MISSION STATEMENT: TO PROVIDE A SAFE, HEALTHFUL AND SOUND ECONOMIC ENVIRONMENT, PROGRESSIVELY ENHANCING OUR QUALITY OF LIFE

COUNCIL MEETING AGENDA
CITY COUNCIL – CITY OF ONTARIO OREGON
TUESDAY, AUGUST 28, 2018, 5:30 PM, MT

Pursuant to the Public Meetings Laws and Rules within the Oregon Revised Statutes, the City Council has the authority, ability, and standing to take action on any items on the Agenda, or add items to the Agenda, during the Study Session or Regular Meeting, as long as all public meeting notice requirements have been met.

1) CALL TO ORDER

Roll Call: Tessa Winebarger _____ Dan Capron _____ Marty Justus _____ Ramon Palomo _____
Betty Carter _____ Norm Crume _____ Mayor Ron Verini _____

2) PLEDGE OF ALLEGIANCE

This Agenda was posted on August 27, 2018. Copies of the Agenda are available from the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) MOTION TO ADOPT THE AGENDA

4) PUBLIC COMMENTS Citizens may address the Council; however, Council may not be able to provide an immediate answer or response. Our of respect to the Council and others in attendance, please limit your comment to three (3) minutes. Please state your name and city of residence for the record.

5) NEW BUSINESS

A) Resolution #2018-136: Golf Course Clubhouse and Land Lease Agreement

6) CORRESPONDENCE, COMMENTS AND EX-OFFICIO REPORTS

7) ADJOURN

The City Council may recess/adjourn to Executive Session under ORS 192.660(2) as follows: (a) Employment of Public Officers, Employees, or Agents; (b) Discipline of Public Officers, Employees, or Agents; (d) Labor Negotiations; (e) Real Property Transactions; (f) Exempt Public Records; (g) Trade Negotiations; (h) Litigation /Consult with Legal Counsel; (i) Performance Evaluation of Public Officers and Employees; (j) Trade Negotiations; and/or (l) Labor Negotiations.

AGENDA REPORT
NEW BUSINESS
August 28, 2018

TO: Mayor and City Council

FROM: Adam J. Brown, City Manager

THROUGH: Adam J. Brown, City Manager

SUBJECT: RESOLUTION #2018-136: GOLF COURSE CLUBHOUSE AND LAND LEASE AGREEMENT

DATE: August 27, 2018

PROPOSED MOTION:

I MOVE THE CITY COUNCIL APPROVE RESOLUTION 2018-136, A RESOLUTION APPROVING THE LEASE OF THE FORMER GOLF COURSE CLUBHOUSE AND 10 CONTIGUOUS ACRES OF LAND.

SUMMARY:

The City has worked with Shadow Butte Enterprises LLC to develop a 20-year lease agreement for the former golf course club house and 10 acres of land.

BACKGROUND:

The City has worked with the proposed lessee to find a mutually beneficial site on the west side of he Ontario Municipal Airport, which was formerly the golf course clubhouse and land. The tenant was looking for a building to be use for oil extraction and production and with land to build greenhouses for seeding.

CURRENT SITUATION:

The attorney for the city and the attorney for Shadow Butte Enterprises LLC have come to an agreement on the lease language for the property that is mutually beneficial. The tenant would like a 20 year lease.

The city has agreed to update the bathrooms to be ADA accessible and to provide ADA accessible parking on site. Also, the city will pay for electrical upgrades up front and will be reimbursed for 50% of the costs within the first two years of the lease agreement.

The site plan of the leased property has been made contemplating an ultimate use of the west side of the airport as industrial use. Sufficient land has been set aside for an entrance that would accommodate large vehicles and multiple lanes into the industrial park through Golf

Lane. This will be the second lease for the west side of the airport.

<u>ANALYSIS:</u>

A. **<u>FINANCIAL</u>** After a 90 day period the city will receive a rent in the amount of $2,000 per month or $24,000 per year. The rent will increase by 3% per year until the rent is equal to the fair market value of the property. Revenue from this property lease will go to the airport to make the airport more self-sustaining.

