



# CITY of NOVI CITY COUNCIL

Agenda Item J  
May 18, 2009

**SUBJECT:** Approval of an easement agreement with Verizon Wireless for use of city-owned property on Grand River Avenue near CSX railroad (parcel 22-15-451-006).

**SUBMITTING DEPARTMENT:** Department of Public Services/Engineering Division *RH BTC*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:**

Verizon Wireless has requested an easement from the City of Novi for the purpose of installation and maintenance of gas line to serve an existing Verizon Wireless communications facility. The existing facility is not located on City property. The easement has a term of 25 years after which is terminable at the request of either party.

The enclosed documents have been reviewed by the City Attorney and city staff with no objections being presented. The work will be performed under a right-of-way permit and the site will be restored following construction.

**RECOMMENDED ACTION:** Approval of an easement agreement with Verizon Wireless for use of city-owned property on Grand River Avenue near CSX railroad (parcel 22-15-451-006).

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Burke				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

# Location Map

## Subject Parcel for Easement



### CITY OF NOVI

ENGINEERING DIVISION  
45175 W TEN MILE RD  
NOVI, MI 48375-3024  
(248) 347-0454  
MAP AUTHOR: Brian Coburn



1 INCH = 211 FEET

MAP PRINT DATE: 5/8/03

### MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

SECRET  
**SW**  
WARDLE

April 21, 2009

30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-  
3040  
Tel: 248-831-9500  
Fax: 248-831-2158  
www.secretwardle.com

Elizabeth M. Kudla  
Direct: 248-539-2846  
hkudla@secretwardle.com

Mr. Lindon Ivezaj  
Engineering Department  
City of Novi  
45175 West Ten Mile Road  
Novi, MI 48375-3024

**RE: Verizon Wireless Easement Agreement  
Our File No. 55142 NOV**

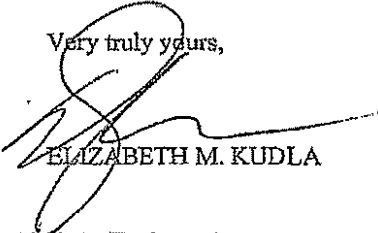
Dear Mr. Ivezaj:

Enclosed please find the final draft of the Verizon Wireless Easement Agreement requested by Verizon Wireless over City property located near Grand River and Clark Street. The easement is for the purpose of installation and maintenance of a gas line to serve Verizon's "Communications Facility" on adjacent property. The Easement Agreement provides for a term of 25 years after which is terminable at the request of either party. Verizon is responsible for restoration of the City property each time it is disturbed for operation and/or maintenance of the gas line.

In the event the Communications Facility is abandoned at any time and Verizon no longer requires the use of the adjacent City property for operation and maintenance of a gas line, Verizon is responsible for removal of its improvements and restoration of the City property. Verizon is required to indemnify and hold harmless the City for any liability arising out of its use and occupancy of the City property.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



ELIZABETH M. KUDLA

EMK  
Enclosure

cc: Maryanne Cornelius, City Clerk (w/Enclosure)  
C. Kim Shierk, Esquire (w/Enclosure)  
Thomas R. Schultz, Esquire (w/Enclosure)

C:\N\Portb\l\m\m\g\B\KUDLA\1227689\_1.DOC

COUNSELORS AT LAW

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EASEMENT AGREEMENT

This Agreement, made this        day of        , 2009, by the City of Novi, a Michigan municipal corporation, with its mailing address located at 45175 W. Ten Mile Road, Novi Michigan 48375, hereinafter designated "Grantor" and New Par d/b/a Verizon Wireless, a Delaware partnership, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter designated "Grantee."

