



NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Michael Bork, Director

September 30, 2021

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of Ground Lease Agreement of Trolley Trail Easement between North Clackamas Parks and Recreation District (NCPRD) and Crainic Auto Group Inc. dba Gladstone Mitsubishi

Purpose/ Outcomes	Approval of ground lease agreement of Trolley Trail Easement
Dollar Amount and Fiscal Impact	Lease revenue is \$13,032 and increases 3% annually.
Funding Source	n/a
Duration	October 1, 2021 – September 30, 2022
Previous Board Action	March 25, 2010 – Board Order No. 2010-27 Authorizing Execution of Real Property Leases or Other Agreements Along the Trolley Trail Right-of-Way
Strategic Plan Alignment	<ol style="list-style-type: none"> How does this item align with your department’s Strategic Business Plan goals? NCPRD is committed to providing essential economic development, public spaces, and community enrichment services to residents, businesses, visitors and partners so they can thrive and invest in a healthy, vibrant, and prosperous Clackamas County both now and in the future. This lease contributes additional revenue for the District to provide essential recreation services and enhanced public spaces for the residents of NCPRD. How does this item align with the County’s Performance Clackamas goals? This request to approve the lease agreement ensures a legally compliant and transparent business process, which aligns with the County goal of Building Public Trust through Good Government.
County Counsel Review	Jeff Munns, 9/15/21
Procurement Review	<ol style="list-style-type: none"> Was the item processed through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If no, provide brief explanation: This is for lease revenue for the District.
Contact Person	Michael Bork, <i>NCPRD Director</i> , 971-610-1036
Contract No.	

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD), requests approval of a ground lease agreement between NCPRD and Crainic Auto Group, dba Gladstone Mitsubishi.

This lease was originally made between Union Pacific Railroad Company as Lessor and Palmer Kellum, dba Kellum Motors as Lessee. The Lessor's interest was subsequently assigned to Metro, a municipal corporation, on January 24, 2002, and later to North Clackamas Parks and Recreation District on April 20, 2005. NCPRD is the current owner of this property. The lease agreement between Palmer Kellum and NCPRD expires September 30, 2021.

On June 7, 2021, Crainic Auto Group, dba Gladstone Mitsubishi expressed interest in entering into a Ground Lease with NCPRD for these grounds located at 18396 SE McLoughlin Boulevard, Milwaukie, OR 97267.

RECOMMENDATION:

Staff respectfully recommend the Board approve the Ground Lease Agreement with Crainic Auto Group, Inc. dba Gladstone Mitsubishi.

ATTACHMENTS:

1. Ground Lease Agreement – Trolley Trail Easement
2. Exhibit A – Real Property Description
3. Exhibit B – Property Map

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Bork", written in a cursive style.

Michael Bork, Director
North Clackamas Parks and Recreation District

GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT (this "Lease") made and entered into by and between North Clackamas Parks and Recreation District, a county service district ("Landlord") and Crainic Auto Group, Inc. dba Gladstone Mitsubishi ("Tenant") on _____ day of _____, 2021.

- 1. PROPERTY AND TERM.** In consideration of the obligation of Tenant to pay rent as herein provided, and in consideration of the other terms, provisions and covenants hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes and leases from Landlord those certain real Property as described on the attached Exhibit A (the "Property") and depicted on the attached Exhibit B.

TO HAVE AND TO HOLD the same for a term commencing on the date this document is fully executed by all parties (the "Commencement Date") and shall continue for successive one-month terms until and unless it is terminated by either party (as defined below).

- 2. BASE RENT.** Tenant agrees to pay Landlord Rent for the Property at the rate of **\$13,032 per year** for the Property ("Rent"), payable in quarterly installments and will be prorated based on the number of months the property is leased. One such quarterly installment shall be due and payable on the Commencement Date and a like quarterly installment shall be due and payable on or before the first day of each January, April, July, and October of each year during the Term. The Rent shall increase 3% per year during the Term of the lease, effective each October quarterly payment for such year.

- 3. PURPOSE AND USE OF PROPERTY.** Tenant may use the property for general commercial activities consistent with the current use of the Property, specifically the repair and sale of automobiles and related activities, *provided, however,* that such use is consistent with applicable zoning restrictions, and any applicable restrictions encumbering the Property. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Property, or do or permit anything to be done in the Property, in any manner that may (a) cause injury to, or in any way impair the value or proper utilization of, all or any portion of the Property; (b) constitute a violation of the laws and requirements of any public authority or the requirements of insurance bodies, or any covenant, condition or restriction affecting the Property; or (c) have any detrimental environmental effect on the Property that arises out of a violation or violations of any applicable local, state and federal laws, rules and regulations now or hereafter in force and all applicable judicial and administrative decisions in connection with the enforcement thereof pertaining to either or both of the Property and Tenant's use and occupancy thereof (collectively, "Laws").

