

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works, Programming

DATE: January 16, 2024

REQUESTED ACTION: Execute a Fuel Tax funding agreement between Clark County and the Washington State Transportation Improvement Board for the NE 152nd Avenue, (Padden Parkway – NE 99th Street) - CRP #301022.

 X Consent Hearing County Manager

BACKGROUND

The Washington State Transportation Improvement Board (TIB) has notified Clark County that the NE 152nd Avenue (vicinity of Padden Parkway – NE 99th Street) project was awarded \$3,500,000 in state grant funding for preliminary engineering, right of way and construction. By signing the attached TIB Fuel Tax Grant Agreement and Project Funding Status Form, Public Works can begin the process of receiving state funds for the preliminary engineering and right of way phases in 2024 and the construction phase to begin in 2025.

TIB funding will support reconstruction of NE 152nd Avenue from an obsolete two-lane road to modern urban collector with bike lanes and sidewalks. The NE 152nd Avenue/NE 99th Street intersection will be reconfigured from an all-way stop control to a signal-controlled intersection.

The project will fill sidewalk gaps by extending current cement walks, install new ADA ramps, install/infill new sidewalk and provide cross walks in locations that will improve safety for students walking to York Elementary school and Tiger Tree Neighborhood Park. RRFB illumination will alert drivers to students and others who are walking or rolling across the street and help calm traffic.

COUNCIL POLICY IMPLICATIONS

None. This project supports the Council’s policy of providing a safe and efficient transportation system for all County residents.

ADMINISTRATIVE POLICY IMPLICATIONS

None. This project is in the adopted 2024-2029 Transportation Improvement Program, or TIP, adopted 2024 Annual Construction Program (No. 12) and adopted 2024 Budget.

COMMUNITY OUTREACH

The development of the adopted TIP included Clark County Council work sessions, as well as presentations to Clark County Planning Commission and the Development and Engineering Advisory Board. The TIP was the subject of a digital-media campaign throughout the past year via Facebook, Twitter, and Nextdoor. A State Environmental Policy Act (SEPA) review provided an additional opportunity for public comment. The TIP will also be shared and discussed at future public open houses for specific capital road projects.

PW24-007

REVIEWED: *cl*

BUDGET IMPLICATIONS

YES	NO	
	X	Operating Budget Impacts.
	X	Capital Budget Impacts
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation. If YES, please complete the budget impact statement. If YES, please route this staff report through the budget director and then to the county manager.
	X	Additional budget capacity is necessary and will be requested at the next supplemental or annual budget. If YES, please complete the budget impact statement. If YES, please route this staff report through the budget director and then to the county manager. This action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS:**Total Budget = \$9,895,000**

Local Fund	\$ 895,000
Utility Reimbursable	\$1,000,000
Federal Grant Award	\$4,500,000 (\$500k PE Phase Executed; \$4M for future CN Phase)
State Grant Award	\$3,500,000 (PE = \$120k; ROW = \$472k; CN = \$3.1M)
Fund	1012 – County Road Fund
Cost Center	Multiple
BASUB	B3340380 (Revenue State TIB Grant)
Program	Multiple

DISTRIBUTION:

Council staff will post all staff reports to the web. <https://www.clark.wa.gov/council-meetings>

****Blue ink signatures are required. Please sign page 5 of the Fuel Tax Grant Agreement in blue ink and return the originals to Public Works, attention to Chresta Larson.**

ATTACHMENTS: (1) TIB Fuel Tax Grant Agreement; (2) Vicinity Map

Chris Carle

Chris Carle
Capital Programming Manager

Sherry Villafane

Sherry Villafane
Public Works Finance Manager

Kenneth A. Lader

Kenneth A. Lader, P.E.
Public Works Director/County Engineer

Primary Staff: Laura Hoggatt, Ex. 4372

APPROVED: _____

**CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL**

DATE: _____

SR# _____

PW24-007

REVIEWED: cl



Clark County
8-5-006(044)-1
NE 152nd Avenue
Padden Pkwy to NE 99th St

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
Clark County
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the NE 152nd Avenue, Padden Pkwy to NE 99th St (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and Clark County, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

For the project specified above, TIB shall pay 39.0304 percent of approved eligible project costs up to the amount of \$3,500,000, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT'S Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT'S submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as



Washington State Transportation Improvement Board
Fuel Tax Grant Agreement

8-5-006(044)-1

often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.0 DEFAULT AND TERMINATION

9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:



Washington State Transportation Improvement Board
Fuel Tax Grant Agreement

8-5-006(044)-1

- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the maximum payable TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for all costs incurred in excess of the maximum amount payable by TIB. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the intended ratio between TIB funds and total project costs, as described in Section 1.0 of this Agreement.