   The tenant will also pay $300 per year into a sinking fund for maintenance of the Hollingsworth well from which they will draw some irrigation.

   Not only will the city realize a new revenue source for the airport, but will also save on the heating and air costs being spent on the building now as well as ten less acres of property for the city to maintain.

B. **<u>TIMING</u>** The tenant would like to enter the lease as soon so they can to commence operations this fall.

C. **<u>POLICY/LEGAL</u>** Only the City Council can approve leases on behalf of the city.

<u>ALTERNATIVES:</u>

Take No Action - We will continue to bear the maintenance costs for the airport. No additional revenue will be received. Staff will continue to look for revenue generating opportunities to develop the west side of the airport.

<u>RECOMMENDATION:</u>

Staff recommends approval of the lease with Shadow Butte Enterprises LLC.

<u>ATTACHMENTS:</u>

1. Golf Course Club House Lease 08-27-2018
2. Club House Lease Exhibit A
3. 2018 CLUB HOUSE EXIBIT B (1)
4. Res #2018 Golf Course Lease Shadow Butte Enterprises

LEASE AGREEMENT
Former Golf Course Club House

THIS LEASE AGREEMENT (the "Lease") made and entered into this ___ day of September, 2018 (the "Effective Date"), by and between the **City of Ontario, Oregon, a municipal corporation**, hereinafter referred to as "Landlord" and **Shadow Butte Enterprises LLC,** an Idaho limited liability company, hereinafter referred to as "Tenant."

WITNESSETH:

WHEREAS, Landlord is the owner of certain real property known and operated as the Ontario Municipal Airport, which is partially comprised of a golf course and related structures; and

WHEREAS, Tenant desires to lease a portion of the Airport consisting of the golf course and improvements for commercial and agricultural use.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein it is agreed as follows:

1) Landlord leases to Tenant and Tenant leases from Landlord the real property described in Exhibit "A" attached hereto, which is illustrated in the Map shown in Exhibit "B" attached hereto, and by this reference incorporated herein, comprised of approximately 10 acres and the 10,000 square foot clubhouse located thereon (collectively, the "Property"), for a period of **TWENTY (20) years**, commencing on the Effective Date. If the Lease is not in default, unless either party shall give written notice at least 90 days prior to each 20th anniversary date of this Lease, and subject to Landlord's receipt from Tenant of all lease payments, the Lease term will automatically renew for a successive twenty-year term. Absent a Tenant event of default, Landlord's election to terminate the Lease as provided herein shall be based solely upon Landlord's need to utilize the Property for other airport uses. All portions comprising the airport less the Property shall be referred to herein as the "Airport".

2) Tenant shall pay to Landlord rent of the amount of $2,000 per month (the "rent" or "Rent") for the Property, subject to the rights of Landlord to escalate the rent as more specifically provided for hereinafter. The parties hereto covenant and agree that the total area of the Property is ten (10) **acres** for the purposes of determining the annual rent herein. The Rent shall be paid on or before the **1st day of each month**. Notwithstanding, Tenant shall not be obligated to pay any rent hereunder until the 90th day from the Effective Date ("First Payment Date"). Rent will for any partial month in the event the First Payment Date is not on the first day of the month shall be prorated and any partial payment and rent due for the following calendar month shall be paid on the 1st day of the month following the First Payment Date.

3) Concurrently with the execution of this Lease by Landlord and Tenant, Tenant will deliver to Landlord a Security Deposit in the amount of $1,000. Landlord may apply the Security Deposit to pay the cost of performing any obligation that Tenant fails to perform within the time required by this Lease, but such application by Landlord will not waive Landlord's other remedies nor be the

exclusive remedy for Tenant's default.

a) If Landlord applies the Security Deposit as set forth herein, Tenant will pay Landlord, on demand, all sums necessary to restore the Security Deposit to its original amount. Tenant will not have the right to apply the Security Deposit or any part thereof to any Rent or other sums due under this Lease.

b) If Tenant is not in default of this Lease at the expiration or termination hereof, Landlord will return the unapplied portion of the Security Deposit to Tenant within 30 days of the expiration or termination date. Landlord will not be obligated to pay interest on the Security Deposit.