If Tenant seeks to alter the use of the Property then Tenant must first obtain Landlord's prior written consent. During the Term the Tenancy shall comply with all Laws, including but not limited to those regarding the correction, prevention and abatement of nuisances in or upon, or connected with, the Property, all at Tenant's sole expense.

Tenant must obtain the prior written consent of Landlord for any and all signage on the Property. To the extent any signage is authorized, Tenant shall remove all signs of Tenant upon the expiration or earlier termination of the Lease and immediately repair any damage to the Property caused by, or resulting from, such removal.

4. **TENANT'S MAINTENANCE.** Tenant shall at its own cost and expense keep and maintain the Property in good condition, promptly making all necessary repair and replacements including regular removal of trash and debris, keeping the Property in a clean and sanitary condition. Tenant shall restore the Property to its original condition. All such restoration shall be accomplished in good workmanlike manner.

5. **INSPECTION AND VACATION.** Landlord and Landlord's agents and representatives shall have the right to enter and inspect the Property at any reasonable time during business hours, for the purpose of ascertaining the condition of the Property. Owner will inspect and photograph existing condition at start and end of lease. Change in conditions will be evaluated for repairs, debris or encroachment at end of lease. Tenant will work with owner to remedy any unauthorized change in condition.

Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Property and shall arrange to meet with Landlord for a joint inspection of the Property prior to vacating. In the event of Tenant's failure to give such notice or arrange such joint inspection, Landlord's inspection at or after Tenant's vacating the Property shall be conclusively deemed correct for purposes of determining Tenant's responsibility for restoration.

6. **LIENS.** During the term, Tenant will promptly, but no later than thirty (30) days after the date Tenant first has actual knowledge of the filing thereof, or such shorter period as shall prevent the forfeiture of the Property, remove and discharge of record, by bond or otherwise, any charge, lien, security interest or encumbrance upon any of the Property or Rent which charge, lien, security interest or encumbrance arises for any reason, including but not limited to, all liens that arise out of the possession, use, occupancy, construction, repair or rebuilding of the Property or by reason of labor or materials furnished, or claimed to have been furnished to Tenant for the Property, but not including any encumbrances expressly permitted under this Lease or any charge, lien security interest or encumbrance created as the result of any act or omission of Landlord or in connection with any work performed or indebtedness incurred by or on behalf of Landlord. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to or for the performance of any contractor, laborer, materialman, or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Property or any part thereof. Notice is hereby given that, during the Term, Landlord will not be liable for any labor, services, or materials furnished or to be furnished to Tenant, or to anyone holding an interest in the Property or any part thereof through or under Tenant, and that no mechanics or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Property.

7. ASSIGNMENT AND SUBLETTING. Tenant acknowledges that this Lease and the Rent due under this Lease have been agreed to by Landlord in reliance upon (a) Tenant's reputation and creditworthiness; and (b) upon the continued operation of the Premises by Tenant for the particular use set forth in Section 3 above; therefore, except as expressly permitted below in this Section 7, Tenant shall not, whether voluntarily, or by operation of law, assign or otherwise transfer, mortgage, encumber or pledge all or any portion of its interest under this Lease without the prior written consent of Landlord. Any purported assignment, mortgage, transfer or pledge requiring, but made without, the prior written consent of Landlord shall be absolutely null and void. No assignment of this Lease shall be effective and valid unless and until the assignee executes and delivers to Landlord any and all documentation reasonably required by Landlord in order to evidence assignee's assumption of all obligations of Tenant hereunder. Any consent by Landlord (and, if applicable, its lender) to a particular assignment, mortgage, transfer or pledge shall not constitute consent or approval of any subsequent assignment, mortgage, transfer or pledge.

8. LIABILITY AND INDEMNIFICATION OF LANDLORD. Landlord shall not be liable to Tenant or Tenant's employees, agents, servants, guests, invitees or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Property, resulting from and/or caused in part or whole by the negligence or misconduct of Tenant, its employees, agents, servants, guests, invitees or visitors, or by any other person entering upon the Property, or caused by any temporary structures and improvements located on the Property becoming out or repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Property, or due to any cause whatsoever, and Tenant hereby covenants and agrees that it will at all times indemnify and hold safe and harmless the Property and Landlord. Tenant shall obtain, at Tenant's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract.

Tenant shall also obtain, at contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1 Million.