12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.



15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Approved as to Form
Attorney General

By:

Signature on file

Guy Bowman
Assistant Attorney General

Lead Agency

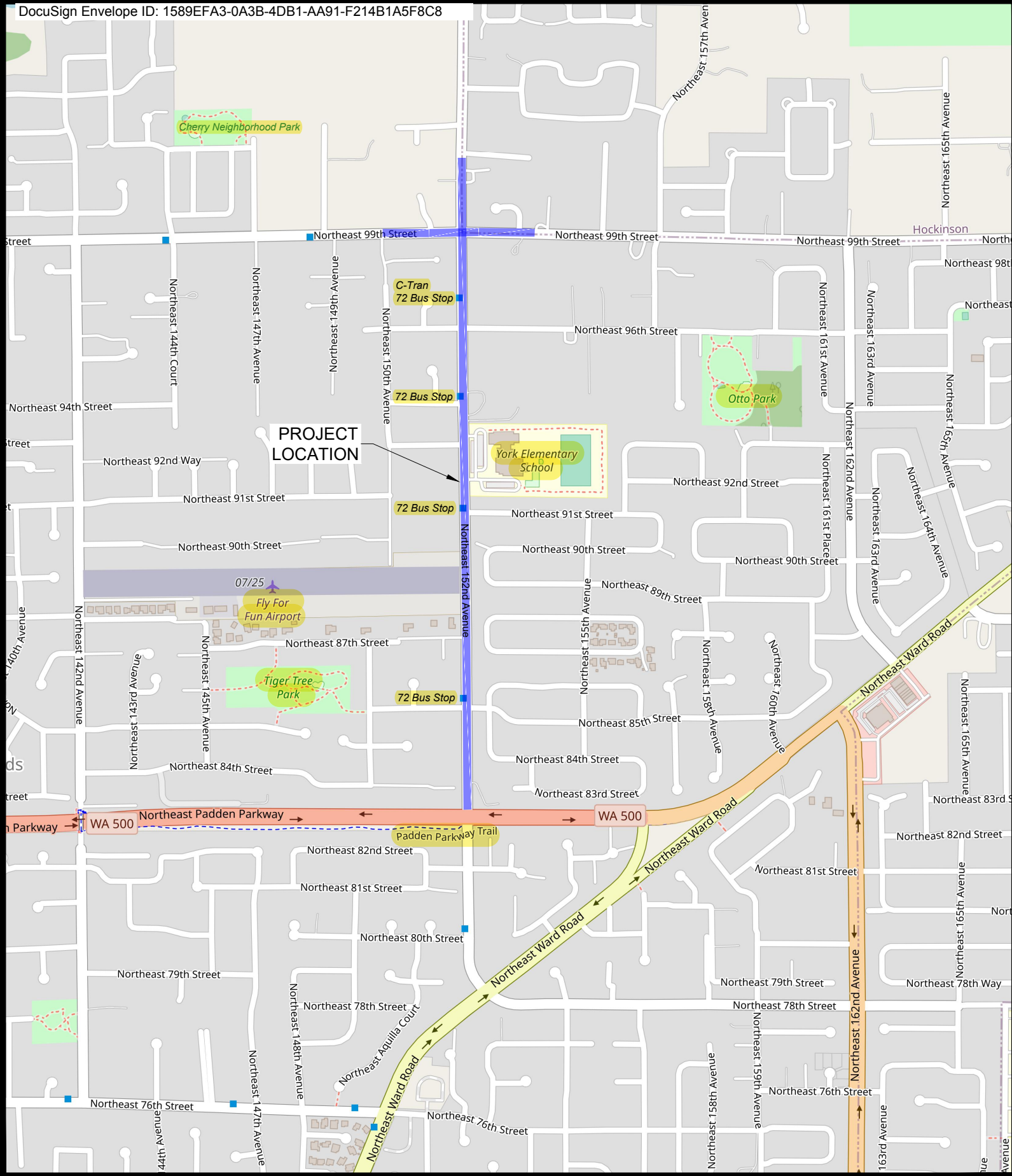
Transportation Improvement Board

Chief Executive Officer Date

Executive Director Date

Print Name

Print Name

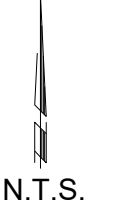


PROJECT LOCATION

07/25
Fly For
Fun Airport



Vicinity Map
NE 152nd Avenue
(NE Padden Parkway to NE 99th Street)



