

A G E N D A
WORK SESSION
City of Moberly
October 07, 2019
6:00 PM

Requests, Ordinances, and Miscellaneous

1. A request from YMCA to hold their annual Turkey Trot 5K on November 28, 2019.
2. A request from VFW to hold their annual Veterans Day Parade on November 9, 2019.
3. Receipt of state bid for a 2020 Polaris Ranger 1000 for use at Street Dept.
4. Report for demolished property at 709 Benson due to fire.
5. A resolution repealing Resolution # R-498 and authorizing the transfer of \$219,228.53 of funds saved through the “flexible funding resolution” since the program’s inception into the Health Trust Fund.
6. An Ordinance Ratifying A Consent Agreement; Approving A First Amendment To Cooperative Agreement; Making Certain Findings; And Providing Further Direction And Authority.

City of Moberly City Council Agenda Summary

Agenda Number: _____
 Department: Police
 Date: October 7, 2019

WS #1.

Agenda Item: 2019 YMCA Turkey Trot 5K on November 28, 2019.

Summary:

If approved, the 2019 Turkey Trot 5K fundraiser to support the YMCA Strong Kids campaign will held on November 28, 2019 beginning at 8:00am in the 500 block of W Reed Street. Registration will begin at 6:45am. Contact person for the race is Jamie Shirk, 660-263-3600. 100 to 150 persons are expected to participate and they will have approximately 20 volunteers to assist at intersections and follow the last runners/walkers. The route is the same as in previous years. Race will begin in front of 515 W Reed Street, travel east to 4th Street, south on 4th to Wightman St, west on Wightman crossing 5th Street and continue west on Fisk Ave to Rothwell Park Road at the maintenance building, north on Rothwell Park Road to the James Youth Cabin, turn east and travel across the dam to the War Memorials on Holman Road, turn south on Holman Road to W Reed, east on W Reed to Hagood, and continue east on Adams to Johnson, continue east on W Reed to the finish line at 515 W Reed. Police requested to lead the 5k.

Recommended

Action: Direct staff to bring to the October 21st Council meeting for final approval.

Fund Name:

Account Number:

Available Budget \$:

ATTACHMENTS:	Roll Call	Aye	Nay
<input type="checkbox"/> Memo			
<input checked="" type="checkbox"/> Staff Report	Mayor		
<input type="checkbox"/> Correspondence	M___ S___ Jeffrey	___	___
<input type="checkbox"/> Bid Tabulation			
<input type="checkbox"/> P/C Recommendation	Council Member		
<input type="checkbox"/> P/C Minutes	M___ S___ Brubaker	___	___
<input type="checkbox"/> Application	M___ S___ Kimmons	___	___
<input type="checkbox"/> Citizen	M___ S___ Davis	___	___
<input type="checkbox"/> Consultant Report	M___ S___ Kyser	___	___
<input type="checkbox"/> Council Minutes			
<input type="checkbox"/> Proposed Ordinance			
<input type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Attorney's Report			
<input type="checkbox"/> Petition			
<input type="checkbox"/> Contract			
<input type="checkbox"/> Budget Amendment			
<input type="checkbox"/> Legal Notice			
<input type="checkbox"/> Other _____			
		Passed	Failed

Police Department
Troy Link
Interim Chief of Police
223rd Session FBI Academy

300 N Clark Street
Moberly, MO 65270
Phone: 660-263-0346
Fax: 660-263-8540

Walk/Run Application Permit

Application Date: September 11, 2019
(Note: Application Date must be received by staff sixty (60) days prior to the event)

Requested Date of event: November 28, 2019

Purpose of event: Turkey Trot 5K (Fundraiser for YMCA Strong Kids Campaign)

Name of event director: Jamie Shirk

Contact phone, & Address of director: 660 263 3600, 1000 Kwik Rd. Moberly, MO 65270

Approximate number of participants: 100-150

Route requested, Begin & End Time: Race begins at Championship Sports (515 W Reed St) downtown; then, east on Reed St., south on 4th street, west on Wightman St, west on Fisk Ave, north on Rothwell Park Rd., turn right at James Youth Center, south on Holman Rd., east on Reed St, north on Hagoood St., east on Adams Ave, south on Johnson St, east on Reed St, finish at Championship Sports. Registration begins at 6:45am with race starting at 8:00am.
(Please include a map diagram showing start to finish) * Request a police car

Will the route/streets be marked? Yes: X No: _____ to lead race.

