

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Agreement and Grant of Easement with Verizon Northwest Inc. for sidewalk along 41st Street

_____ Consent
 X Action
 _____ First Reading
 _____ Second Reading
 _____ Third Reading
 _____ Public Hearing

COUNCIL BILL # _____
 Originating Department Real Property
 Contact Person Mike Palacios
 Phone Number 425-257-8938
 FOR AGENDA OF Feb. 10, 2010

Initialed by:
 Department Head _____
 CAA db
 Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Southeast corner of 41 st Street and Colby Ave	5/21/08 Award 41 st Street/Broadway Arterial Improvement Project construction contract	Easement Agreement	All

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The City's 41st Street/Broadway Arterial Improvement Project involved the construction of various improvements to complement the reconstruction of the I-5/41st Street interchange. These improvements included curbs, gutters, pedestrian and traffic signal enhancements, new traffic signals on the Broadway connector, and minor widening between the 41st Street/Broadway bridge and Colby Avenue.

The attached easement is for a portion of the widened pedestrian sidewalk along 41st Street, located on the Verizon property, which is on the southeast corner of Colby Avenue and 41st Street.

RECOMMENDATION:

Authorize the Mayor to sign the Agreement and Grant of Easement with Verizon Northwest Inc. for sidewalk along 41st Street.

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
REAL PROPERTY MANAGER
3200 CEDAR STREET
EVERETT, WA 98201
(BY AND FOR THE BENEFIT OF THE CITY)

[Space above this line for Recorder's use]

AGREEMENT AND GRANT OF EASEMENT

This AGREEMENT AND GRANT OF EASEMENT (the "Agreement"), dated October 27, 2009 for reference purposes only, is entered into by and between Verizon Northwest Inc., a Washington corporation ("Verizon"), and the City of Everett, a Washington municipal corporation (the "City"), with reference to the following facts:

A. Verizon is the owner of certain real property located at 1800 41st Avenue, Everett, Washington, and as more particularly described in Exhibit "A" attached hereto (the "Verizon Property").

B. The City desires to use a portion of the Verizon Property to construct a pedestrian/bicycle trail ("Trail"), located east of Colby Avenue along 41st Street and more particularly described herein. Verizon is willing to grant a perpetual easement to the City for the operation and maintenance of the Trail on the terms and conditions more specifically set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Verizon hereby grants to the City a perpetual easement, subject to Verizon's rights as set forth herein, to construct, maintain and operate the Trail (the "Easement") in, along and across that certain portion of the Verizon Property described in Exhibit "B-1" attached hereto and as shown on the diagram attached hereto as Exhibit "B-2" ("Easement Area").

2. Construction of Trail.

2.1 Construction Standards. The City shall not commence to construct the Trail or commence any work on the Easement Area without the written consent of Verizon, and Verizon may withhold such consent or impose conditions to such consent, as Verizon may deem reasonably necessary or desirable. The City shall deliver to Verizon plans and specifications for such construction, which shall be subject to Verizon's prior reasonable approval. Notwithstanding the foregoing, such approval by Verizon shall not constitute a representation regarding the adequacy of the plans and specifications or a waiver of the City's obligations not to disturb the Underground Utilities, as set forth in Paragraph 2.3 below. The City shall give Verizon at least two (2) weeks' written notice at the address set forth in Paragraph 8 below and to Rob Dutcher at (425)261-6109 prior to commencement of construction of the Trail on the Easement Area. The City shall complete such construction in accordance with the plans and specifications approved by Verizon, using good quality materials, and in compliance with all applicable local, state and federal laws and in a good and workmanlike manner. The City shall pay the costs of all construction, and shall keep the Easement Area and the Verizon Property free and clear of any liens or encumbrances arising out of such construction. Verizon shall have the right to post and record appropriate notices of non-responsibility.

2.2 Insurance. The parties acknowledge that the City maintains a self-insurance program in accordance with Washington law.

2.3 Underground Utilities. The City acknowledges that Verizon has notified the City of the existence of underground cables, wires, conduits, utilities and infrastructure located under the Easement Area (collectively, "Underground Utilities"). The City shall undertake its construction in a manner so as not to disturb any of Verizon's Underground Utilities. If the City disturbs any of Verizon's Underground Utilities, Verizon shall have the right, in addition to all other rights and remedies, at the City's sole cost and expense, to replace or repair such Underground Utilities.

2.4 Existing Landscaping. Promptly following the completion of the construction, the City shall, at its sole cost and expense, replace and restore all landscaping, shrubs, trees, brush, plants, sprinklers, and irrigation systems impacted as a result on construction of the Trail to Verizon's satisfaction.

3. No Interference. In connection with its use of the Easement Area, the City shall not cause or permit any interference with the use by Verizon of the balance of the Verizon Property.

4. Verizon's Rights to Operate Underground Utilities. The City acknowledges that Verizon operates the Underground Utilities under the Easement Area. Verizon shall have the right at any time to the extent deemed necessary by Verizon, to repair, replace and maintain the Underground Utilities, and in connection therewith, Verizon may be required to uproot all or a portion of the Easement Area, in which case, Verizon shall repair, repave, and/or replace the damaged portions of the Easement Area. The City acknowledges that

the use of the Trail may be interrupted during such period and waives any and all rights to damages resulting therefrom.

5. Maintenance of the Easement Area. The City shall maintain the Easement Area in good order, condition and repair, and in compliance with all applicable local, state and federal laws. The City shall have the right upon providing at least five (5) days' notice to Verizon, but not the obligation, to remove, cut and/or trim all brush, shrubs, trees or other growth standing or growing upon the Easement Area which constitutes an unreasonable interference with City's rights or a menace or danger to the Easement Area.

