise agreed to between the parties.

5. **TENANT'S MAINTENANCE.** Tenant shall at its own expense keep and maintain all parts of the Premises (including the existing landscaping located thereon) in good condition, promptly making all necessary repairs and replacements, including but not limited to re-paving, re-striping, landscaping and regular removal of trash and debris, keeping the whole of the Premises in a neat, clean and sanitary condition.

6. **ASSIGNMENT AND SUBLETTING.** Tenant shall not have the right, voluntarily or involuntarily, to assign, convey, transfer, mortgage or sublet the whole or any part of the Premises under this Lease. This prohibition applies to assignments, subleases and other transfers by which Tenant transfers any interest, including partial

or indirect interests, in the leasehold created hereby (e.g., transfer to a co-tenant or to an entity in which Tenant has a beneficial interest).

7. **INSURANCE**. The Tenant shall maintain insurance, or self-insurance funds, against loss or damage by fire, earthquake, flood, and the hazards now or hereafter insured by the "All Risk" form of insurance in an amount equal to the full insurable value of the improvements with a deductible for any single casualty of no more than \$100,000.00, a replacement cost endorsement without reduction for depreciation, and a fluctuating value endorsement with a waiver of the co-insurance clause (or an agreed amount endorsement with an inflation guard endorsement); PROVIDED, that the deductible for earthquake and flood coverage shall be commensurate with prevailing standards.

8. **INDEMNITY**.

8.1 Landlord shall not be liable to Tenant or Tenant's officers, directors, trustees, employees, agents, contractors servants, guests, invitees or visitors (collectively, "Tenant Parties"), or to any other person for any damage, expense, loss or liability, including injury to person or damage to property on or about the Premises, resulting from and/or caused in part or whole by the act or omission of Tenant, its employees, agents, servants, guests, invitees, and visitors, or of any other person entering upon the Premises, or caused by the condition of the Premises, or due to any other cause unless caused by the gross negligence of Landlord, and Tenant hereby releases Landlord from any such liability.

8.2 Tenant hereby releases and shall defend, indemnify and hold harmless Landlord and Landlord's officers, directors, trustees, employees, agents, contractors servants, guests, invitees or visitors (collectively, "Landlord Parties") from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, that arises out of (a) any activity, work, condition or thing permitted or suffered to exist or done at the Premises; (b) the negligence or willful misconduct of any of the Tenant Parties; or (c) any breach or default by Tenant in the performance of any obligation on Tenant's part to be performed under this Lease. This indemnity does not apply (i) to claims, suits, actions or liabilities to the extent they are caused by the negligent acts or omissions or willful misconduct of Landlord, its agents, employees, contractors or invitees, or (ii) to the indemnity in Section 12. In the absence of comparative or concurrent negligence on the part of any of the Landlord, the foregoing indemnity shall also include reasonable costs, expenses and attorney's fees incurred in connection with any indemnified claim or incurred by Landlord in successfully establishing the right to indemnity (including in any bankruptcy proceeding). Tenant shall at Landlord's request assume the defense of any claim subject to this indemnity. Landlord agrees to cooperate fully with Tenant and Tenant's counsel in any matter where Tenant elects to defend, provided Tenant promptly reimburses Landlord for reasonable costs and expenses incurred in connection with its duty to cooperate. When the claim is caused by the joint negligence or willful misconduct of any of the Tenant Parties and the Landlord, Tenant's duty to indemnify

and defend shall be proportionate to Tenant's allocable share of joint negligence or willful misconduct.

8.3 The indemnification obligations contained in this Section shall not be limited by any worker's compensation, benefit or disability laws, and the indemnifying party hereby waives any immunity that said indemnifying party may have under the Industrial Insurance Act, Title 51 RCW and similar worker's compensation, benefit or disability laws.

8.4 THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS LEASE THAT EACH OF THE INDEMNIFICATION PROVISIONS OF THIS LEASE (SPECIFICALLY INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OF THIS LEASE.

9. **CONDEMNATION.** If all of the Premises is taken for any public or quasi-public use under government law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), this Lease shall terminate when the physical taking of the Premises occurs. If any part of the Premises is subject to a Taking, this Lease shall continue in full force and effect without abatement of any of Tenant's obligations hereunder. Landlord shall receive the entire award for any Taking of the Premises.

