

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 August 4, 1993, and recorded at Snohomish County Auditor’s File No. 9308060319, Vol. 2771, pages 0339-0343, for the purposes of water lines and/or sanitary sewer lines and other stated purposes, hereinafter referred to as the “Utility Easement,” attached hereto as Exhibit 1;

WHEREAS, the Utility Easement included a legal description of Grantor’s servient estate incorporated herein by reference in its entirety, summarized as follows: “Lots 4, 5, & 6 of City of Marysville boundary line adjustment as recorded under Auditor’s File No. 9001180170, Vol. 2300 pages 2297-2307, Records of Snohomish County Washington . . . ;” (hereinafter “Grantor’s Property”);

WHEREAS, the Utility Easement also included a legal description of the easement in an “Exhibit A” attached thereto, which located the easement on the following portions of Grantor’s Property:

- (a) The south 20 feet of Lots 5 and 6 of Grantor’s Property (Assessor’s Parcel Numbers 30052300200800 and 30052300200900), except for the west 334.74 feet of Lot 5;
- (b) The south ten feet of the remaining west 334.74 feet of Lot 5; and
- (c) The south ten feet of the east 40.80 feet of Lot 4 of Grantor’s Property (Assessor’s Parcel Number 30052300200600).

WHEREAS, without modifying those descriptions or the easements granted in the Utility Easement, Grantor and Grantee wish to modify the Utility Easement solely to include an additional perpetual, non-exclusive, appurtenant easement for construction, operation and maintenance of a pedestrian walkway within the south ten feet of the entirety of Lots 4, 5 and 6 of Grantor’s Property, described above;

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 south ten feet of the entirety of 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;

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.

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:

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

By: _____
 [DRAFT]
Wayne Olhemeier
Chairman of the Board of Elders
Its Authorized Representative

DATE: _____, 2018

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

By: _____
 [DRAFT]
— Jon Nehring, Mayor

DATE: _____, 2018

ATTEST:
MARYSVILLE CITY CLERK

_____ [DRAFT] _____
Jan Berg

DATE: _____, 2018

STATE OF WASHINGTON)
)ss
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that WAYNE OHLEMEIER 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: _____

EXHIBIT 1

RECORDED

CITY OF MARYSVILLE

'93 AUG -6 P1:14

UTILITY EASEMENT

BOB TERPIL LIGER, JUNIOR
SNOHOMISH COUNTY

THIS INDENTURE made this 46 day of AUGUST 1993 between GRACE BAPTIST CHURCH, hereinafter referred to as Grantor; the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter referred to as Grantee; and (NONE), hereinafter referred to as Mortgagee,

WITNESSETH:

WHEREAS, Grantor is the owner of certain lands and premises situated in the County of Snohomish, State of Washington, described as follows:

Lots 4, 5, 6 & 6 of City of Marysville boundary line adjustment as recorded under Auditor's File No. 9001180170, Vol. 2300, pages 2297-2307, Records of Snohomish County, Washington, said lots being a portion of the south half of the northwest quarter of and, section 23 township 30 north, range 5 east; W.N.

WHEREAS, Grantee is desirous of acquiring certain rights and privileges across, over, under and upon said lands and premises;

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, operate and maintain water lines and/or sanitary sewer lines, pipes and appurtenances, across, under, over, and upon the following described lands and premises situated in the County of Snohomish, State of Washington, to-wit:

93080319

See attached Exhibit "A".

Together with the right of ingress to and egress from said lands across adjacent lands of the Grantor, for the purpose of constructing, reconstructing, repairing, renewing, altering, or changing said lines and appurtenances. Provided, however, the Grantor may erect a fence and may landscape within the above described easement on the condition that Grantee shall not be responsible for repair or replacement of said fence or landscaping if Grantee must enter upon said easement for operation, removal, repair, maintenance, and/or alteration of said lines and appurtenances, or for any other reason reasonably related to the Grantee's interest in said sewer or water lines.

The Grantor reserves the right to use the surface of the above-described easement in the manner now existing, but shall not erect any buildings, structures, patios, or other construction of any nature on said easement except as allowed above.