4) It is mutually understood and agreed between the parties hereto that the rent increases by 3% upward annually until the rent due hereunder is equal to fair market value. Such adjustment may be made each year and shall be effective for the balance of the lease term or until further adjustment, if any. At the request of either party, Landlord and Tenant shall reset the rent to the then current fair market value (the "FMV rent") for properties similar to the Property. FMV Rent of the Property shall mean the rental rate that a landlord under no compulsion to lease the Property and a tenant under no compulsion to lease the Property would agree upon as a reasonable rental rate and lease terms for the remainder of the Lease term, as of the commencement of the next Lease year, taking into consideration the uses permitted under this Lease, the quality, size, design and location of the Property, and the rent for comparable buildings located in the same geographic area. In the event the parties are unable to reach an agreement as to the renewal FMV rent, then each party shall engage an appropriate third party expert, at such party's sole cost and expenses, to determine the renewal FMV rent. If the parties are still unable to agree after consultation with their respective third party experts, then the experts selected by the parties will appoint a single, mutually agreed upon expert in commercial real estate (the "Appointed Third Party") to determine the FMV rent. The parties agree to be bound by the determination of the Appointed Third Party and shall equally share all costs associated with employing the Appointed Third Party. Notwithstanding, adjustments to the rent shall not be made more frequently than one adjustment per year and each yearly adjustment shall be the lesser of (i) the leasehold fair market value of the land and improvements, (ii) the percentage increase in the Consumer Price Index for Oregon for the previous year, or (iii) 3% of the previous year's rent.

5) Tenant shall have the right to install industrial greenhouses and expand as necessary, in Tenant's sole discretion. All plans for new construction or improvements made on the Property are to be submitted to Landlord in writing for its approval prior to commencement of the installation of any improvements or new structures, and the same to be constructed and operated in conformity with all applicable law, ordinances and regulations. Any construction shall be completed solely with Tenant's labor and at Tenant's expense.

6) Tenant will keep and maintain all structures on the Property in a constant state of good repair, ordinary wear and tear excepted, and will refrain from storing any equipment or debris outside buildings and will keep the Property in a clean and sightly condition. It is mutually understood and agreed between the parties hereto that the building inspector of the City of Ontario shall have the right to inspect the Property periodically upon reasonable notice to Tenant and provided such right shall not unreasonably interfere with Tenant's use of the Property. In the event the building inspector of the City of Ontario deems any structure upon the Property not to be in compliance with any applicable statute, ordinance, rules or regulation or this agreement as the

result of Tenant's use of the Property, only, Tenant agrees to correct such non-complying item at Tenant's sole expense.

7) There is an irrigation water retention pond on the Property which is served by an irrigation well and pump referred to as the Hollingsworth Well, that Landlord has an easement to use. Landlord shall be responsible for providing irrigation water to the retention pond from the Hollingsworth Well in amounts sufficient for Tenant's use as well as maintaining and repairing the Hollingsworth Well in good condition and repair. Landlord will take no action that would impair, limit, or terminate Landlord's rights to use the Hollingsworth Well under the terms of the easement agreement, and if such rights are impaired, limited, or terminated, Landlord shall find alternative sources of water to be delivered to the Property sufficient for Tenant's proposed uses hereunder. Hollingsworth Well. In addition, Tenant shall pay as additional rent the sum of $300 per year as a contribution to the City's cost to maintain the Hollingsworth Well and pump in a condition of good repair.

8) Tenant covenants and agrees to:

a) Maintain the landscaping immediately around the facility and manage weeds on the Property;
b) Clean, epoxy, and prepare the basement for product manufacturing;
c) Update the existing electronic security system;
d) Install security bars over the windows;
e) Make modifications to the interior to accommodate business needs;
f) Install a sprinkler system;
g) Pay all real and personal property taxes levied against the Property and improvements and Tenant's personal property;
h) Be responsible for all utility charges for water and power, including power charges for the use of the Hollingsworth well and pump for irrigation water applied to the Property, and;
i) Maintain and repair the septic system on the Property.