10. **MECHANIC'S LIENS.** Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature upon, or in any manner to bind, the interest of Landlord in the Premises in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs, and each such lien shall attach to, if at all, only the leasehold interest granted to Tenant by this instrument. Tenant will pay or cause to be paid all sums due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon. Tenant will discharge, by bond or otherwise, any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant within ten (10) days after filing. Tenant will indemnify, defend and hold Landlord harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Premises or under the terms of this Lease.

11. **NOTICES.** All notices, demands or requests which may or are required to be given by one party to the other under this Lease shall be given in writing and hand delivered, or sent by United States registered or certified mail, postage prepaid, return receipt requested, and addressed to the Landlord's address or Tenant's address below, as the case may be. Notices shall be deemed to have been given upon receipt or

attempted delivery when delivery is not accepted. Either party may change its address upon notice given to the other.

LANDLORD:

Metropolitan Park District of Tacoma
Attn: Executive Director
4702 South 19th Street
Tacoma, WA 98405

TENANT:

Tacoma School District
Attn: Superintendent
P.O. Box 1357
Tacoma, WA 98401

12. **HAZARDOUS MATERIALS**. Tenant shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as defined below) on, under, in, above, to, or from the Premises. The term "Hazardous Materials" refers to any substances, materials, and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order. The term "Hazardous Materials" shall not include any equipment or products utilized in normal school operations. Tenant shall indemnify, defend and hold the Landlord Parties harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work ("Remedial Work") relating to Hazardous Materials required by, or incurred by Landlord or any entity or person in a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release or discharge of any Hazardous Material on, under, in, above, to, or from the Premises. If any Remedial Work is required under any applicable federal, state or local law during the Term, Tenant shall perform or cause to be performed the remedial work in compliance with such law, regulation or order. All Remedial Work shall be performed by one or more contractors under the supervision of a consulting engineer, each selected by Tenant and approved in advance in writing by Landlord. If Tenant does not commence the Remedial Work in a timely fashion or does not diligently prosecute the Remedial Work to completion, Landlord may, but shall not be required to cause the remedial work to be performed, subject fully to the indemnification of this paragraph. The foregoing indemnification obligation shall survive termination of this Lease.

13. **MISCELLANEOUS**.

13.1 Captions and Governing Law. The captions inserted in this Lease are for convenience only, they in no way define, limit or otherwise describe the scope or intent of this Lease, and shall not be used to interpret or construe this Lease. This Lease shall be governed by the laws of the State of Washington.

13.2 Amendment. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties.

13.3 Survival. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term and the indemnity provisions shall survive the expiration or earlier termination of the Term, including without limitation all payment obligations with respect to taxes and insurance and all obligations concerning the condition of the Premises.

13.4 Time. Time is of the essence of this Lease with respect to the performance of every provision in which time of performance is a factor.


13.5 Recording. Neither party shall record this Lease or a memorandum thereof without the consent of the other party.

13.6 Brokerage. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and/or that no broker, agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

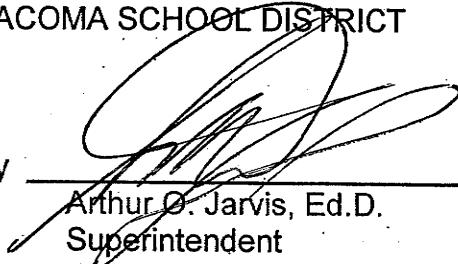
LANDLORD:

METROPOLITAN PARK DISTRICT
OF TACOMA

By  _____
Jack C. Wilson
Executive Director

TENANT:

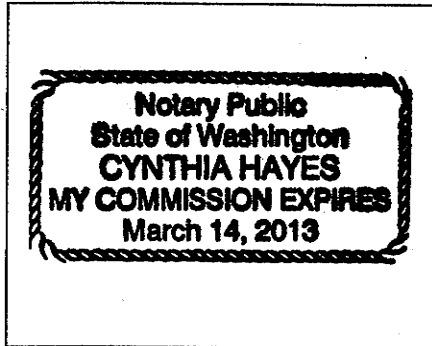
TACOMA SCHOOL DISTRICT

By  _____
Arthur D. Jarvis, Ed.D.
Superintendent

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Arthur O. Jarvis, Ed.D. is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Superintendent for the Tacoma School District, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 1, 2009.