WITNESSETH

WHEREAS, Grantor is the owner of certain property ("Property") located in the City of Novi, County of Oakland, State of Michigan, and being described as Parcel No. 22-15-451-006; and

WHEREAS, Grantee has installed and maintains a telecommunications facility on adjacent property ("Communications Facility");

WHEREAS, Grantee has the need for a utility easement across Grantor's Property in order to service a natural gas generator to be installed within the Communications Facility;

WHEREAS, the Grantor and Grantee desire to enter into this grant of easement with respect to the Property,

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the Grantor and Grantee herein agree as follows:

I.    GRANT OF EASEMENT:

1.01 Grantor hereby grants, bargains, sells and conveys onto Grantee and its successors and assigns the following easements and rights over, under, upon and in the Property and the improvements now or hereinafter situated thereon:

A.    The right and easement of any public utility providing public utility services to the Communications Facility to install, maintain, repair, replace, use and remove from time to time over, under, upon and in the Property such wires, poles, cables, conduits and pipes as might be necessary to provide utility service to the Communications Facility and the right of access by such public utility to and from public highways over the Property to the Communications

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Site 131 West Oaks  
Easement Agreement  
MNS 2-11-09

Facility or any portions of it, in the location shown on Exhibit A attached hereto (the "Easement Parcel").

B. The right of access, seven (7) days a week, twenty-four (24) hours a day, to and from public highways over the Property to the Easement Parcel in order to install, maintain, repair, replace, use and remove from time to time the utilities installed within the Easement Parcel.

II. CONSIDERATION:

2.01 In consideration for this easement, Grantee agrees that it shall pay to the Grantor one (\$ 1.00) dollar.

III. TERMINATION:

3.01 After the expiration of the twenty-five (25) years following the Commencement Date, Grantor or Grantee shall have the right, for any reason whatsoever, to terminate this Easement Agreement and the rights and obligations under it upon no less than six months prior written notice effective upon any anniversary of the Commencement Date.

3.02 Grantee shall have the additional right to terminate this Easement Agreement upon the occurrence of the following:

A. The rejection of an application for any and all State, Federal or Local certificates, permits, licenses or approvals which in Grantee's opinion are necessary for its installation or operation of the Communications Facility or the subsequent cancellation, expiration, lapse, withdrawal or termination of same by governmental authority.

B. Any soil boring test conducted by Grantee is found to be unsatisfactory by the Grantee in its sole discretion so that it will be unable to use the Easement Parcel for its intended purpose.

C. Grantee, in its sole discretion, determines that the adjacent property is no longer compatible for Grantee's use as a Communications Facility.

D. Annual anniversary of the Commencement Date of this Agreement provided that three months prior notice is given to the Grantor by the Grantee.

3.03 A termination pursuant to Section 3.02 shall be effected by written notice from the Grantee to the Grantor in accordance with the notice provisions provided hereinafter.

3.04 In the event of a termination of this Easement Agreement, at the request of either party, Grantor and Grantee shall enter into a written termination in recordable form referencing this Easement Agreement or any abstract of it and any recordation information reflecting it.

#### IV. RESTORATION BY GRANTEE

4.01 Following any work within the Easement Parcel by Grantee, Grantee shall immediately restore all parts of the Easement Parcel disturbed, damaged or destroyed as a result of such work to the condition that existed immediately prior to the commencement of such work by Grantee.

#### V. GRANTEE'S IMPROVEMENTS

5.01 All improvements made by Grantee within the Easement Parcel shall be made at Grantee's sole cost and expense and at all times shall be deemed to be the sole and exclusive property of Grantee. Grantee shall keep and maintain the same in a reasonable condition.

5.02 In the event this Easement Agreement is terminated, within a reasonable time thereafter, Grantee shall remove its installations, equipment, personal property and fixtures and at its cost and expense repair any damage caused by such removal. Grantee shall immediately restore all parts of the Easement Parcel disturbed, damaged or destroyed as a result of such work to the condition that existed immediately prior to the commencement of such work by Grantee.

#### VI. COMPLIANCE WITH LAWS AND INDEMNITIES:

6.01 Grantee at its cost and expense will comply with all laws affecting its physical use of the Easement Parcel.

6.02 Grantee shall indemnify and hold Grantor harmless against any claim of liability or loss from personal injury or property damages resulting from or arising out of the use and occupancy of the Easement Parcel by Grantee, its servants or agents, excepting, however, such

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claims or damages as may be due to our caused by the acts or omissions of Grantor or its or their servants, agents, relatives, tenants, invitees, successors and assigns.