Will the organization furnish personnel to assist with the event?

Yes: X No: _____ If yes, how many? 20+

Signature of applicant: Jamie Shirk

Approved: ✓ Declined: _____

Authorizing Official: [Signature] Date: 09-12-19

Emergency services assistance to monitor traffic may be provided for a period of time up to one (1) hour after the race begins.

❖ No permanent paint may be used on roads or trails. Only spray chalk or temporary paint with a life of not more than 30 days may be used.

City of Moberly City Council Agenda Summary

Agenda Number: _____
 Department: Police
 Date: October 7, 2019

WS #2.

Agenda Item: 2019 VFW Veterans Day Parade on November 9, 2019 at 1:00pm

Summary:

If approved the 2019 VFW Veterans Day Parade will be held on November 9, 2019 beginning at 1:00pm. Staging area will be the 600 block of Adams Street and the 700, 800 and 900 blocks of West Reed if needed. Parade will begin at Johnson and Adams, travel east on West Reed to Clark Street, turn right and disband in the 100 block of N Clark Street. Contact person is Chris Wertz, 660-263-2325. Approximately 80-90 units are expected to participate in the parade. Police requested to provide traffic assistance for the paraded.

Recommended

Action: Direct staff to bring to the October 21st Council meeting for final approval

Fund Name:

Account Number:

Available Budget \$:

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	Mayor		
<input checked="" type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance	M___ S___ Jeffrey	___	___
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution	Council Member		
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	M___ S___ Brubaker	___	___
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ Kimmons	___	___
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M___ S___ Davis	___	___
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ Kyser	___	___
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice		___	___
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed

Submit completed form
any attachments to:
Moberly Police Department
ATTN: Chief of Police

APPLICATION FOR PARADE PERMIT
City of Moberly, Missouri

Date: September 10, 2019

- 1. Organization/Agency requesting permit: Veterans of Foreign Wars Post 2654
- 2. Name of Person making Application: Chris Wertz - Commander
 Contact Person: Same or Elaine Avery Phone: 660-263-6030 (Post)
660-263-2325 (Home)
- 3. Date of Parade: November 9, 2019 Start Time: 1 PM
- 4. Staging Area: Adams Street next to Post Office then down W. Reed Street-starting behind Post Office, west to College Av
- 5. Approximate Number of Units Participating in Parade:

A. Bands <u>3</u>	D. Foot Units <u>6</u>
B. Motorized Units <u>70-80</u>	E. Animal Units <u>(Unknown)</u>
C. Floats <u>Maybe 5</u>	F. Others <u>(Unknown)</u>

Total Number of Units: 84-94

- 6. Parade Route and ending point: Start at Johnson and Reed Street, east on Reed St to Clark St, south (right) on Clark St and disband.

- 7. Will organization or parade participants be dispersing any items during the parade? Yes No If yes, what? May give out small flags.
- 8. Will organization or agency furnish personnel to assist the police with security or traffic along the parade route? Yes No If so, how many? 10-15 (Hopefully)
- 9. Have read and agree to the rules outlined in the parade permit. Yes No

10. Signature of Applicant: [Signature]

11. Approved: [Signature] Disapproved _____

12. By authority of: [Signature] Date 09-17-19
(Chief of Police)

City of Moberly City Council Agenda Summary

Agenda Number: _____
 Department: Public Works
 Date: October 7, 2019

WS #3.

Agenda Item: Receipt of state bid for a 2020 Polaris Ranger 1000 for use at Street Dept.

Summary: Street Dept. requested the state bid on this item. They will use it for weed spraying, plowing sidewalks and other general street maintenance. Attached is the state bid and a copy of the bill of sale with a roof and windshield added. Staff recommends accepting the state bid of \$11,820.00.

Recommended Action: Direct staff to bring forward to October 21, 2019 regular City Council meeting for final approval.