9) Landlord covenants and agrees to:

a) Improve the building to be ADA compliant;
b) Improve the parking lot to be ADA compliant;
c) Provide three phase electrical service.;
d) Upgrade the electrical service on the Property to meet Tenant's needs. Landlord shall initially pay all of Landlord's out of pocket cost for that upgrade, and shall provide Tenant with documents showing that cost. As additional rent, Tenant shall reimburse Landlord for 50% of that the actual and reasonable cost within two years of the date of this Lease; and
e) Maintain the Hollingsworth Well as provided herein.

10) The color of paint used in all new construction and in the painting of any and all structures shall conform to the airport color scheme as adopted by the Airport Committee.

11) Landlord reserves the right to further develop the Airport in the best interests of Landlord and the citizens of Landlord.

12) Landlord shall maintain and keep in repair the Airport in a safe and sanitary condition at all

times.

13) This Lease shall be subordinate to the provisions of any existing or future agreement between Landlord and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. For so long as Tenant is not in default hereunder, Tenant shall enjoy its quite enjoyment of the Property.

14) During the time of war or national emergency, Landlord shall have the right to lease the Airport or any part thereof to the United States government for military or naval use, and if such lease is executed, the provisions of this Lease insofar as they are inconsistent with the provisions of the lease to the United States government shall be suspended.

15) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Property at the request of Tenant, and Tenant shall keep the Property free from any liens. If Tenant fails to pay such claims or to discharge any lien, Landlord may do so on Tenant's behalf, and collect the actual and reasonable fees incurred by Landlord as additional rent. Any amount so added shall bear interest at the rate of 12% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Landlord's property interests are not jeopardized. If a lien is filed as a result of non-payment, Tenant shall, within ten days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or a sufficient corporate surety bond or other security satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

16) Tenant shall obtain Commercial General Liability Insurance from a responsible company, with limits of $1,000,000 each occurrence, $2,000,000 in the General Aggregate, naming Landlord as an additional insured. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Property excluding any occurrences or matters caused or contributed to by Landlord's negligence, shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under the provisions of the indemnification paragraph contained herein, and shall protect Landlord and Tenant against any and all claims of third persons. **Tenant is required to provide a copy of current insurance coverage to the city.** If Tenant fails to provide such coverage or allows it to lapse, Landlord may provide such coverage for its own protection. In that event, Landlord makes no representations, warranties or assurances that said coverage is adequate for the purposes of protecting Tenant. The purpose of said insurance obtained by Landlord is solely for the protection of Landlord and nothing in this paragraph is intended to waive the limits as established in the Oregon Tort Claims Act, ORS 30.260 et seq., as it applies to Landlord.

17) No part of the Property may be assigned to any third person without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. This provision shall apply to all transfers by operation of law and to transfers to and by trustees in bankruptcy, receivers, administrators, executors and legatees. No consent in one instance shall

prevent the provision from applying to a subsequent instance.

18) The following shall be events of default:

a) Failure of Tenant to pay any rent or other charge within thirty (30) days after it is due.

b) Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within fifteen (15) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied with the fifteen (15) day period, this provision shall be complied with if Tenant begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good-faith to effect the remedy as soon as practicable.

c) Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; and adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of an involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 60 days after filing; attachment of or the levy of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 60 days. If Tenant consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within 60 days after an event of default occurs the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the party then exercising the rights of Tenant under the lease.

19) In the event of a default, the Lease may be terminated at the option of Landlord by notice in writing to Tenant. The notice may be given before or during the applicable grace period for default and may be included in a notice of default given under the provisions of paragraph 17(b) above set forth, however, such notice shall not impair or limit Tenant's cure rights hereunder. If the Property is abandoned for more than twenty consecutive days by Tenant without Landlord's consent in connection with a default, termination shall be automatic and without notice.

20) If the Lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default.

21) If the Lease is terminated for any reason, Tenant shall vacate the Property immediately and shall remove all improvements, trade fixtures, equipment, and non-permanent structures constructed by Tenant on the Property and shall perform any necessary clean-up or other work required to lease the Property in its original condition, normal wear and tear excepted. Any improvements not removed within ninety (90) days after the termination of this Lease shall become the property of Landlord. Landlord may re-enter, take possession of the Property and remove any persons or property by legal action or by self-help with the use of reasonable force and without the liability for damages.