VII INTENTIONALLY OMITTED

VIII INTENTIONALLY OMITTED

IX EASEMENT RUNNING WITH LAND-TRANSFERABILITY:

9.01 Grantor, for itself and its successors and assigns, hereby covenants and agrees that this Easement Agreement shall burden and run with the title to the Property.

9.02 This Easement Agreement shall be for the benefit of Grantee and its successors and assigns. It is acknowledged by Grantor that this Easement Agreement shall be assignable and transferable by Grantee to others, only as approved by the City Council for the City of Novi. In the event of such transfer, Grantor agrees that upon the written request of the transferee, it shall execute such reasonable documents as such transferee shall request to indicate and evidence its agreement that it remains bound by the Easement Agreement and that the same remains an encumbrance upon the Property.

9.03 In addition to the foregoing if for any reason this Easement Agreement is transferred by Grantee, at the request of the transferee or transferor, Grantor shall execute and deliver for recording a new easement Agreement in favor of the transferee containing such terms and conditions as Grantor deems appropriate.

X. TITLE AND AUTHORITY:

10.01 Grantor covenants that it is seized of good and sufficient title and interest to the Property and that it has full power and authority to enter into and execute this Easement Agreement.

10.02 This Easement is non-exclusive and is subject to all easements and encumbrances of record.

10.03 At the Grantor's option, this Easement Agreement shall be subordinate to any mortgage by Grantor which from time to time may encumber the Property; provided, however, every such mortgage shall recognize the validity of this Easement Agreement in the event of a foreclosure of Grantor's interest and also Grantee's right to remain in occupancy pursuant to this

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Easement Agreement, to have all of the benefits of this Easement Agreement and to have access to the Property as long as Grantee is not in default hereunder. Grantee shall execute whatever instruments may reasonable be required to evidence this subordination clause. In the event the Property is presently encumbered by a mortgage, Grantor immediately after execution of this Easement Agreement shall obtain and furnish to Grantee a discharge or release of the mortgage with respect to the area covered by this Easement Agreement or a non-disturbance agreement to the benefit of the Grantee setting forth the protection outlined about in a recordable form.

XI. NOTICES:

11.01 All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

Grantee: NEW PAR  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, NJ 07921  
Attention: Network Real Estate

Grantor: CITY OF NOVI  
Maryanne Cornelius  
City Clerk  
45175 W. Ten Mile Road  
Novi, MI 48375

XII. MISCELLANEOUS:

12.01 This Easement agreement may not be amended or modified except by a written instrument executed by both parties in recordable form.

12.02 This Easement Agreement shall be governed and construed in accordance with the laws of the State of Michigan.

12.03 The provisions of this Easement Agreement with its benefits and advantages shall inure to the respective successors and assigns of the parties hereto.



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12.04 This Easement Agreement shall be executed in recordable form. However, the Grantor agrees that upon request from the Grantee, the Grantor shall execute an abstract of this Easement Agreement in recordable form which may be recorded in lieu of the actual Easement Agreement.

12.05 The Grantee shall have and hold the granted and bargained easements and rights herein for its own benefit and uses and those of its successors and assigns forever.

12.06 The Grantor does by these presents bind itself and its successors and assigns forever to warrant and defend the above granted and bargained rights and easements to the Grantee, its successors and assigns.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands and affixed their respective seals the day and year first above written.

GRANTOR:

\_\_\_\_\_

CITY OF NOVI  
A Municipal Corporation

By:  
Its:

STATE OF MICHIGAN    )  
                                  ) SS  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 200\_\_, by \_\_\_\_\_, on behalf of the City of Novi, a Municipal Corporation.

\_\_\_\_\_

\_\_\_\_\_

Site 131 West Oaks  
Easement Agreement  
MUDS 2-11-09

Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

GRANTEE:  
New Par d/b/ Verizon Wireless  
By Verizon Wireless (VAW), LLC  
Its General Partner

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Beth Ann Drohan  
Title: Area Vice President Network  
Date: \_\_\_\_\_

STATE OF ILLINOIS        )  
                                  )  
COUNTY OF COOK         )

**ACKNOWLEDGMENT**

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that Beth Ann Drohan personally came before me this day and acknowledged that she is the Area Vice President Network, of Verizon Wireless (VAW) LLC, the general partner of New Par d/b/a Verizon Wireless, and that she, as Area Vice President Network, being authorized to do so, executed the foregoing **MEMORANDUM OF LEASE SUPPLEMENT** on behalf of New Par d/b/a Verizon Wireless.