Fund Name: Street Improvement CIP

Account Number: 601.000.5502

Available Budget \$: 158,986.46

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	Mayor		
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance	M__ S__ Jeffrey	___	___
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution			
<input checked="" type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	Council Member		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M__ S__ Brubaker	___	___
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M__ S__ Kimmons	___	___
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M__ S__ Davis	___	___
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M__ S__ Kyser	___	___
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed

Items 17 and 18 –4x4 Utility Task Vehicle (UTV) with Bench Seat, Minimum 875CC Engine

Commodity Service Code: 25101905

Contract Number: CC190323001

Contractor: LSK Lebanon, Inc.

ITEM 17 - MAKE/MODEL: Polaris Ranger 900 XP

PRICE: \$11,100.00

+ Roof Windshield = \$11,820

MISCELLANEOUS EQUIPMENT INCLUDED:

The unit shall be equipped with all standard equipment for easy operation and mounting of components for the model specified, including trailer hitch; speedometer, odometer, and hourmeter; rear dump box with lift; front bumper with grill guard; front winch mount; mud flaps; roll over protection structure (ROPS); and electrical “pig tail” wiring to facilitate connection with 12 volt accessories.

Colors: Sage Green

ITEM 18 – Discount off manufacturer’s catalog list price for other options/accessories for item 17 above. 20%

Delivery: 30 days ARO

Warranty on Parts: 12 month
Warranty on Labor: 12 month

Items 19 and 20 –4x4 Utility Task Vehicle (UTV) with Bench Seat, Diesel, Minimum 953CC Engine

Commodity Service Code: 25101905

Contract Number: CC190323004

Contractor: Powersports Plus, LLC, Albany GA

ITEM 19 - MAKE/MODEL: (2018) Polaris Ranger Diesel PRICE: \$12,483.00

MISCELLANEOUS EQUIPMENT INCLUDED:

The unit shall be equipped with all standard equipment for easy operation and mounting of components for the model specified, including trailer hitch; speedometer, odometer, and hourmeter; rear dump box with lift; front bumper with grill guard; front winch mount; mud flaps; roll over protection structure (ROPS), and electrical “pig tail” wiring to facilitate connection with 12 volt accessories.

Color: Green

ITEM 20 – Discount off manufacturer’s catalog list price for other options/accessories for item 19 above. 15.5%

Delivery: 90 days ARO

Warranty on Parts: 12 months
Warranty on Labor: 12 months

City of Moberly City Council Agenda Summary

Agenda Number: _____ WS #4.
 Department: Community Development
 Date: October 7, 2019

Agenda Item: Report for demolished property at 709 Benson due to fire.

Summary: The Code Enforcement Office completed the removal of structure at 709 Benson St. Report regarding this property from Rick Ridgway is attached. The final step in this process is to issue a special tax bill and record them with the Randolph County Recorder. With your approval, ordinances authorizing the issuance of special tax bills to the property owners will be prepared.

Recommended Action: Direct staff to bring forward to the October 21, 2019 regular City Council meeting for final approval.

Fund Name: Structure Demolition and Debris Removal

Account Number: 100.005.5418

Available Budget \$: 246,245.63

ATTACHMENTS:	Roll Call	Aye	Nay
<input type="checkbox"/> Memo			
<input checked="" type="checkbox"/> Staff Report			
<input type="checkbox"/> Correspondence			
<input type="checkbox"/> Bid Tabulation			
<input type="checkbox"/> P/C Recommendation			
<input type="checkbox"/> P/C Minutes			
<input type="checkbox"/> Application			
<input type="checkbox"/> Citizen			
<input type="checkbox"/> Consultant Report			
<input type="checkbox"/> Council Minutes			
<input type="checkbox"/> Proposed Ordinance			
<input type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Attorney's Report			
<input type="checkbox"/> Petition			
<input type="checkbox"/> Contract			
<input type="checkbox"/> Budget Amendment			
<input type="checkbox"/> Legal Notice			
<input type="checkbox"/> Other _____			
	Mayor		
	M___ S___ Jeffrey	___	___
	Council Member		
	M___ S___ Brubaker	___	___
	M___ S___ Kimmons	___	___
	M___ S___ Davis	___	___
	M___ S___ Kyser	___	___
		Passed	Failed

Report of Director of Community Development

To: The Honorable Mayor and City Council

Ladies and Gentlemen:

The demolition of a structure located on Porter, Hatcher & Tannehills Addition of Moberly: E 46' W 130' Ex N 5' Lot 1 & E 46' W 130' Lot 2, Blk 9; or more commonly known as 709 Benson St. in the City of Moberly, Missouri has been completed.