22) The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law. Tenant shall have all available remedies at law or in

equity in the event of a Landlord default.

23) Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

24) If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to the costs such sum as the court may adjudge reasonable as attorney fees, including attorney fees upon appeal.

25) Any notice required or permitted under this Lease shall be given when actually delivered or when deposited in the United States mail as certified mail, addressed as follows:

To Landlord: City of Ontario
444 SW 4th Street
Ontario, Oregon 97914

To Tenant: Shadow Butte Enterprises LLC
9811 West Hackamore Drive
Boise, Idaho 83709

or to such other address as may be specified from time to time by either of the parties in writing.

26) Subject to the above-stated limitation on transfer of Tenant's interest, this Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

27) If Tenant fails to perform any obligation under this Lease, Landlord shall have the option to do so after fifteen (15) days written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 12% per annum from the date of notice of the same to Tenant.

28) In construing this Lease, it is understood that Landlord or Tenant may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

[end of text]

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date and year first above written.

CITY OF ONTARIO, OREGON

____
Ronald Verini, Mayor

ATTEST

____
Tori Barnett, MMC, City Recorder

SHADOW BUTTE ENTERPRISES LLC

____
BY: James Hutchens, Manager

EXHIBIT “A”
Legal Description of Property

Exhibit “A”

Lease Area

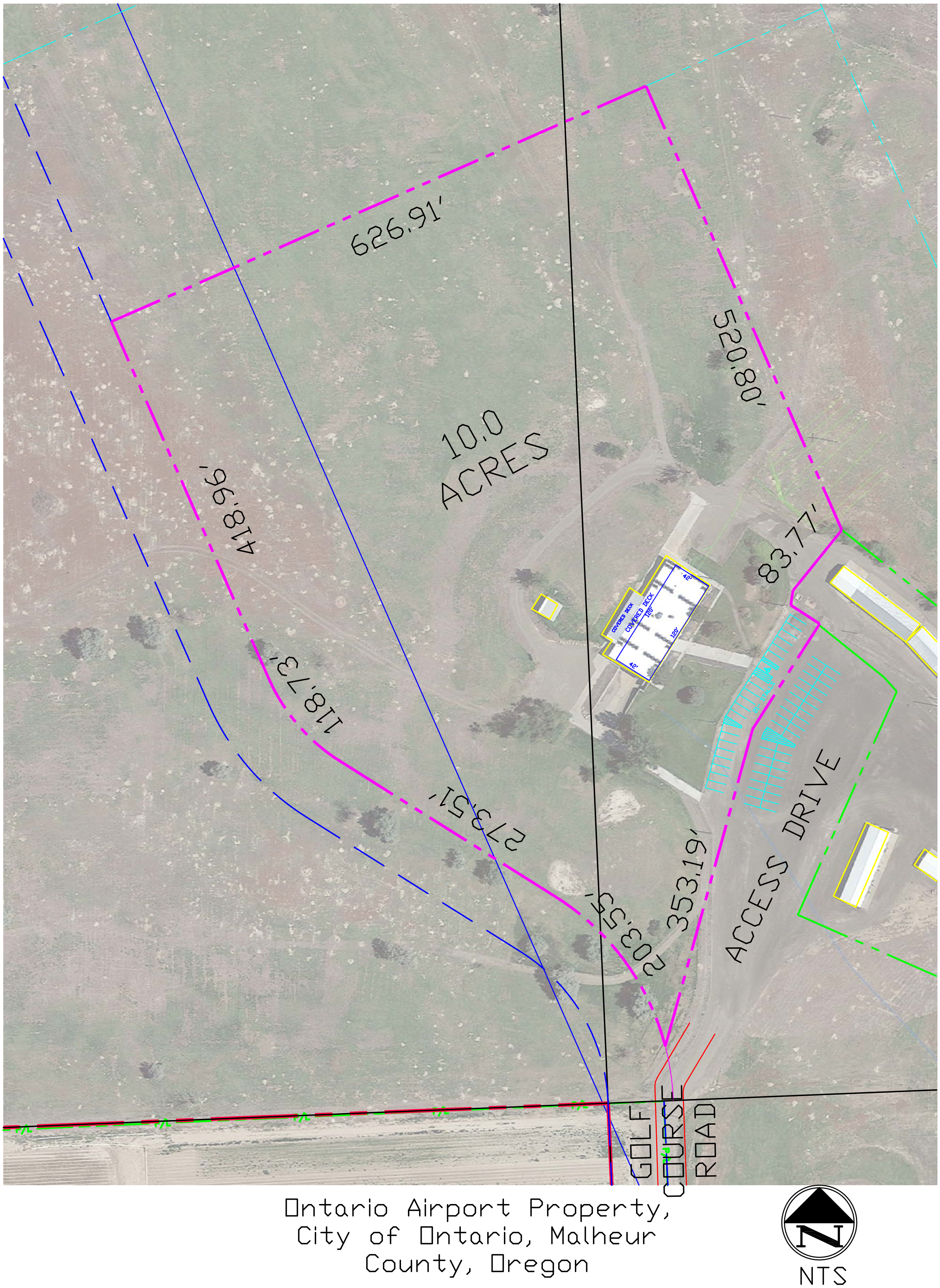
Land within the S1/2 of Section 7, Township 18 South, Range 47 East, W.M., City of Ontario, Malheur County, Oregon, more particularly described as follows:

