

Return Address:

City of Mercer Island
Attn: City Manager
9611 SE 36th Street
Mercer Island, WA 98040

EASEMENT ENCROACHMENT LICENSE AGREEMENT

Grantor: City of Mercer Island, a Washington Municipal Corporation
Grantee: Mercer Island School District No. 400

Property Legal Description: Lot 3 Mercer Island LLR #SUB07-008 Rec.
#20090506900003 SD SP Being Por N ½ of NW ¼.

Property Tax Parcel ID Number: 1824059006

THIS EASEMENT ENCROACHMENT LICENSE AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2021. The parties (“Parties”) to this Agreement are the City of Mercer Island, a Washington municipal corporation (“Grantor” or “City”) and The Mercer Island School District No. 400 (“Grantee”).

A. Description of Property. The Grantee owns certain real property commonly known as 4030 86th Ave. SE, Mercer Island, WA, and legally described above (“Property”).

B. Improvements. Grantee wishes to construct a private above-ground improvement described in Attachment A (“Improvements”). The above-ground Improvement will encroach on Property under easement to the City of Mercer Island commonly known as a Permanent Easement for Utilities recorded under King County Recorder’s office under Recording No. 20170308000260 (“City Easement”).

C. Pre-inspection. Prior to the execution of this Agreement and in partial consideration thereof, Grantee has performed a video inspection of the 24” diameter storm drainage main in the easement to confirm that it is free of material defects. The main was constructed by the Grantee as part of its construction of Northwood Elementary School in 2016. The Improvements as described in Attachment A are pre-fabricated portable

classrooms constructed on grade. Only a portion of the portable encroaches on the easement. The portable can be removed through the use of a crane if needed in the future.

NOW, THEREFORE the Parties agree as follows:

1. License. The Grantor hereby grants a temporary, nonexclusive license to Grantee to permit the Improvements to be constructed on the City Easement so long as the Improvements continue to meet the conditions specified in the Building Permits, do not interfere with the reasonable public access to the City Easement, do not threaten public health, safety or welfare, and/or Grantor does not wish to use the City Easement for any other purpose. This license may be revoked by the City at any time with or without cause.

2. Agreement to Remove. In the event the City Engineer determines that the Improvements threaten public health, safety or welfare; or the City wishes to terminate this Agreement for any other reason in the City's sole discretion, the Grantee shall remove or modify the encroaching improvements within sixty (60) days of receiving notice from the City Engineer, at Grantee's sole cost and expense.

In the event the Improvements interfere with routine operations and maintenance of public improvements (e.g. storm drainage main), the Grantee shall remove the Improvements within fourteen (14) days of receiving notice from the City Engineer, at Grantee's sole cost and expense.

In the event of an emergency, the Grantee shall immediately remove the Improvements or alternatively, the City may enter the Property in order to remove the Improvements and the costs to remove the Improvements shall become a lien on the Property.

Upon removal of the Improvements, Grantee agrees to return the City Easement to its original condition or as near to its original condition as possible.

3. Grantor's Remedy if Grantee Fails to Remove. In the event the Grantee has received notice to remove the Improvements and the removal or modification is not done in a timely fashion or does not meet other removal requirements specified in the removal notice, the Grantor is authorized to do the necessary work or to designate a third party to perform the work. The Grantee shall be responsible for all costs associated with the performance of such work, including reasonable overhead and attorneys fees.

The Grantor shall not be responsible for any resulting damage to or destruction of the Improvements. Further, the debt shall be a lien against the Property.

In the event of an emergency that requires immediate repair to the public improvements or access to the public City Easement, the Grantor may demolish, remove, or modify the Improvements with no notice to the Grantee. The Grantor shall not be liable for any resulting damage to or destruction of the Improvements.

4. Maintenance of Improvements. Maintenance of the Improvements shall be the sole cost and responsibility of the Grantee. The Grantee shall maintain the Improvements according to the specifications of the Permits. If Grantee fails to maintain the Improvements, the Grantor may take steps to ensure that the Improvements do not interfere with reasonable public access to any public property or threaten public health, safety or welfare. These steps may include removing or modifying the Improvements as outlined in Section 2 of this Agreement.

The City will not be responsible for repairing or replacing any landscaping, shrubs, sod, gravel parking, retaining walls, gate, concrete pavement and all private improvements in the public City Easement damaged by the city maintenance department while performing routine activities such as, but not limited to, catch basin inspections and cleaning, snow plowing and any other miscellaneous actions. They are the sole responsibility of the property owners.

5. Indemnification. The Grantee agrees to indemnify, defend, and hold the City, its elected officials, officers, employees, agents, volunteers, and assigns harmless from any and all claims, demands, losses, actions, liabilities (including all costs and attorney fees) arising out of damages to persons or property resulting from the construction, location, or removal of the Improvements.