According to County records, this property is owned by Kimberly J Imboden and Loretta C Imboden of Moberly, Missouri

I find that said demolition has been completed in accordance with the Ordinances of the City of Moberly.

Wiedeman Dozing LLC of Leonard, MO was contracted to do the work.

Demolition fees	\$ 4,800.00
Materials, hauling fees & surcharges	\$ 3,610.21
Asbestos sampling	\$ 145.00
Asbestos Removal	\$ 4,120.00
Publication fees	\$ N/A
O&E report	\$ N/A
Tire Disposal	\$ 46.50
DNR Permit fee	\$ 102.15
Recording Fee	\$ 30.00

The total cost(s) to be charged against the properties was heretofore determined to be \$12,853.86



Director of Community Development

Title of Document: Special Tax Bill

Date of Document: October 21, 2019

Grantor(s): Kimberly J. Imboden and Loretta C. Imboden

Grantee(s): City of Moberly, Missouri
101 West Reed Street
Moberly, MO 65270

Mailing Address(es): 617 Gilman Street
Moberly, MO 62570

Legal Description: See page 1 of attached pages

Reference Book and Pages:

SPECIAL TAX BILL

This tax bill is issued to Kimberly J. Imboden and Loretta C. Imboden for the sum of Twelve Thousand Eight Hundred Fifty Two dollars and Eighty Six cents (\$12,853.86) against the following described lots, tracts, or pieces of land, situated in the City of Moberly, County of Randolph, State of Missouri, to-wit:

Porter, Hatcher & Tannehills Addition of Moberly: E 46' W 130' Ex N 5' Lot 1 & E 46' W 130' Lot 2 Block 9, or more commonly known as 709 Benson Street, Moberly, MO.

in payment for the cost of the demolition and removal of a condemned building or structure located on such property in the City of Moberly, Missouri, which said demolition and removal of said structure was done by the City of Moberly, Missouri, by authority of an Ordinance duly passed by the Council of the City of Moberly, Missouri, on the 5th day of March, 2018, which said Ordinance provided for the mandatory demolition of buildings or structures within the City of Moberly which were a nuisance and detrimental to the health, safety, or welfare of the residents of the City of Moberly, Missouri.

Said Ordinance provided that the cost of the removal or demolition of said building or structure should be charged against the property upon which such building or structure was located that was demolished or removed. Said Ordinance further provided that the City of Moberly should perform such demolition so that the cost thereof should be certified to the City Clerk of the City of Moberly and special tax bills issued therefor.

The amount set out herein being the amount due the City of Moberly for the cost of the demolition and removal of a structure upon the above described property. That, in accordance with said Ordinance above referred to, the Director of Community Development of the City of Moberly did cause to be demolished and removed said structure located upon the above described property. Said Director of Community Development did report in writing to the Council of the City of Moberly, Missouri, which said report was duly accepted by the Council of the City of Moberly, which said Council did, on the 21st day of October, 2019, by an Ordinance entitled: "An Ordinance in relation to accepting and approving the report of the Director of Community Development relative to the demolition by the City of Moberly, Missouri of structures located at 709 Benson Street, certifying the cost of demolition to the City Clerk and directing the City Clerk pursuant to Section 26-24 of the Moberly City Code to cause a Special Tax Bill to be issued thereon." An assessment on the above described real estate for the cost of said demolition and removal was hereby levied.

This tax bill is a special lien against the above described lots and parcels of ground for ten (10) years from and after its date, unless sooner paid, except tax bills payable in installments as hereinafter provided shall bear interest at the rate of eight percent (8%) per annum from 60 days after its date.

City of Moberly City Council Agenda Summary

Agenda Number: _____
 Department: Finance
 Date: October 7, 2019

WS #5.

Agenda Item: A resolution repealing Resolution # R-498 and authorizing the transfer of \$219,228.53 of funds saved through the “flexible funding resolution” since the program’s inception into the Health Trust Fund.

Summary: After a short hiatus, claims processed through the City’s health plan have once again reached extremely high levels, depleting the fund balance to approximately \$240,000. This level is concerning because 2-4 large claims have potential to drop this balance to under \$100,000. The Finance Director and City Manager have discussed the situation and feel that the best course of action is to repeal the March 2014 “flexible funding” resolution and transfer the \$219,228.53 of funds saved through the program into the Health Trust Fund to bolster it. A calculation of this amount and the source of the funds to transfer are attached.