WITNESS my hand and official Notarial Seal, this \_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public

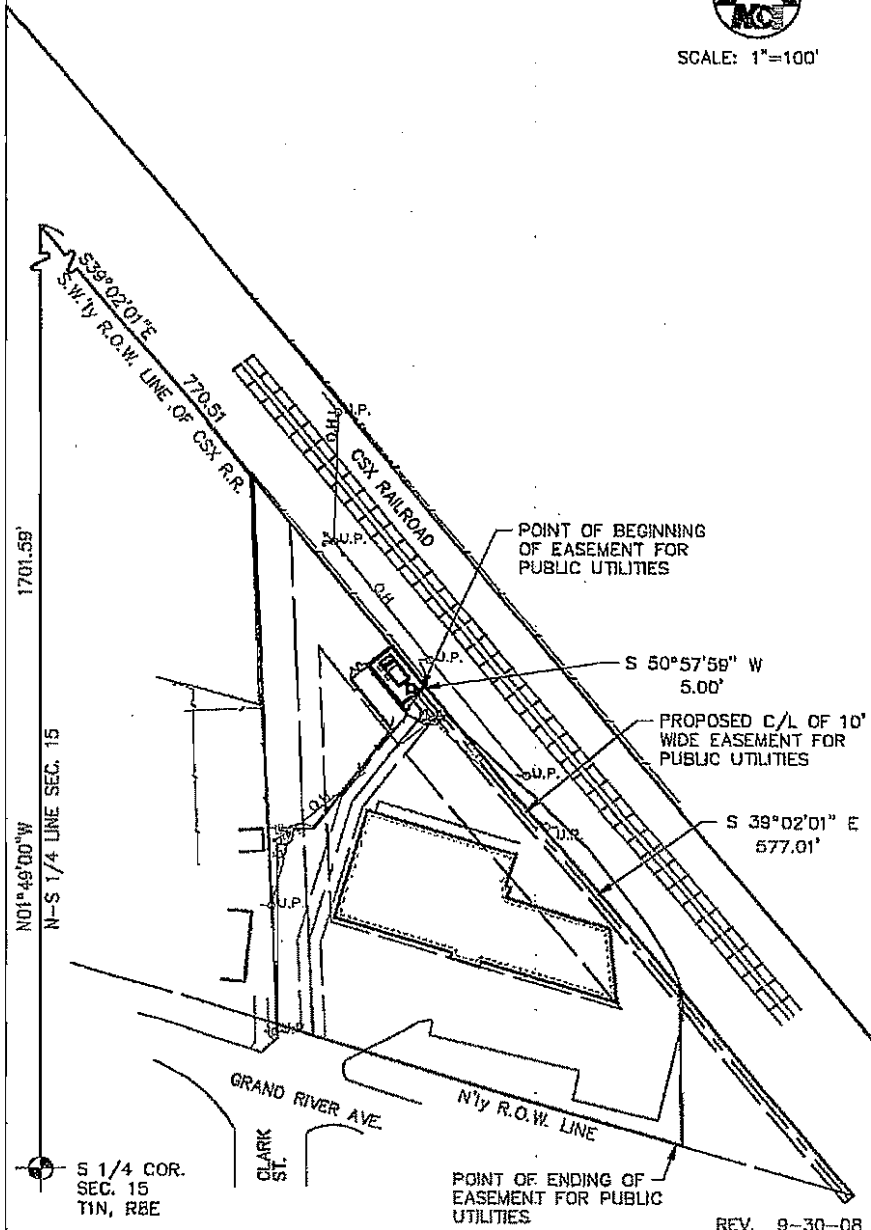
My Commission Expires:  
\_\_\_\_\_

Site 131 West Oaks  
Easement Agreement  
MNDS 2-11-09

**EXHIBIT A**  
**Description of Easement Parcel**



SCALE: 1"=100'