The rights, title, privileges and authority hereby granted shall continue to be in force until such time as the Grantee, its successors or assigns, shall permanently remove said lines and appurtenances from said lands, or shall otherwise permanently abandon said lines, at which time all such rights, title, privileges and authority hereby granted shall terminate.

NO EXCISE TAX
REQUIRED

AUG 6 1993

BOB TERPIL Snohomish County Treasurer
KIRKE SIEVERS

VOL. 2771 PAGE 0339

The Grantor also covenants to and with the Grantee that Grantor is lawfully seized and possessed of the land aforesaid; has a good and lawful right and power to sell and convey same; that same are free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever. This conveyance shall be covenant running with the land, and shall be binding on the Grantor, and its heirs, successors and assigns, forever.

Any mortgage on said land held by the Mortgagee is hereby subordinated to the rights herein granted to the Grantee, but in all other respects the said mortgage shall remain unimpaired.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

GRANTOR:

Grace Baptist Church
James H. Walker

MORTGAGEE:

(NONE)

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH) ss

I, the undersigned, a Notary Public, do hereby certify that on this ____ day of _____, 19__ , personally appeared before me _____ and _____, to me known to be the individual(s) described and who executed the within instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposed herein mentioned.

GIVEN under my hand and official seal the day and year in this certificaata above written.

NOTARY PUBLIC in and for the
State of Washington, residing at _____

My Commission expires _____

utleasmt/pw
Revised 4/15/91

9308060319

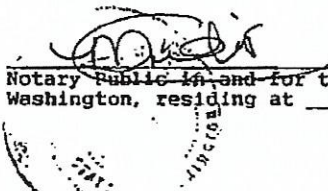
VOL. 2771 PAGE 0340

STATE OF WASHINGTON)
)SS
COUNTY OF)

This is to certify that on this 4th day of August, 1999, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Thomas V. Williams and _____, to me known to be the VICE PRESIDENT _____, respectively, of

and _____, respectively, of the _____ corporation that executed the within and foregoing dedication, and acknowledged the said dedication to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed on the day and year first above written.


Notary Public in and for the State of
Washington, residing at Everett

ACK.COR CHS.93

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VOL. 2771 PAGE 0341

EXHIBIT A

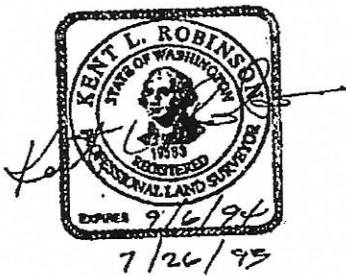
LEGAL DESCRIPTION OF THE CITY OF MARYSVILLE SEWER AND WATER EASEMENTS
SERVING THE HOUSING AUTHORITY OF SNOHOMISH COUNTY CEDAR GROVE SITE

AN EASEMENT FOR SANITARY SEWER AND WATERLINES AND APPURTENANCES IN THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 30 NORTH, RANGE 5 EAST, W.M., OVER, UNDER, ACROSS AND UPON THE SOUTH 20.00 FEET OF LOTS 5 AND 6 OF CITY OF MARYSVILLE BOUNDARY LINE ADJUSTMENT AS RECORDED UNDER AUDITOR'S FILE NO.9001180170, VOLUME 2300 PAGES 2297-2307, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, EXCEPT THE WEST 334.74 FEET OF SAID LOT 5;

TOGETHER WITH AN EASEMENT FOR WATERLINES AND APPURTENANCES OVER, UNDER, ACROSS AND UPON THE SOUTH 10.00 FEET OF THE WEST 334.74 FEET OF SAID LOT 5, TOGETHER WITH THE SOUTH 10.00 FEET OF THE EAST 40.80 FEET OF LOT 4 OF SAID BOUNDARY LINE AGREEMENT;

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD;