Certificate Of Completion

Envelope Id: 1589EFA30A3B4DB1AA91F214B1A5F8C8	Status: Completed
Subject: Complete with DocuSign: PW24-007 Fuel Tax Funding Agreement.pdf	
Source Envelope:	
Document Pages: 8	Signatures: 3
Certificate Pages: 5	Initials: 2
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Chresta Larson
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	1300 Franklin St
	Vancouver, WA 98660
	Chresta.Larson@clark.wa.gov
	IP Address: 64.4.181.38

Record Tracking

Status: Original	Holder: Chresta Larson	Location: DocuSign
12/27/2023 3:21:18 PM	Chresta.Larson@clark.wa.gov	

Signer Events

Signer Events	Signature	Timestamp
Chresta Larson chresta.larson@clark.wa.gov Security Level: Email, Account Authentication (None)	<i>cl</i>	Sent: 12/27/2023 3:27:52 PM Viewed: 12/27/2023 3:28:06 PM Signed: 12/27/2023 3:28:08 PM
	Signature Adoption: Pre-selected Style Using IP Address: 64.4.181.38	

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Chris Carle chris.carle@clark.wa.gov Security Level: Email, Account Authentication (None)	<i>Chris Carle</i>	Sent: 12/27/2023 3:28:09 PM Viewed: 1/3/2024 8:22:05 AM Signed: 1/3/2024 8:22:27 AM
	Signature Adoption: Pre-selected Style Using IP Address: 64.4.184.5	

Electronic Record and Signature Disclosure:
Accepted: 1/3/2024 8:22:05 AM
ID: ecaaf6da-ea1d-4f5d-8a58-19f3cc2cee30

Kenneth A Lader ken.lader@clark.wa.gov Security Level: Email, Account Authentication (None)	<i>Kenneth A. Lader</i>	Sent: 12/27/2023 3:28:09 PM Viewed: 12/28/2023 8:41:49 AM Signed: 12/28/2023 8:43:50 AM
	Signature Adoption: Uploaded Signature Image Using IP Address: 64.4.181.38	

Electronic Record and Signature Disclosure:
Accepted: 6/20/2019 2:45:06 PM
ID: 3037acb5-08a7-41e1-a68c-d404beb2864c

Sherry Villafane sherry.villafane@clark.wa.gov Security Level: Email, Account Authentication (None)	<i>Sherry Villafane</i>	Sent: 12/27/2023 3:28:10 PM Viewed: 1/2/2024 9:53:06 AM Signed: 1/2/2024 11:35:20 AM
	Signature Adoption: Pre-selected Style Using IP Address: 64.4.184.5	

Electronic Record and Signature Disclosure:
Not Offered via DocuSign**In Person Signer Events****Signature****Timestamp**

Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Laura Hoggatt laura.hoggatt@clark.wa.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 4/19/2022 8:23:09 AM ID: 9d5784b9-f444-4663-9c8b-52b8dc591cae	COPIED	Sent: 1/3/2024 8:22:28 AM Viewed: 1/3/2024 8:23:07 AM
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PW Staff Reports pwstaffreports@clark.wa.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 1/3/2024 8:22:29 AM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	1/2/2024 9:53:06 AM
Signing Complete	Security Checked	1/2/2024 11:35:20 AM
Completed	Security Checked	1/3/2024 8:22:29 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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CONSUMER DISCLOSURE

From time to time, Clark County, WA (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the "I agree"™ button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign "Withdraw Consent"™ form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

electronically from us.

How to contact Clark County, WA:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: loann.vuu@clark.wa.gov

To advise Clark County, WA of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at loann.vuu@clark.wa.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

To request paper copies from Clark County, WA

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to loann.vuu@clark.wa.gov and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Clark County, WA

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to loann.vuu@clark.wa.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari®, 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the "I agree"™ button below.

By checking the "I agree"™ box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Clark County, WA as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Clark County, WA during the course of my relationship with you.