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### MIDWESTERN CONSULTING



Civil, Environmental and  
Transportation Engineers  
Planners, Surveyors  
Landscape Architects

3815 Plaza Drive  
Ann Arbor, Michigan 48108  
Phone 734.985.0200  
Fax 734.955.0599

*verizon*wireless

CITY OF NCM, OAKLAND COUNTY, MICHIGAN

DATE: 8-11-08

JOB NO.: 00285-131B

SCALE: 1"=100'

SHEET 1 OF 2

REV. 9-30-08

S 1/4 COR.  
SEC. 15  
T1N, R8E

POINT OF ENDING OF  
EASEMENT FOR PUBLIC  
UTILITIES

POINT OF BEGINNING  
OF EASEMENT FOR  
PUBLIC UTILITIES

S 50°57'58" W  
5.00'

PROPOSED C/L OF 10'  
WIDE EASEMENT FOR  
PUBLIC UTILITIES

S 39°02'01" E  
577.01'

## **LEGAL DESCRIPTION OF EASEMENT FOR PUBLIC UTILITIES**

A 10 foot wide easement for public utilities, the centerline of said easement is described as follows:

Commencing at the South 1/4 corner of Section 15, T.1N., R.8E., City of Novi, Oakland County, Michigan; thence N 01°49'00" W 1701.59 feet along the north & south 1/4 line of said Section 15; thence S 39°02'01" E 770.51 feet along the southwesterly right-of-way line of CSX Railroad; thence S 50°57'59" W 5.00 feet to the POINT OF BEGINNING:

thence S 39°02'01" E 577.01 feet  
the POINT OF ENDING; being a Southeast 1/4 of Section 15, T.1N., R.8E., City of Novi, Oakland County, Michigan. Except any part taken, deeded, or used for public road right-of-way.

REV. 9-30-08

### **MIDWESTERN CONSULTING**



Civil, Environmental and  
Transportation Engineers  
Planners, Surveyors  
Landscape Architects

3615 Plaza Drive  
Ann Arbor, Michigan 48108  
Phone: 734.995.0200  
Fax 734.995.0599

CITY OF NOVI, OAKLAND COUNTY, MICHIGAN

DATE: 8-11-08 JOB NO.: 00289-131B

SCALE: 1" = 100'

SHEET 2 OF 2

LAW OFFICES  
**MYERS NELSON DILLON & SHIERK, PLLC**

40701 WOODWARD, SUITE 235  
BLOOMFIELD HILLS, MI 48304

TELEPHONE (248) 203-2040  
FACSIMILE (248) 203-2045  
kshierk@mnds-llc.com

C. KIM SHIERK

April 24, 2009

*VIA E-MAIL AND FIRST CLASS MAIL*

Mr. Lindon Ivezaj  
Engineering Department  
City of Novi  
45175 West Ten Mile Road  
Novi, MI 48375-3024

Re: City of Novi  
New Par d/b/a Verizon Wireless, Site 131 (West Oaks)  
Easement Agreement

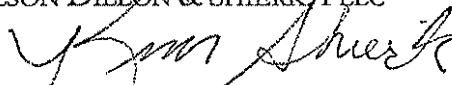
Dear Mr. Ivezaj:

Our client, New Par d/b/a Verizon Wireless, leases property at 44170 Grand River on which it has installed a communication facilities. In order to service the facilities, an easement for gas service across property owned by the City of Novi is needed. The proposed route of the gas line is at the direction of the gas company. The form of easement has been reviewed by Elizabeth Kudla, City attorney, and the form she approved was forwarded to your attention by Ms. Kudla in her letter dated April 21, 2009.

We respectfully request that the approval for execution of this easement be placed on the City's next available agenda. If you require any additional information regarding this request, please feel free to contact me.

Very truly yours,

MYERS NELSON DILLON & SHIERK, PLLC



C. Kim Shierk

cc: Elizabeth M. Kudla (via e-mail)  
Robert Anders (via e-mail)