Commencing at the 1/4 corner common to said Section 7 and Section 18, from which the E1/16 corner of said Sections 7 and 18 bears N. 87º 35’ 48” E., 1319.93 feet;
thence N. 02º 31’ 14” W., 1314.63 feet;
thence N. 87º 29’ 08” E., 70.00 feet;
thence N. 02º 30’ 52” W., 1.69 feet;
thence on a 270.00 feet radius curve to the left, 57.04 feet, whose long chord bears N. 08º 34’ 02” W., 56.94 feet, to the **Point of Beginning**;
thence continuing on said curve to the left, 203.55 feet, whose long chord bears N. 36º 13” 00” W., 198.76 feet;
thence N. 57º 48’ 49” W., 273.51 feet;
thence on a 200.00 feet radius curve to the right, 118.73 feet, whose long chord bears N. 40º 48’ 22” W., 117.00 feet;
thence N. 23º 47’ 55” W 418.96 feet;
thence N. 66º 12’ 05” E., 626.91 feet;
thence S. 23º 47’ 55” E., 520.80 feet;
thence S. 38º 47’ 27 “ W., 83.77 feet;
thence S. 08º 15’ 58” W., 15.66 feet;
thence S. 57º 11” 33” E., 36.82 feet;
thence S. 32º 27” 27” W., 134.04 feet;
thence S. 15º 22’ 08” W., 353.19 feet to the **Point of Beginning**.

Containing 10.00 acres.

The Bearings and distances are Grid and are based on the Bearing and Distance as noted herein between the 1/4 corner of Sections 7 & 18 and the E1/16 corner Sections 7 & 18.

EXHIBIT "B"
CLUB HOUSE LEASE



Ontario Airport Property,
City of Ontario, Malheur
County, Oregon

RESOLUTION #2018-136

A RESOLUTION APPROVING A LEASE BETWEEN THE CITY OF ONTARIO AND SHADOW BUTTE ENTERPRISES LLC

WHEREAS, Shadow Butte Enterprises is a legitimate company recognized by the State of Oregon; and

WHEREAS, The City of Ontario has a facility and land they are willing to lease; and

WHEREAS, The City and Shadow Butte Enterprises have come to an agreement on the terms of a lease.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Ontario City Council approves a 20-year lease between the City of Ontario and Shadow Butte Enterprises LLC.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the City Council of the City of Ontario this _____ day of ____________, 20____, by the following vote:

AYES:

NAYES:

ABSENT:

APPROVED by the Mayor this _____ day of ______________, 20___.

____
Ronald Verini, Mayor

ATTEST:

____
Tori Barnett, MMC, City Recorder