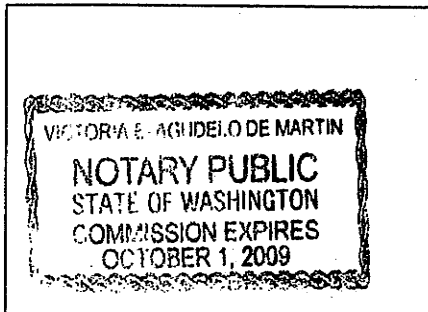
Cynthia Hayes
Notary Public
Print Name CYNTHIA HAYES
My commission expires 3/14/13

(Use this space for notary stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Jack C. Wilson is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of the Metropolitan Park District of Tacoma, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 1, 2009.



Victoria Agudeo de Martin
Notary Public
Print Name Victoria Agudeo-Martin
My commission expires 10/01/2009

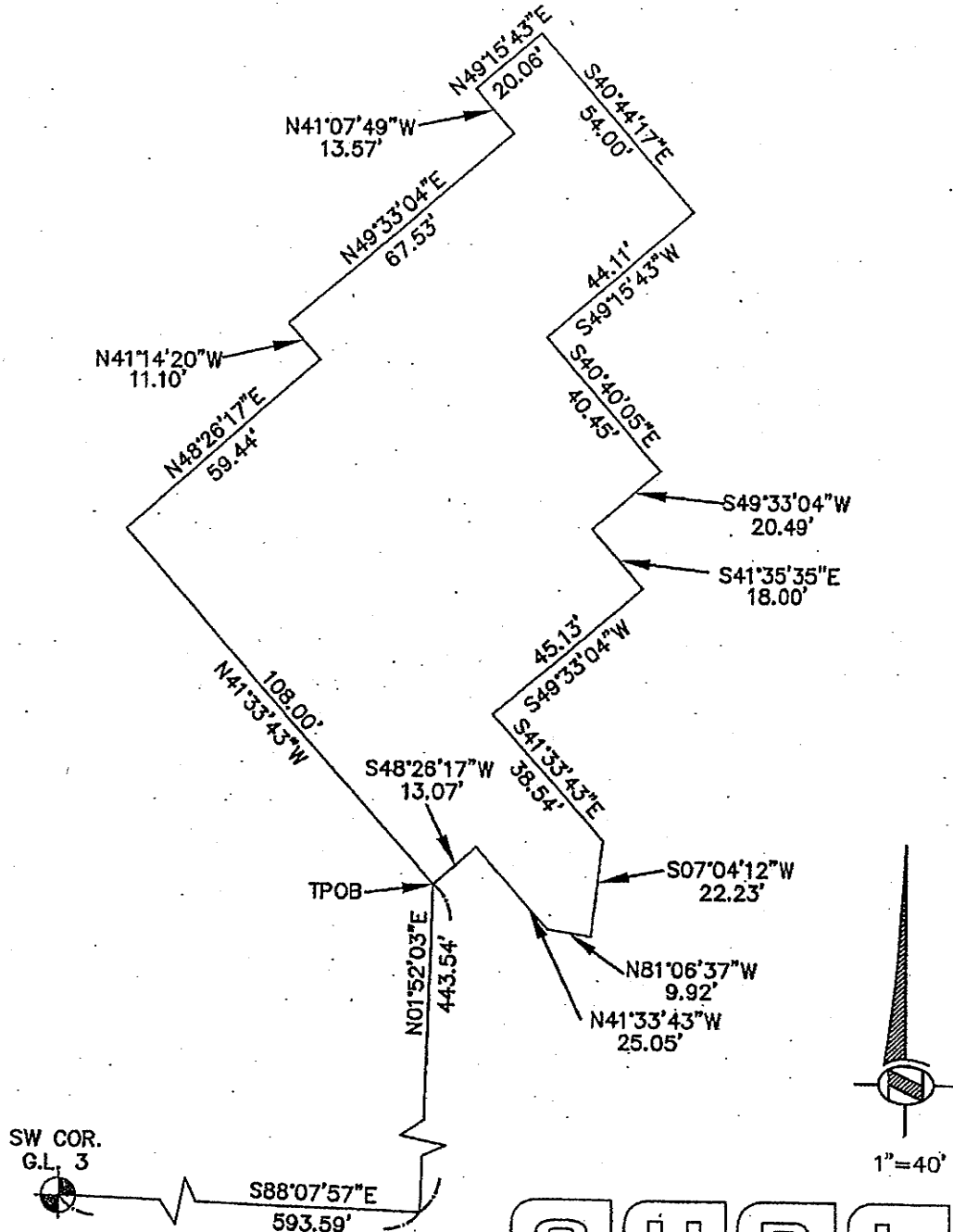
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EXHIBIT A