6. Surrender of Easement Area. The rights, privileges and authority hereby granted shall continue to be in force until such time as the City shall permanently remove the Trail, at which time all such rights, privileges and authority hereby granted shall terminate. Upon the destruction, removal, termination or abandonment of the Trail, this Agreement shall terminate and be of no further force or effect. In the event of any destruction, removal, termination or abandonment of the Trail, the City shall remove the Trail and restore the Verizon Property to a good and clean condition, including without limitation, repaving and landscaping to restore the Verizon Property to its condition existing immediately prior to such destruction, removal, termination or abandonment of the Trail.

7. Indemnity. The City hereby releases Verizon, Verizon's affiliates, and their respective officers, directors, employees, contractors, agents successors and assigns (collectively, the "Verizon Parties") from any and all claims, damages, costs and expenses (including, but no limited to, attorneys' fees), fines, penalties, assessments, damages, claims, demands, actions, causes of action, suits, judgments and settlements (collectively "Claims") arising in any manner, directly or indirectly, in, on or about the Easement Area from any cause whatsoever, including but not limited to, any injury, including death, to any person or persons, or damage or loss or theft to any property. Except to the extent caused by the gross negligence or willful misconduct of the Verizon Parties, the City hereby agrees to indemnify and hold the Verizon Parties harmless from any and all Claims arising in any manner, directly or indirectly, (a) in, on or about the Easement Area from any cause whatsoever, including but not limited to, any injury, including death, to any person or persons, or damage or loss or theft to any property, and (b) in connection with the use by the City, its employees, agents, contractors, representatives, invitees or the general public of the balance of the Verizon Property, including but not limited to, any injury, including death, to any person or persons, or damage or loss or theft to any property.

8. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing, shall be given by personal delivery or by registered or certified United States mail, return receipt requested, postage prepaid, addressed as follows:

TO VERIZON:

VERIZON NORHTWEST INC.
c/o Nancy Carmichael Dixon
CB Richard Ellis Inc./Verizon Account
112 Lakeview Canyon Rd., CA500CW
Thousand Oaks, CA 91362

TO CITY:

CITY ATTORNEY
2930 Wetmore Avenue
Everett WA 98201

CITY CLERK
2930 Wetmore Avenue
Everett WA 98201

REAL PROPERTY MGR.
3200 Cedar Street
Everett WA 98201

Any such notice, demand, request or other communication shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt. If the date on which any notice to be given hereunder falls on a weekend or legal holiday then such date shall automatically be extended to the next business day immediately following such weekend or holiday. The foregoing addresses may be changed by notice given in accordance with this Paragraph 8.

9. Miscellaneous. Verizon shall have the right without the City's consent to assign its rights and obligations under this Agreement. The City shall not assign its rights and obligation under this Agreement without the express written consent of Verizon, which consent may be withheld in Verizon's sole and absolute discretion. This Agreement shall be governed by and interpreted under the laws of the State of Washington. If any action or proceeding is commenced by any party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs in addition to any other relief awarded by the court. As used in this Agreement, the term, "including" shall mean including without limitation. Time is of the essence of this Agreement. The parties' respective rights and remedies under this Agreement are cumulative with and in addition to all other legal and equitable rights and remedies which the parties may have under applicable law. This Agreement shall insure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

VERIZON NORTHWEST INC., a
Washington Corporation

By: _____

Title: _____

CITY OF EVERETT, a
Washington Municipal Corporation

By: _____
Ray Stephanson, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF VERIZON PROPERTY

LEGAL DESCRIPTION

Lots 2 through 31, Block 17 and lots 3 through 16, Block 18, South Park Addition, according to the plat thereof recorded in Volume 7 of Plats, page 43, records of Snohomish County, Washington.

AND

Lots 1 through 8, Block 20 and Lots 1 through 4, Block 19, Replat of Blocks 19 through 28, South Park Addition, according to the plat thereof recorded in Volume 8 of Plats, page 5, records of Snohomish County, Washington.

TOGETHER WITH all those portions of Vacated Streets, Alleys, Easements and Right of Ways accruing to any of the above premises by operation of law.

EXCEPT portions conveyed to the State of Washington for Highway SSH 1-I;

AND EXCEPT portions conveyed to the City of Everett for street purposes by deed recorder under Auditor's File number 8704230256, records of Snohomish County, Washington.

EXHIBIT "B-1"

LEGAL DESCRIPTION OF EASEMENT AREA

EASEMENT DESCRIPTION

BEGINNING at a point described in that certain easement filed under Auditor's File No. 200407300631, records of Snohomish County, as being 104.50 feet East of the centerline of Colby Ave. and 70.00 feet South of the centerline of 41st and on the northerly boundary of the above described parcel, thence North 89° 22' 21" East along said northerly boundary and southerly margin of 41st Street, a distance of 74.98 feet, to a point of cusp of a 1,422.74 radius tangent curve to the right, the radius point of which bears North 05° 13' 24" West; thence along the arc of said curve in a westerly direction, through a central angle of 03° 18' 48", an arc distance of 52.27 feet to the east line of said easement; thence North 58° 55' 36" East, along said east line, a distance of 8.32 feet to the POINT OF BEGINNING.

Containing an area of 563 square feet, more or less.

EXHIBIT "B-2"

DIAGRAM OF EASEMENT AREA