Recommended

Action: Direct staff to draft a resolution for adoption at the October 21, 2019 meeting.

Fund Name: N/A

Account Number: N/A

Available Budget \$: N/A

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	Mayor		
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance	M___ S___ Jeffrey	___	___
<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Proposed Resolution	Council Member		
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney’s Report	M___ S___ Brubaker	___	___
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ Kimmons	___	___
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M___ S___ Davis	___	___
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ Kyser	___	___
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice		___	___
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed

City of Moberly Flexible Funding Transfer		
Account #	DR	CR
100.001.5103	5,546.48	
100.002.5103	2,411.51	
100.003.5103	4,340.72	
100.004.5103	1,227.68	
100.005.5103	10,106.44	
100.006.5103	2,411.51	
100.007.5103	58,577.87	
100.008.5103	38,649.99	
100.009.5103	18,042.51	
100.013.5103	12,254.87	
100.000.1000		153,569.58
110.033.5103	1,118.07	
110.000.1000		1,118.07
115.040.5103	1,205.76	
115.041.5103	6,905.70	
115.044.5103	5,765.71	
115.048.5103	2,170.36	
115.000.1000		16,047.53
301.110.5103	10,128.36	
301.112.5103	16,244.83	
301.113.5103	9,097.98	
301.114.5103	10,829.89	
301.115.5103	2,192.29	
301.000.1000		48,493.35
400.000.5103	0.00	
400.000.1000		0.00
TOTALS	219,228.53	219,228.53

City of Moberly "Flexible Funding" Resolution Reduced Contributions Made				
Period	100% contribution	Reduced contribution	Reduction amount	Comment
April 2014	86,592.59	71,196.33	15,396.26	
May 2014	88,460.77	75,330.62	13,130.15	
June 2014	85,838.91	85,838.91	0.00	
July 2014	85,306.88	85,306.88	0.00	
August 2014	84,757.51	84,757.51	0.00	
September 2014	85,804.90	85,804.90	0.00	
October 2014	88,163.92	88,163.92	0.00	
November 2014	87,045.55	87,045.55	0.00	
December 2014	87,526.10	15,004.57	72,521.53	
January 2015	87,511.09	26,421.50	61,089.59	
February 2015	86,644.29	34,669.40	51,974.89	
March 2015	86,696.70	172,472.01	(85,775.31) *	
April 2015	87,179.15	87,179.15	0.00	
May 2015	86,743.02	86,743.02	0.00	
June 2015	86,300.57	86,300.57	0.00	
July 2015	86,674.29	86,674.29	0.00	
August 2015	87,192.59	87,192.59	0.00	
September 2015	86,231.95	60,345.05	25,886.90	
October 2015	86,218.33	86,218.33	0.00	
November 2015	86,218.33	66,502.61	19,715.72	
December 2015	85,738.01	83,552.91	2,185.10	
January 2016	86,599.35	70,223.35	16,376.00	
February 2016	83,076.04	55,006.52	28,069.52	
March 2016	84,920.40	84,920.40	0.00	
April 2016	88,919.18	88,919.18	0.00	
May 2016	88,922.17	125,463.44	(36,541.27) **	
June 2016	88,956.23	80,979.53	7,976.70	
July 2016	87,031.15	87,031.15	0.00	
August 2016	88,668.35	88,668.35	0.00	

City of Moberly "Flexible Funding" Resolution Reduced Contributions Made				
Period	100% contribution	Reduced contribution	Reduction amount	Comment
September 2016	90,588.48	90,588.48	0.00	
October 2016	90,157.12	90,157.12	0.00	
November 2016	87,858.32	60,635.57	27,222.75	
December 2016	89,912.01	89,912.01	0.00	
January 2017	90,805.29	90,805.29	0.00	
February 2017	91,716.22	91,716.22	0.00	
March 2017	89,739.69	89,739.69	0.00	
April 2017	91,464.80	91,464.80	0.00	
May 2017	87,971.57	87,971.57	0.00	
June 2017	87,971.57	87,971.57	0.00	
July 2017	93,459.81	93,459.81	0.00	
August 2017	94,268.62	94,268.62	0.00	
September 2017	96,037.23	92,763.21	0.00	***
October 2017	96,582.24	93,459.81	0.00	***
November 2017	97,658.93	93,572.01	0.00	***
December 2017	97,658.93	93,459.81	0.00	***
TOTAL			219,228.53	

* This contribution is in excess of City policy due to the lack of claims processed by the claims administrator through the first 7 weeks of 2015 while converting to new claims processing software. This contribution "catches up" the fund balance for those claims processed beginning in late February through March for claims submitted after 12/31/2014.