SCIENCE AND MATH INSTITUTE
PARKING

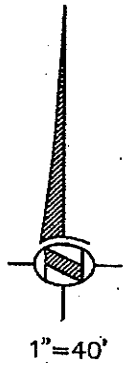
THAT PORTION OF THE GOVERNMENT LOT 3 IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, LYING IN THE CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3; THENCE SOUTH 88°07'57" EAST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 593.59 FEET; THENCE NORTH 01°52'03" EAST A DISTANCE OF 443.54 FEET TO THE TRUE POINT OF BEGINNING, THENCE NORTH 41°33'43" WEST A DISTANCE OF 108.00 FEET; THENCE NORTH 88°26'17" EAST A DISTANCE OF 59.44 FEET; THENCE NORTH 41°14'20" WEST A DISTANCE OF 110.00 FEET; THENCE NORTH 49°33'04" EAST A DISTANCE OF 67.53 FEET; THENCE NORTH 41°07'49" WEST A DISTANCE 13.57 FEET; THENCE NORTH 49°15'49" EAST A DISTANCE OF 20.06 FEET; THENCE SOUTH 40°44'17" EAST A DISTANCE OF 54.00 FEET; THENCE SOUTH 49°15'43" WEST A DISTANCE OF 44.11 FEET; THENCE SOUTH 40°40'05" EAST A DISTANCE OF 40.45 FEET; THENCE SOUTH 49°33'04" WEST A DISTANCE OF 20.49 FEET; THENCE SOUTH 41°35'35" EAST A DISTANCE OF 18.00 FEET; THENCE SOUTH 49°33'04" WEST A DISTANCE OF 45.13 FEET; THENCE SOUTH 41°33'43" EAST A DISTANCE OF 38.54 FEET; THENCE SOUTH 07°04'12" WEST A DISTANCE OF 22.23 FEET; THENCE NORTH 81°06'37" WEST A DISTANCE OF 9.92 FEET; THENCE NORTH 41°33'43" WEST A DISTANCE OF 25.05 FEET; THENCE SOUTH 48°26'17" WEST A DISTANCE OF 13.07 FEET TO THE POINT OF BEGINNING.



SW COR.
G.L. 3

TPOB



AHBL
TACOMA SEATTLE

JOB NO. 209046.50
6/19/09
PARKING
LEGAL BY: BD EXHIBIT BY: TAD

2215 North 30th Street, Suite 300, Tacoma, WA 98403 253.383.2422 TEL
1200 Sixth Avenue, Suite 1620, Seattle, WA 98101 206.287.2425 TEL

THIS EXHIBIT HAS BEEN PREPARED TO ASSIST IN THE INTERPRETATION OF THE ACCOMPANYING LEGAL DESCRIPTION. IF THERE IS A CONFLICT BETWEEN THE WRITTEN LEGAL DESCRIPTION AND THIS SKETCH, THE LEGAL DESCRIPTION SHALL PREVAIL.