Tenant, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. TENANT shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

Tenant, will at its sole expense, procure and maintain a property insurance policy (ISO "Special Form" policy, or its nearest equivalent available) covering (Tenant's) personal property, including but not limited to mobile equipment, located at the Premises, providing coverage on an all-risk basis, including coverage (as available), for the perils of earthquake, flood, and windstorm. Limits of coverage shall be no less than the replacement cost of all scheduled

property. Tenant shall solely be responsible for the Property Policy's deductible and such policy will not contain a coinsurance requirement.

The Tenant shall obtain, at the Tenant's expense and keep in effect during the term of the contract, Tenant Pollution Liability insurance covering the Tenant's liability for a third party bodily injury and property damage arising from pollution conditions caused by the Tenant while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1 Million each loss/\$1 Million aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the COUNTY for review and approval

The insurance, other than Workers' Compensation and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

- 9. RIGHTS AND AUTHORITY OF LANDLORD.** Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, upon paying the rental herein set forth and performing its other covenants and agreements herein set forth, shall have, hold and use the Property for the term hereof without hindrance from Landlord, subject to the terms and provisions of this Lease.
- 10. NOTICES.** Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Certified or Registered Mail, addressed to the parties hereto at the respective addresses set out below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith:

LANDLORD:

North Clackamas Parks and Recreation District
Development Services Building
150 Beaver Creek Rd, 4th Floor
Oregon City, OR 97045
Attn: Michael Bork

TENANT:

Crainic Auto Group
dba Gladstone Mitsubishi
18500 SE McLoughlin Boulevard
Milwaukie, OR
Attn: Daniel Crainic

BINDING EFFECT. The terms, provisions and covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided.

11. NON-WAIVER. Any waiver of the compliance with any of terms herein contained by either Landlord or Tenant shall not be deemed or considered to be a continuing waiver, and shall not operate to bar or prevent the other party from exercising any rights as to any succeeding breach, either of the same condition, covenant or otherwise.

Any acceptance of partial payment of rent, or any failure by Landlord to take immediate action for non-payment of rent, shall not be a waiver by Landlord of any claims or rights, including the ability to collect all past due rent, to terminate this lease pursuant to Section 13 below, or to exercise any other legal rights possessed by Landlord.

12. TERMINATION. Either party may terminate this lease for any cause by providing at least ninety (90) days prior written notice to the other party. The termination shall be effective at the end of the 90-day notice period if a termination date is not specified in the notice.

13. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

14. PREVIOUS LEASES. By entering into the lease Landlord and Tenant agree that any previous leases in existence regarding the Property shall be automatically and immediately superseded and extinguished.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LANDLORD:


NORTH CLACKAMAS PARKS AND RECREATION DISTRICT, a county service district

Signature: _____
Tootie Smith, Chair

Date: _____

TENANT:

CRAINIC AUTO GROUP, INC.
an Oregon Corporation

Signature:  _____
Daniel Crainic

Date: 9-15-21

EXHIBIT A
Legal Description
TEMPORARY CONSTRUCTION EASEMENT
August 11, 2009

An easement as shown on attached Exhibit "B", located in the Southwest One-Quarter of Section 18, Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and being a portion of that tract of land described in that Statutory Quitclaim Deed to North Clackamas Parks and Recreation District, a subdivision of Clackamas County, Oregon, recorded April 20, 2005 as Fee No. 2005-035292, Clackamas County Official Records, said easement being a portion of said tract and all of that lease area as shown in that "Lease of Property" dated October 1, 2001 between Metro, A municipal corporation ("Assignor") and Palmer Kellum, dba Kellum Motors (Lessee) and being more particularly described as follows:

Beginning at the southeast corner of that property described in Fee No. 86-41097, recorded October 20, 1986, Clackamas County Deed Records also being a point on the westerly right of way line of the Portland Traction Company Railroad right of way as located per Survey Number 2003-216, Clackamas County Survey Records;

Thence N66°10'03"E, along the easterly extension of the south line of said Fee No. 86-41097, 42.80 feet to a point on the easterly right of way line of said Portland Traction Company Railroad right of way also being a point on the westerly right of way line of Abernethy Lane (County Road No. 2337);

Thence N44°39'28"W, along the easterly right of way line of said Portland Traction Company Railroad right of way and the westerly right of way line of said Abernethy Lane (County Road No. 2337), 500.78 feet to a point on the easterly right of way line of McLoughlin Boulevard (State Highway 99 East);

Thence S26°43'57"E, along the easterly right of way line of McLoughlin Boulevard (State Highway 99 East), 129.96 feet to the most northerly corner of said Fee No. 86-41097 also being a point on the westerly right of way line of said Portland Traction Company Railroad right of way as located per Survey Number 2003-216, Clackamas County Survey Records;

Thence S44°39'28"E, along the westerly right of way line of said Portland Traction Company Railroad right of way, 361.91 feet to the Point of Beginning.