However, should a court of competent jurisdiction determine that RCW 4.24.115 applies to this Agreement, then the Grantee agrees to indemnify, defend, and hold the City, its elected officials, officers, employees, agents, volunteers, and assigns harmless to the maximum extent permitted thereunder. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

6. Recording Requirement. The Grantee shall record this Agreement against the Property with the King County Recorder's Office and pay all recording fees. This Agreement shall run with the land, and therefore bind Grantee, Grantee's heirs, assigns and any subsequent owners of the Property.

7. General Provisions. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs, and assigns. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision. The venue for any dispute related to this Agreement shall be King County, Washington. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or

delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

GRANTOR: CITY OF MERCER ISLAND

By: _____
Jessi Bon
City Manager
City of Mercer Island

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me Jessi Bon, to me known to be the City Manager of the City of Mercer Island, a Washington municipal corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN my hand and official seal this ____ day of _____, 2021.

Notary Name: _____
NOTARY PUBLIC in and for the State of
Washington.
My commission expires: _____

GRANTEE:

By: _____

Name:

Executive Director of Business Services and Human Resources

Mercer Island School District No. 400

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this day personally appeared before _____, the Executive Director of Business Services and Human Resources of Mercer Island School District No. 499 that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN my hand and official seal this ____ day of _____, 2021.

Notary Name: _____

NOTARY PUBLIC in and for the State of Washington.

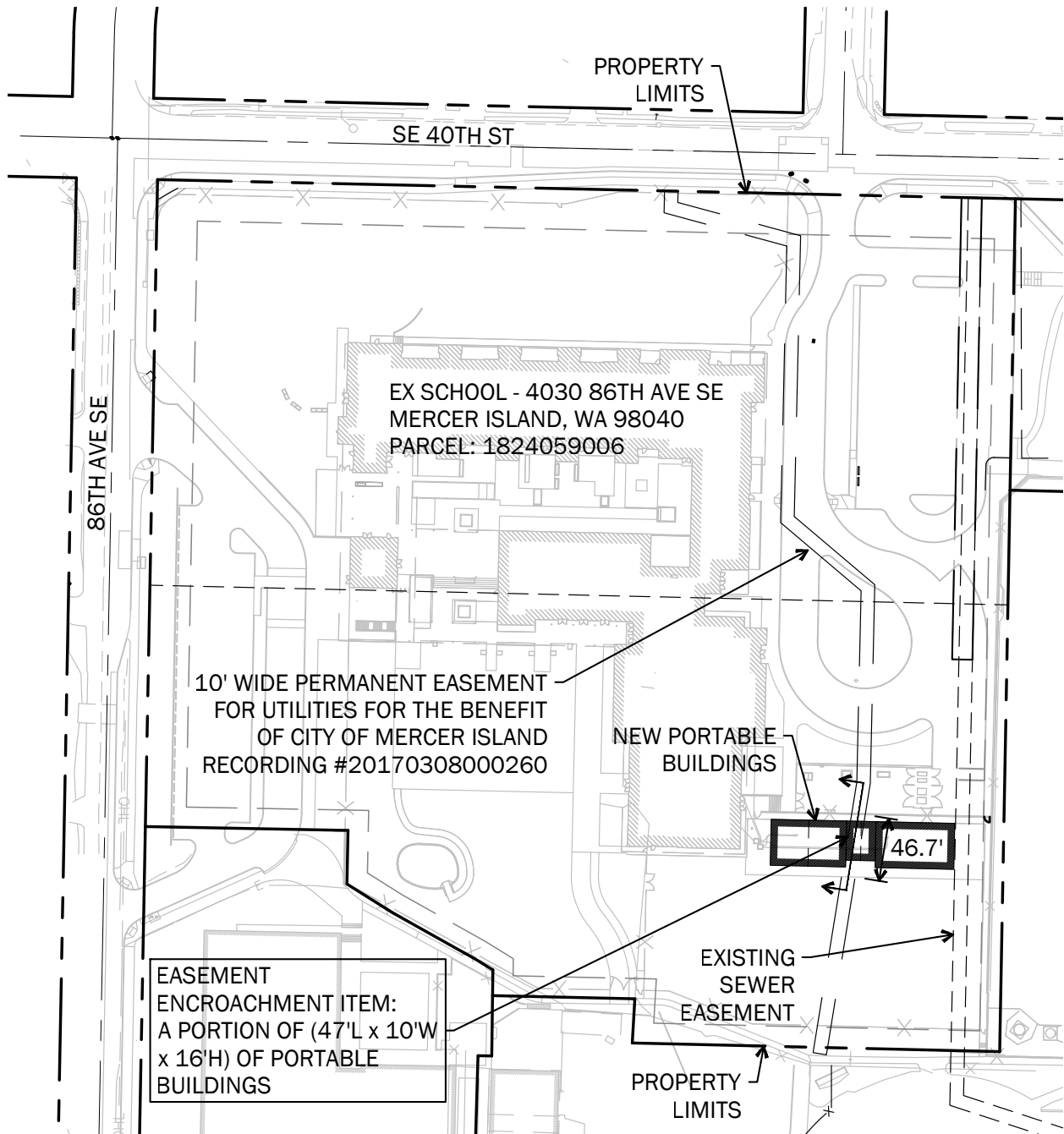
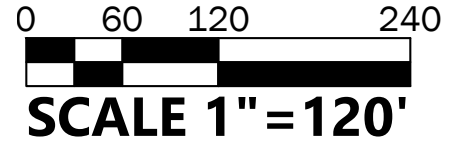
My commission expires: _____