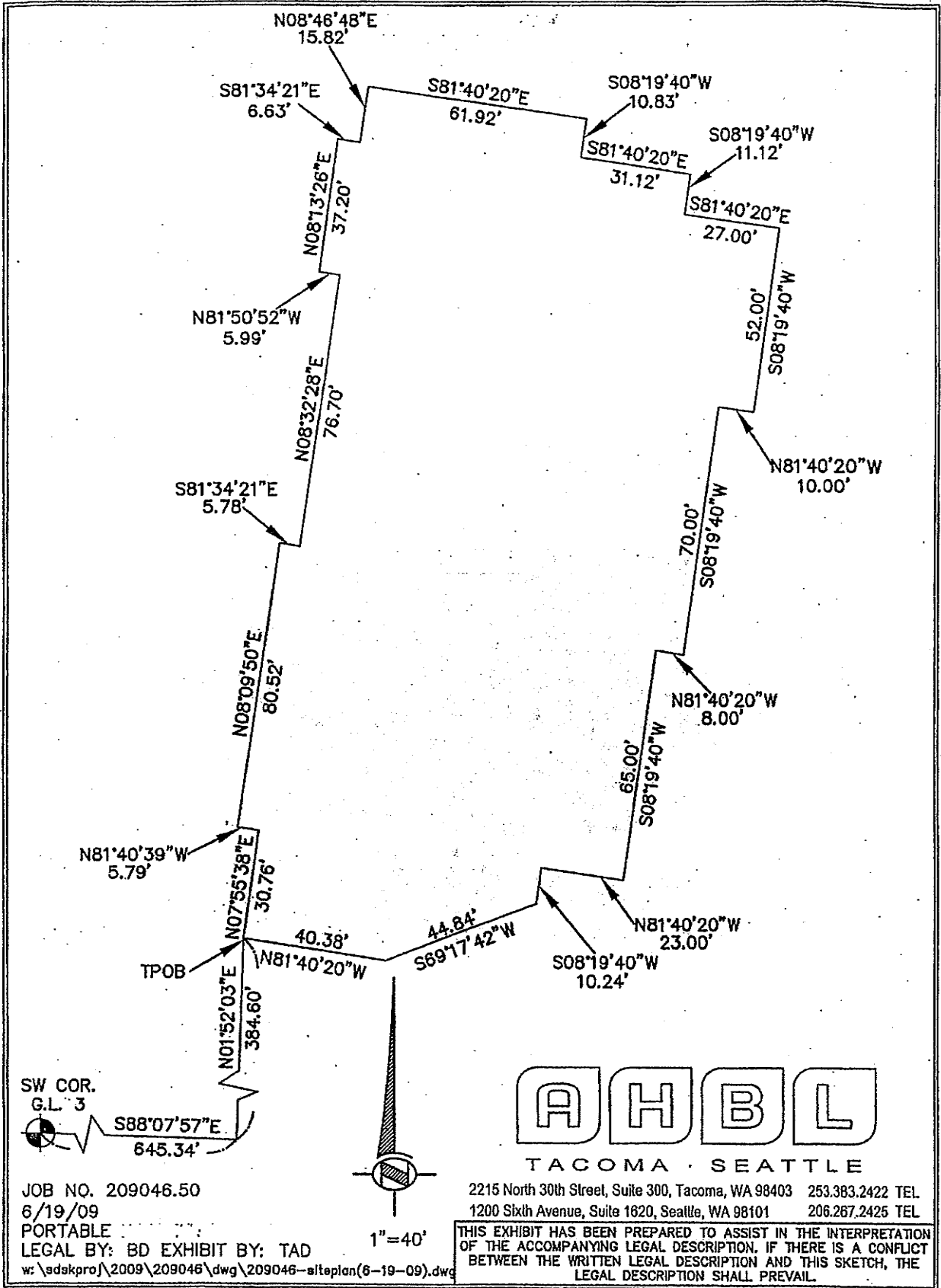
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EXHIBIT A (Cont.)