** One-time additional contribution to bring fund balance to \$1 million.

*** Payment adjusted to remain within budget constraints.

City of Moberly City Council Agenda Summary

Agenda Number: _____ WS #6.
 Department: Parks & Rec
 Date: October 7, 2019

Agenda Item: An Ordinance Ratifying A Consent Agreement; Approving A First Amendment To Cooperative Agreement; Making Certain Findings; And Providing Further Direction And Authority.

Summary: The attached amendment to the golf course cart path agreement provides for the exchange of an additional 1.4 acre tract for a \$5,000 credit toward materials on the first phase of cart paths (back 9) or the labor on a future phase (front 9) of cart path development at Heritage Hills.

Recommended

Action: Approve this resolution.

Fund Name:

Account Number:

Available Budget \$:

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	Mayor		
<input type="checkbox"/> Staff Report	<input checked="" type="checkbox"/> Proposed Ordinance	M___ S___ Jeffrey	___	___
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	Council Member		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ Brubaker	___	___
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M___ S___ Kimmons	___	___
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ Davis	___	___
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M___ S___ Kyser	___	___
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed

BILL NO. _____

ORDINANCE NO: _____

AN ORDINANCE RATIFYING A CONSENT AGREEMENT; APPROVING A FIRST AMENDMENT TO COOPERATIVE AGREEMENT; MAKING CERTAIN FINDINGS; AND PROVIDING FURTHER DIRECTION AND AUTHORITY.

WHEREAS, Sections 70.210 through 70.320 of the Revised Statutes of Missouri, as amended, authorize Missouri municipalities to contract with any private person, firm, association, or corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service, provided, that the subject and purposes of any such contract or cooperative action are within the scope of the powers of such municipality; and

WHEREAS, The Moberly, Missouri, Public Building Corporation (the “**Corporation**”) was formed as a non-profit corporation under the laws of the State of Missouri “[t]o benefit and carry out the purposes of the City of Moberly, Missouri (the “**City**”), by providing for the acquisition, construction, improvement, extension, repair, remodeling, renovation and financing of public sites, buildings, facilities, furnishings and equipment for the benefit or use of the City”; and

WHEREAS, the City, the Corporation, and DMC Concrete LLC (the “**Contractor**”) have previously entered into a certain Cooperative Agreement dated as of _____, 2019 (the “**Cooperative Agreement**”) by and through which the Corporation will convey a certain portion of an improved parcel known and numbered as 4092 Highway JJ, Moberly, Missouri (the “**Conveyed Portion**”) to the Contractor in exchange for the installation by the Contractor of concrete golf cart paths on portions of a public golf course facility located at 3534 State Highway JJ South, Moberly, Missouri 65270 and generally known as Heritage Hills Golf Course managed and operated by the City (the “**Golf Course**”), all in accordance with the terms and conditions of the Cooperative Agreement; and

WHEREAS, that certain Asset Purchase and Sale Agreement, dated as of January 7, 2019 (the “**Purchase Agreement**”) among the City, the Corporation, and Heritage Golf Course, LLC (“**Heritage**”) which governed the financing and sale of the Golf Course provides that any “material alteration” to any of the real property constituting the Golf Course requires the prior written consent of Heritage and Heritage has granted its consent to the transactions and undertakings set forth in the Cooperative Agreement by and through that certain Consent and Agreement dated as of August 12, 2019 (the “**Consent Agreement**”) which Consent Agreement is hereby incorporated by reference in this Resolution as if set forth in its entirety herein; and

