



ORDINANCE NO. 4021-24

An Ordinance granting permission to construct, maintain and operate an overhead skybridge across 80th Street SW, between Snohomish County Parcel Numbers 28041200303600 on the south and 00412300000800 on the north, located approximately five hundred eighty-five (585) feet west of Hardeson Road; and specifying the conditions under which this permission is granted

WHEREAS,

- A. In 1999 the City of Everett (the “**Grantor**” or the “**City**”) permitted a skybridge to be constructed across 80th Street SW approximately five hundred eighty-five (585) feet west of Hardeson Road.
- B. The existing skybridge is in need of replacement.
- C. The United States Postal Service (“**Grantee**” or “**USPS**”) desires to replace the skybridge and construct, maintain and operate a new skybridge.
- D. The City agrees to grant the right to construct, operate and maintain the new skybridge, all as under set forth in this Ordinance.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. **Permissions – Administration**

A. Skybridge. Subject to the terms and conditions of this Ordinance, the City hereby grants permission to Grantee(s) to construct, maintain and operate a skybridge over and across 80th Street SW, between Snohomish County Parcel Numbers 28041200303600 on the south and 00412300000800 on the north, located approximately five hundred eighty-five (585) feet west of Hardeson Road (the “**Skybridge**”), for the purpose of facilitating pedestrian travel in conjunction with Grantee’s mail facility operations (such operations, the “**Approved Purpose**”).

B. USPS Warranty of Property Rights. As a material term and condition of this Ordinance, Grantee represents and warrants that, except for rights that may be necessary to be granted from the City, Grantee has obtained (or will obtain before Skybridge construction) and will continuously maintain for the duration of the Term any and all rights necessary for Grantee to construct, operate, and maintain the Skybridge and fulfill Grantee’s obligations hereunder. This includes without limitation obtaining and maintaining rights as necessary from persons who may own property on which Skybridge landing pads or other improvements are located, including rights as necessary for Grantee to construct, operate, and maintain the Skybridge and for the City to enter such property in accordance with this Ordinance.

C. Administration. The Director of Public Works or designee (the “**Director**”) shall administer the provisions of this Ordinance.

Section 2. **Compensation to City.** As compensation to the City for the permissions granted under this Ordinance, Grantee shall pay to the City a one-time payment in the amount of five thousand dollars (\$5,000) (the “**One-Time Fee**”). The One-Time Fee covers the City’s administrative costs, including without limitation publication costs. Grantee shall pay the One-Time Fee with Grantee’s acceptance of this Ordinance.

Section 3. **Term.** The permissions granted to Grantee are effective as of the effective date of this Ordinance and expire twenty-five (25) years thereafter, unless terminated earlier pursuant to the provisions of this Ordinance (the “**Term**”).

Section 4. **Use of Right-of-Way.** All use of the Skybridge and all permissions granted under this Ordinance are non-exclusive and at all times subject to the right of the City to use right-of ways (including without limitation 80th Street SW) for public travel, utilities, and other public purposes. All use of the Skybridge and all permissions granted under this Ordinance shall be in a manner that minimizes interference with the use by the City and the public of City rights-of-way. Grantee shall at its sole expense conform to all applicable laws, regulations, permits or requirements of any public authority affecting the use of the Skybridge. Upon request, Grantee shall deliver to the City copies of any such permits.

Section 5. **Protection of Utilities.** Grantee shall pay all costs of any protection, support or relocation of existing utilities deemed necessary by the owners of utilities affected by operation and maintenance of the Skybridge. Grantee is solely responsible for any damage to any utilities due to the maintenance and operation of the Skybridge.

Section 6. **Conflict with Future Installations of the City**

A. **Interference Notice.** If the City determines that the space occupied by the Skybridge is necessary for any public use and benefit and that the Skybridge interferes with such public use and benefit, then the City shall deliver notice thereof to Grantee (the “**Interference Notice**”). The City shall deliver the Interference Notice to Grantee together with preliminary plans and specifications that identify the potential interference.