SCIENCE AND MATH INSTITUTE
PORTABLE

THAT PORTION OF THE GOVERNMENT LOT 3 IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, LYING IN THE CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3; THENCE SOUTH $88^{\circ}07'57''$ EAST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 645.34 FEET; THENCE NORTH $01^{\circ}52'03''$ EAST A DISTANCE OF 384.60 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH $07^{\circ}55'38''$ EAST A DISTANCE OF 30.76 FEET; THENCE NORTH $81^{\circ}40'39''$ WEST A DISTANCE OF 5.79 FEET; THENCE NORTH $08^{\circ}09'50''$ EAST A DISTANCE OF 80.52 FEET; THENCE SOUTH $81^{\circ}34'21''$ EAST A DISTANCE OF 5.78 FEET; THENCE NORTH $08^{\circ}32'28''$ EAST A DISTANCE 76.70 FEET; THENCE NORTH $81^{\circ}50'52''$ WEST A DISTANCE OF 5.99 FEET; THENCE NORTH $08^{\circ}13'26''$ EAST A DISTANCE OF 37.20 FEET; THENCE SOUTH $81^{\circ}34'21''$ EAST A DISTANCE OF 6.63 FEET; THENCE NORTH $08^{\circ}46'48''$ EAST A DISTANCE OF 15.82 FEET; THENCE SOUTH $81^{\circ}40'20''$ EAST A DISTANCE OF 61.92 FEET; THENCE SOUTH $08^{\circ}19'40''$ WEST A DISTANCE OF 10.83 FEET; THENCE SOUTH $81^{\circ}40'20''$ EAST A DISTANCE OF 31.12 FEET; THENCE SOUTH $08^{\circ}19'40''$ WEST A DISTANCE OF 11.12 FEET; THENCE SOUTH $81^{\circ}40'20''$ EAST A DISTANCE OF 27.00 FEET; THENCE SOUTH $08^{\circ}19'40''$ WEST A DISTANCE OF 52.00 FEET; THENCE NORTH $81^{\circ}40'20''$ WEST A DISTANCE OF 10.00 FEET; THENCE SOUTH $08^{\circ}19'40''$ WEST A DISTANCE OF 70.00 FEET; THENCE NORTH $81^{\circ}40'20''$ WEST A DISTANCE OF 8.00 FEET; THENCE SOUTH $08^{\circ}19'40''$ WEST A DISTANCE OF 65.00 FEET; THENCE NORTH $81^{\circ}40'20''$ WEST A DISTANCE OF 23.00 FEET; THENCE SOUTH $08^{\circ}19'40''$ WEST A DISTANCE OF 10.24 FEET; THENCE SOUTH $69^{\circ}17'42''$ WEST A DISTANCE OF 44.84 FEET; THENCE NORTH $81^{\circ}40'20''$ WEST A DISTANCE OF 40.38 FEET TO THE POINT OF BEGINNING.



SW COR.
G.L. 3



S88°07'57"E
645.34'

JOB NO. 209046.50
6/19/09
PORTABLE
LEGAL BY: BD EXHIBIT BY: TAD

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1"=40'

AHBL


TACOMA · SEATTLE

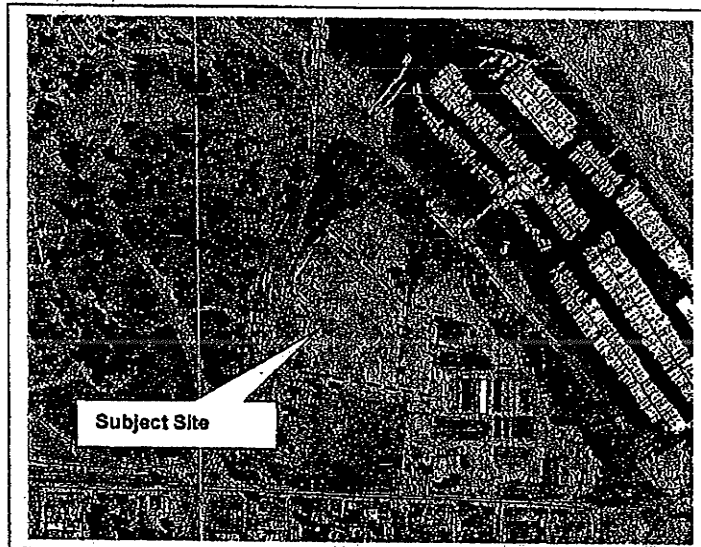
2215 North 30th Street, Suite 300, Tacoma, WA 98403 253.383.2422 TEL.
1200 Sixth Avenue, Suite 1620, Seattle, WA 98101 206.267.2425 TEL.

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EXHIBIT B

DEPICTION OF POINT DEFIANCE PARK PREMISES

 City of Tacoma
Public Works Department
Building and Land Use Services
747 Market Street, Room 345
Tacoma, WA 98402



SAMI Lease