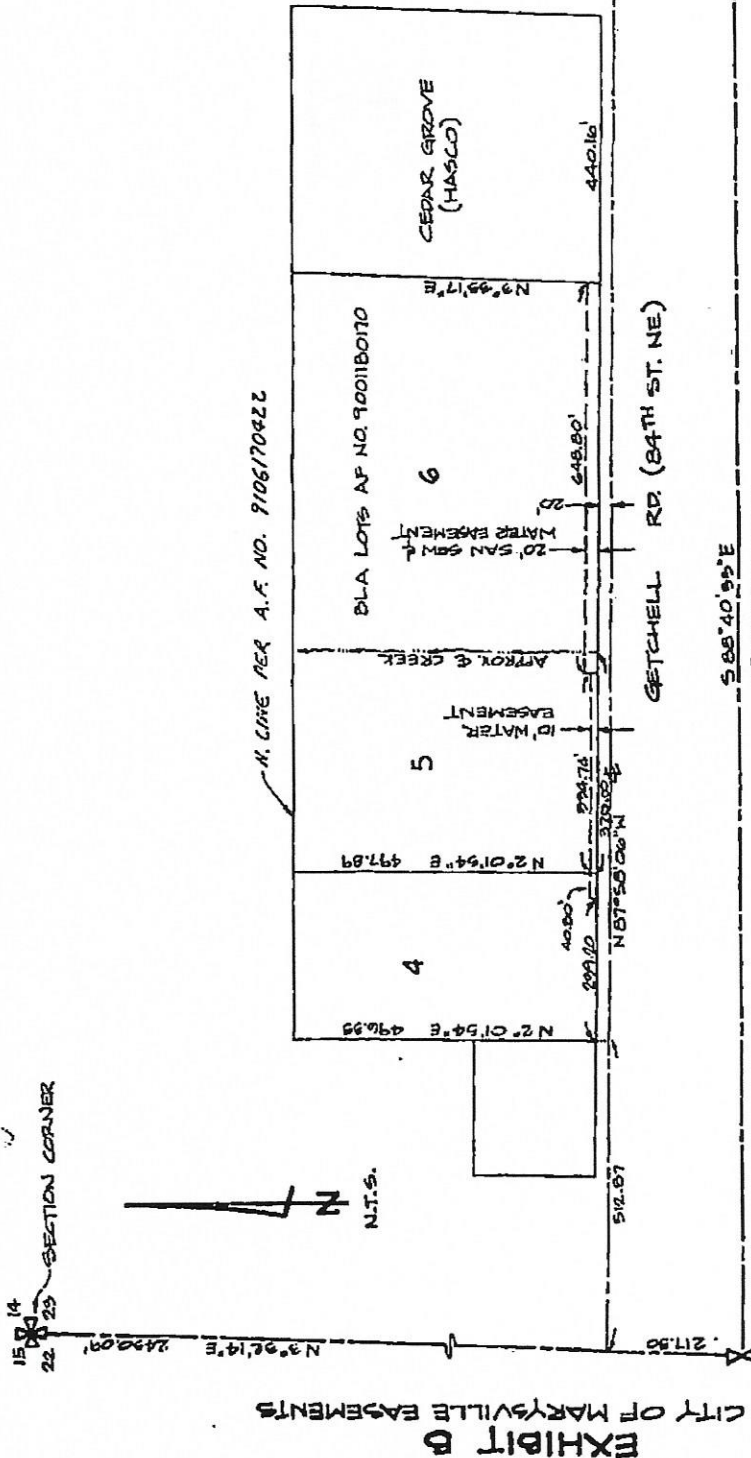
SITUATE IN SNOHOMISH COUNTY, WASHINGTON.



OSTERGAARD-ROBINSON & ASSOCIATES
3705 COLBY AVE. EVERETT, WASH. 98201
(206) 259-6445 (206) 827-5854
91166CHE

VOL. 2771 PAGE 0342

9808060319



N. LINE PER A.F. NO. 9106170422

BLA LOTS AF NO. 90018010

20' SAN SEW WATER EASEMENT

10' WATER EASEMENT

ARTROY & CREEK

GATCHELL RD (84TH ST. NE)

S 88° 40' 35" E

N 1/4, S 29, T 30 N, R 5E, W 1/4 (SW COR, SW 1/4, NW 1/4)

OSTERGAARD-ROBINSON & ASSOCIATES, INC.
3705 COLBY AVE. EVERETT, WASH. 98201
(206) 259-6445 (206) 827-5854



SNOHOMISH COUNTY HOUSING AUTHORITY
CEDAR GROVE

91-166

EXHIBIT B
CITY OF MARYVILLE EASEMENTS

SECTION CORNER