B. **Grantee Election.** Within ninety (90) days after delivery of the Interference Notice (the “**Election Period**”), Grantee shall elect to either (1) modify, relocate or remove the Skybridge improvements at Grantee’ sole expense, so as to remove the interference to the City’s satisfaction, or (2) reimburse the City for all added costs related to such interference, including without limitation added costs of design, construction, and installation. The Director may extend the Election Period at the request of Grantee. If Grantee elects (1), Grantee shall commence work and shall diligently prosecute the modification, relocation or removal work to completion in accordance with a construction schedule reasonably established by the City. If Grantee fails to commence, prosecute, and complete such work in accordance with such schedule, the City at Grantee’ sole expense may enter Grantee property and undertake the work on behalf of Grantee. If Grantee elects (2), Grantee shall give the City satisfactory assurance of payment of added costs at the time Grantee delivers the notice of election and Grantee shall reimburse the City for such added costs within thirty (30) days after delivery of an invoice from the

City.

C. Effect of Failure to Make Election. If Grantee does not duly deliver a notice of election during the Election Period, then the City may, by delivery of written notice to Grantee, make the election for Grantee, in which case such City election is fully binding upon Grantee.

Section 7. Termination - Removal.

A. Termination for Violation of Material Term or Condition of this Ordinance. If the Director determines that Grantee has violated any material term or condition of this Ordinance or if the Director determines that the Skybridge is not being used for the Approved Purpose, the Director shall deliver written notice thereof to Grantee ("**Violation Notice**"). If Grantee does not cure such violation within ninety (90) days after delivery of Violation Notice, then the City may, effective upon written notice to Grantee, terminate all permissions granted to Grantee under this Ordinance.

B. Removal after Termination. Within one hundred and eighty (180) days after expiration of the term granted by this Ordinance or after delivery of a termination notice under Section 7A above, Grantee at Grantee's sole expense shall, unless directed otherwise by the Director, remove the Skybridge. If Grantee fails to commence and complete such removal work within such one hundred eighty (180) days, then the City at Grantee sole expense may enter Grantee' property and undertake such removal on behalf of Grantee.

C. Removal Includes Restoration. Any removal of the Skybridge pursuant to this Ordinance also includes restoration of all portions of rights-of-way that may have been disturbed to as good a condition as it was prior to construction of the Skybridge.

Section 8. Plan Approval/Construction. Grantee shall not commence construction, reconstruction, relocation, readjustment, removal, or repair of the Skybridge except in accordance with plans and specifications approved in advance by the Director. This Director approval is only for the purposes of this Ordinance and is in addition to, and does not replace, any approvals or other permits that may be required under the Everett Municipal Code or other applicable law. All construction, reconstruction, relocation, readjustment, removal, or repair must be in accordance with the Director-approved plans and specifications and all other applicable permits and approvals.

Section 9. Operation, Maintenance and Repair. At its sole expense, Grantee shall operate, maintain, and repair the Skybridge so that it is in a good and safe condition and fully functional as a Skybridge. In the event of damage to or destruction of the Skybridge, Grantee at its sole expense shall either promptly repair such damage or destruction or shall remove the damaged or destroyed Skybridge. If Grantee violates this Section 9, the Director may deliver a Violation Notice pursuant to Section 7A above. This Violation Notice may require closure of the Skybridge until Grantee cures the violation.

Section 10. Continuing Obligation to Remove and Restore. Notwithstanding termination or expiration of the permissions granted by this Ordinance, or closure or removal of the Skybridge, Grantee shall remain bound by its obligations under this Ordinance until:

- A. the Skybridge and all its appurtenances are removed from the right-of-way;
- B. the area is restored in a manner and to a condition satisfactory to the Director in accordance with this Ordinance; and
- C. the Director certifies that Grantee has discharged its obligations under this Ordinance.

Upon prior notice to Grantee and entry of written findings that it is in the public interest, the City may, in the City's sole discretion, excuse Grantee, conditionally or absolutely, from compliance with any or all of Grantee's obligations to remove the Skybridge and to restore disturbed areas.