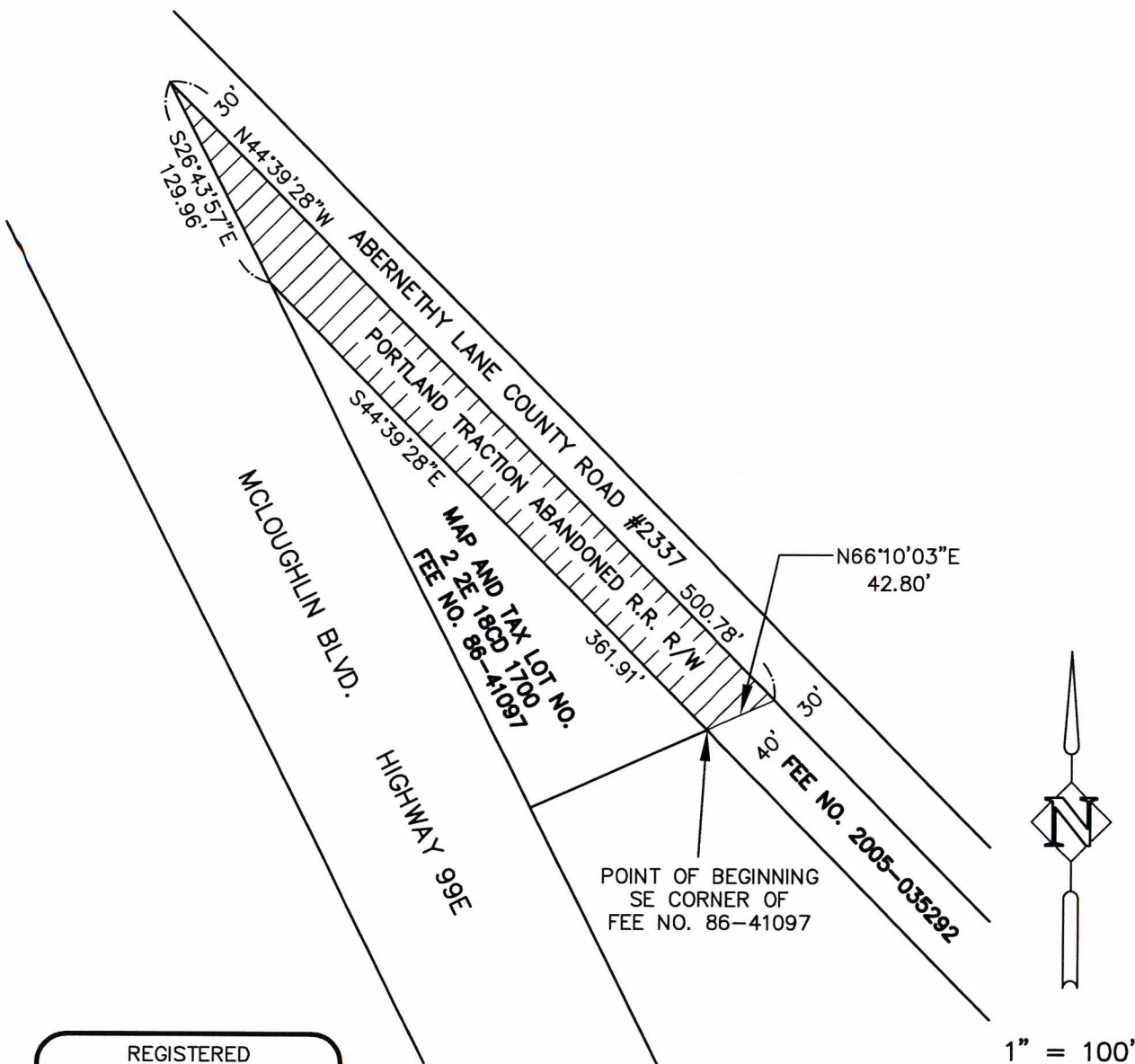
Containing 17,254 square feet more or less.

The westerly right of way line of the Portland Traction Company Railroad right of way as located per Survey Number 2003-216, Clackamas County Survey Records was held to be S44°39'28"E as the basis of bearings for this legal description.



EXHIBIT "B"

AUGUST 11, 2009



REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian K. Henson 8-11-09
OREGON
JANUARY 20, 1998
BRIAN K. HENSON
2855

EXPIRES: 06/30/2011

LEGEND



TEMPORARY CONSTRUCTION
EASEMENT
± 17,254 SQ.FT.



**Harper
Houf Peterson
Righellis Inc.**

ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS

205 SE SPOKANE STREET, SUITE 200, PORTLAND, OR 97202
TEL 503.221.1131 www.hhpr.com FAX 503.221.1171

Exhibit B