ATTACHMENT A
Page 1

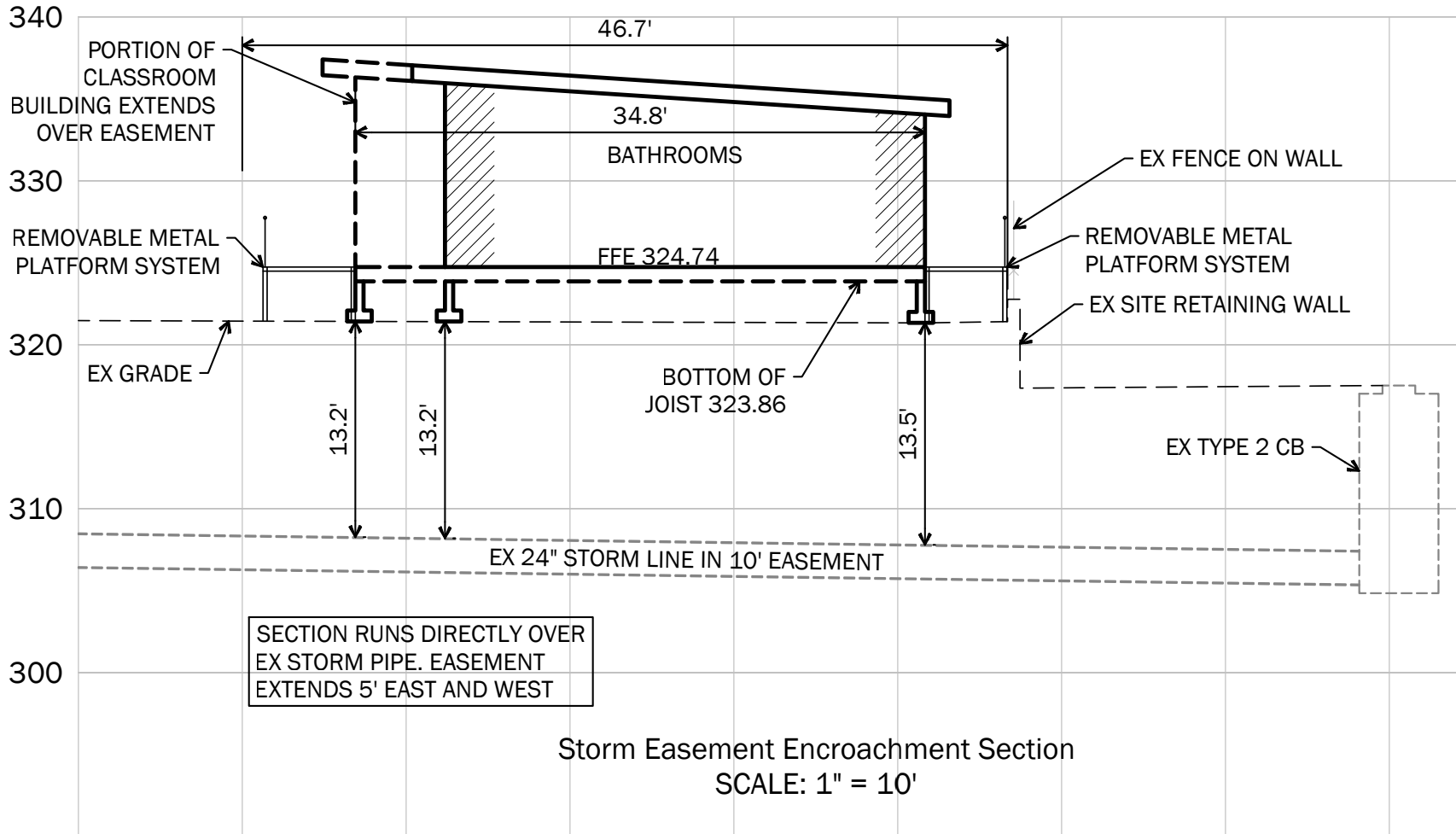
Description of Encroaching Improvements.

A portion of the new portable building will be encroaching into the Public Permanent Easement for Utilities, as shown on the Attachment A, Pages 2 and Page 3.

Attachment A
Page 2



Attachment A
Page 3



Storm Easement Encroachment Section
SCALE: 1" = 10'