

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: May 14, 2018

AGENDA ITEM: Amendment of Utility Easement between the City of Marysville and Grace Academy.	
PREPARED BY: Dave Koenig	DIRECTOR APPROVAL:
DEPARTMENT: Community Development	
ATTACHMENTS: Amendment of Utility Easement City of Marysville document	
BUDGET CODE:	AMOUNT:
SUMMARY:	

Grace Academy has been working through the permit process to improve and expand their classroom space. This project is taking place on one of their parcels of land (Assessor Parcel #30052300200600) and has been approved through the Condition Use Permit process. It has been determined through the permit process that the City's future pedestrian uses on 84th Street NE will benefit from the conveyance of a perpetual easement to the City for future pedestrian use of the frontage on 84th Street NE. With the easement granted by Grace Academy, the Public Works Department will be able to construct an asphalt pedestrian path from Tuscan Ridge up to the golf course parking on the north side of 84th Street NE. The construction of this improvement would occur this summer when the 84th Street NE gets an overlay. The Grace Academy project's impacts on the City's future traffic uses on 84th Street NE and at intersections and roads in the vicinity will be mitigated by payment of the traffic mitigation fees required by the Conditional Use Permit approval. In addition to paying traffic mitigation fees required by the Conditional Use Permit approval, and dedicating the pedestrian easement, Grace is agreeing to pay, prior to occupancy, a per-linear-foot mitigation fee as a pro-rata contribution to the City for the frontage of the lot mentioned above.

RECOMMENDED ACTION:

Staff recommends that the City Council authorize the Mayor to sign the Amendment of Utility Easement with Grace Academy.

EXHIBIT B

After Recording Please Mail to:

Dykes Ehrlichman PS
P.O. Box 1271
Freeland, WA 98249

AMENDMENT OF UTILITY EASEMENT CITY OF MARYSVILLE

THIS INDENTURE made this ___ day of _____, 2018, between GRACE BIBLE CHURCH OF MARYSVILLE, a corporation of the State of Washington, hereinafter referred to as "Grantor;" and the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter referred to as "Grantee;" WITNESSETH:

WHEREAS, Grantor conveyed a certain Utility Easement to Grantee across Grantor's real property, dated May 30, 1990, and recorded at Snohomish County Auditor's File No. 9006270313, hereinafter referred to as "Utility Easement," attached hereto as Exhibit 1;

WHEREAS, the Utility Easement included a legal description of Grantor's servient estate and Grantee's easement thereon;

WHEREAS, the legal description identifies the Utility Easement in an area ten feet wide along a centerline, for the purposes of operating and maintaining utilities; and

WHEREAS, Grantor and Grantee wish to modify the Utility Easement to also include within the same ten-foot easement an additional perpetual, non-exclusive, appurtenant easement for construction, operation and maintenance of a pedestrian walkway therein;

NOW THEREFORE, Grantor, for valuable consideration, the adequacy and receipt of which is hereby acknowledged, hereby conveys and grants to the Grantee, its successors and assigns and its permittees and licensees, the perpetual right, privilege and authority to construct, alter, improve, repair, and operate and maintain a pedestrian walkway for the benefit of the public, across, under, over and upon the lands described in the Utility Easement, limited to the following three parcels owned by Grantor as they exist at the time this *Amendment of Utility Easement* is signed by Grantor:

Assessor's Parcel Number:	30052300200600
Assessor's Parcel Number:	30052300200800
Assessor's Parcel Number:	30052300200900

Together with the right of ingress to and egress from Grantor's lands adjacent to the easement for the limited purpose of constructing, reconstructing, repairing, renewing, altering, changing, patrolling and operating the pedestrian walkway and the right at any time to remove the constructed walkway, hereinafter referred to as the "easement;"

PROVIDED THAT upon completion of pedestrian walkway construction or maintenance within the easement, the City restore Grantor's adjacent lands to a condition reasonably the same as prior to the Grantee's construction or maintenance;

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PROVIDED FURTHER THAT Grantee agrees to construct and utilize the easement in compliance with all applicable federal, state and local laws, including without limitation obtaining all necessary permits at Grantee's sole expense.

Grantee shall be solely responsible for maintenance and/or repair of Grantee's work, construction or repairs within the easement, without cost to Grantor. Grantee agrees not to

Grantor reserves the right to use the surface of the above-described easement for purposes that do not interfere physically with use of the easement for a pedestrian walkway or other uses set forth in the Utility Easement, including but not limited to the following allowed uses: ingress, egress and underground utilities serving Grantor's real property, PROVIDED Grantor shall not erect any buildings or structures within the easement.

The rights, title, privilege and authority granted herein shall continue until such time as Grantee, its successors and/or assigns, shall permanently remove the pedestrian walkway from the easement or shall otherwise permanently abandon said lines, at which time all rights, title, privileges and authority granted herein shall terminate.

Grantor covenants with Grantee that Grantor is lawfully seized and possessed of the servient estate underlying the easement; has a good and lawful right and power to convey the easement; and that the easement is free and clear of encumbrances, except as above indicated or otherwise are a matter of public record; and that Grantor will forever warrant and defend the title to the easement and the quiet possession thereof against the lawful claims and demands of all persons.

Grantee, by accepting and acknowledging this *Amendment of Utility Easement*, hereby agrees to indemnify, defend and save harmless Grantor from and against any and all liability, loss, damage, expense, actions and claims, for personal injury and property damage, both real and personal (including costs and reasonable attorney's fees) asserted or arising on account of or out of the acts or omissions of Grantee and Grantee's agents, contractors, subcontractors, employees, permittees or invitees, including the public, in the exercise of the rights granted herein; PROVIDED those that arise from the sole negligence of Grantor or Grantor's agents, employees or invitees are excluded from Grantee's indemnification and hold harmless; PROVIDED FURTHER, in the event of concurrent negligence of Grantor and Grantee, each party shall be responsible based upon the percentage of fault attributed to it.

This conveyance shall be a covenant running with the land and the respective rights and obligations of Grantor and Grantee herein shall inure to the benefit of and be binding upon their respective heirs, successors and/or assigns. Any mortgage on Grantor's servient estate is hereby subordinated to the rights of Grantee herein, but in all other respects the mortgage shall remain unimpaired.

All other terms and conditions of the Utility Easement that are not in conflict with the terms and conditions herein shall remain in force and effect.

IN AGREEMENT AND IN WITNESS WHEREOF, this instrument has been executed the day and year last written, below:

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**GRACE BIBLE CHURCH OF MARYSVILLE,
GRANTOR:**

By: _____
Jim Martin
Chairman of the Board of Elders
Its Authorized Representative

DATE: _____, 2018

**APPROVED,
CITY OF MARYSVILLE, GRANTEE:**

By: _____
Jon Nehring, Mayor

DATE: _____, 2018

**ATTEST:
MARYSVILLE CITY CLERK**

Jan Berg

DATE: _____, 2018

EXHIBIT B

STATE OF WASHINGTON)
)ss
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that JIM MARTIN is the person who appeared before me, to me known to be the representative for Grace Bible Church of Marysville that executed the foregoing instrument, and on oath stated that he is authorized to execute the instrument for the uses and purposes mentioned in this instrument.

Dated: _____

Notary Public in and for the State of Washington
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that JON NEHRING, Mayor of the City of Marysville, signed this instrument and on oath stated that he was authorized to execute the instrument for the uses and purposes mentioned in the instrument

Dated: _____

Notary Public for the State of Washington.
My appointment expires: _____