Section 11. Release, Hold Harmless, and Indemnification. The Skybridge is the exclusive responsibility of Grantee. Grantee releases the City from any and all claims resulting from the Skybridge or from damage or loss to Grantee's own property and does covenant and agree at all times to indemnify and hold harmless the City, its officers, agents and employees, from all claims, actions, suits, liability, loss, costs, expense or damages of every kind and description (excepting only such damages that may result from the sole negligence of the City), that may accrue to, or be suffered by, any person or persons or property or properties, including without limitation, damage or injury to Grantee, its officers, agents, employees, contractors, invitees, tenants and tenant's invitees, licensees, by reason of the construction, maintenance, operation or use of the Skybridge, or any portion thereof, or by reason of anything that has been done or may at any time be done by Grantee by reason of this Ordinance or by reason of Grantee violating, failing or refusing to strictly comply with each and every provision of this Ordinance or by reason of the City exercising any option, right or other privilege under this Ordinance; and in case judgment shall be rendered against the City in any suit or action, Grantee shall fully satisfy the judgment within one hundred and twenty (120) days after such suit, action or claim shall have been finally determined, if determined adversely to the City. If it is determined by a court of competent jurisdiction that RCW 4.24.115 applies to this Ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of the City, its agents, contractors or employees, and Grantee, their agents, contractors, employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Grantee or Grantee's agents, contractors, employees. **Solely and expressly for the purpose of its duties to indemnify the City, Grantee specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Grantee recognizes that this waiver of immunity under Title 51 was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.** This Section 11 survives any termination or expiration of any permission granted under this Ordinance.

Section 12. Consent for and Conditions of Assignment or Transfer. The right, privilege and authority granted under this Ordinance are solely for the USPS shall not be assignable, leaseable or otherwise alienated or transferable by operation of law, nor shall Grantee transfer, assign, mortgage, pledge or encumber the same without the consent of the City, which must be in writing and signed by the Mayor to be effective and which consent the City may refuse at the City's sole discretion.

Section 13. Inspection Fees. Grantee shall pay to the City such usual and reasonable amounts as may be required by the Director pursuant to City code for the City's inspection of the Skybridge.

Section 14. Conflict. If the provisions of this Ordinance conflict with another provision of the Everett Municipal Code or any other City ordinance or regulation, the provisions of this Ordinance shall control. This Ordinance is subject to the City Charter (including without limitation Article 13, if and as applicable.)

Section 15. Notices. Unless otherwise provided herein, notices required to be in writing under this Ordinance shall be given as follows:

If to the City:

Director of Public Works
City of Everett
3200 Cedar Street
Everett, WA 98201

City Attorney
City of Everett
2930 Wetmore
Everett, WA 98201

City Clerk
City of Everett
2930 Wetmore
Everett, WA 98201

If to Grantee:

U.S. Postal Service
412 E Pine Glen Ct
Spokane, WA 99208

Notices shall be deemed effective, if mailed, upon the second day following deposit thereof in the United States Mail, postage prepaid, or upon delivery thereof if otherwise given. Either the City or Grantee may change the addresses to which notices may be given by giving notice as above provided.

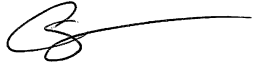
Section 16. Acceptance of Terms and Conditions. Grantee shall deliver to the City Clerk a fully executed acceptance of the terms and conditions of this Ordinance on a form provided by the Office of City Attorney (the “**Acceptance**”) within sixty (60) days after the effective date of this Ordinance, together with the One-Time Fee. The Office of the City Attorney may grant in writing additional time for such delivery, which may not exceed an additional ninety (90) days. In no event may Grantee begin any construction of the Skybridge prior to such delivery to the City Clerk. If Grantee does not so deliver the Acceptance and the One-Time Fee within such sixty days or such additional time as may be granted by the Office of the City Attorney, then the privileges conferred by this Ordinance shall be deemed declined or abandoned and the permissions granted deemed lapsed and forfeited.

Section 17. Ratify and Confirm. Any act taken by the City or Grantee pursuant to the authority and in compliance with the conditions of this Ordinance, but prior to its effective date, is hereby ratified and confirmed.

Section 18. Savings. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 19. Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

Section 20. Recording. This Ordinance may be recorded within the Snohomish County Auditor's Office.



Cassie Franklin, Mayor

ATTEST:



Marista Jorve, City Clerk

PASSED: 4/24/2024

VALID: 04/25/2024

PUBLISHED: 4/27/2024

EFFECTIVE DATE: 5/10/2024

Ordinance 4021-24

Final Audit Report

2024-04-25

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