WHEREAS, the parties to the Cooperative Agreement now wish to enter into a certain First Amendment to Cooperative Agreement, in substantially the form of Exhibit A, attached to and incorporated by reference in this Ordinance (the “**First Amendment**”) to provide for the conveyance and leaseback to the City of another portion of improved real property owned in fee by the Corporation and located contiguous to southern border of the Conveyed Portion and depicted on Exhibit A to the First Amendment (the “**Additional Parcel**”) in exchange for a monetary credit by the Contractor in connection with future anticipated improvements to golf cart paths and other amenities at the Golf Course.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOBERLY, MISSOURI, as follows, to wit:

SECTION 1. The Consent Agreement is hereby acknowledged, confirmed, ratified and approved. Any and all acts heretofore taken by the Mayor, City Manager, City Clerk, and applicable City staff, or any of them, in furtherance of the execution and delivery of the Consent Agreement are hereby acknowledged, confirmed, ratified and approved.

SECTION 2. The First Amendment in substantially the form of Exhibit A is hereby

approved and the Mayor is hereby authorized and directed to execute the First Amendment on behalf of the City with the proviso that such executed First Amendment shall not be delivered unless and until the consent of Heritage to the First Amendment in accordance with paragraph 6 of the aforesaid Purchase Agreement is obtained.

SECTION 3. The Mayor, City Manager, City Clerk, and applicable City staff are hereby authorized and directed, subject to the obtaining of consent as provided in Section 2 of this Ordinance and, upon obtaining such consent, to take such further actions as may be necessary or convenient to carry out and satisfy the City’s obligations under the First Amendment, all of which will facilitate the operation and enjoyment of the Golf Course and are hereby found and determined to be for a public purpose, and in furtherance of the health, safety and welfare of the citizens of the City.

SECTION 4. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Council of the City would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 5. This Ordinance shall take effect and be in force from and after its passage and adoption by the Council of the City and its signature by the officer presiding at the meeting at which it was passed and adopted.

PASSED AND ADOPTED by the Council of the City of Moberly, Missouri on this ____ day of October, 2019.

Presiding Officer at Meeting

ATTEST:

Diane Kay Galloway, CMC/MRCC, City Clerk

EXHIBIT A
FIRST AMENDMENT TO COOPERATIVE AGREEMENT

FIRST AMENDMENT TO COOPERATIVE AGREEMENT

THIS FIRST AMENDMENT TO COOPERATIVE AGREEMENT (this “**Amendment**”) is made and entered into as of this ____ day of _____, 2019 by and among MOBERLY, MISSOURI, PUBLIC BUILDING CORPORATION, a Missouri non-profit corporation having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**Corporation**”); the CITY OF MOBERLY, a city of the third class and Missouri municipal corporation having a principal office at 101 West Reed Street, Moberly, Missouri, 65270 (the “**City**”); and DMC CONCRETE LLC, a Missouri limited liability company having a principal office at 3658 Highway JJ, Moberly, Missouri 65270 (the “**Contractor**”). *Capitalized terms used and not defined in this Amendment shall have the meanings ascribed to them in that certain Cooperative Agreement dated as of _____, 2019 by and among the parties (the “Original Agreement”).*

RECITALS

A. The parties to this Amendment have previously entered to the Original Agreement whereby at the request of the City, the Corporation agreed to convey to the Contractor the Residential Portion in exchange for the Contractor’s agreement to provide labor to install concrete golf cart paths on portions of the Golf Course, in accordance with the terms and requirements of the Original Agreement.

B. The parties now wish to enter into this Amendment to provide for the conveyance and leaseback to the City of another portion of improved real property owned in fee by the Corporation and located contiguous to southern border of the Residential Portion and generally depicted on Exhibit A, attached to and incorporated by reference in this Amendment (the “**Additional Parcel**”) in exchange for a monetary credit by the Contractor in connection with future anticipated improvements to golf cart paths and other amenities at the Golf Course.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. Definitive Descriptions. The survey map and legal descriptions contained on Exhibit B, attached to and incorporated by reference in this Amendment, shall govern and serve as the definitive descriptions of, respectively, the Residential Portion, which shall have the bounds and area described on the aforesaid Exhibit B as “Tract 2;” the Additional Parcel, which shall have the bounds and area described on the aforesaid Exhibit B as “Tract 3;” the perpetual access and egress easement in favor of the Residential Portion as set forth in paragraph 1 of the Original Agreement, which shall have the bounds and area described on the aforesaid Exhibit B as “15 Foot Easement for Ingress and Egress for Tract 2;” and the easement to use the lagoon and attendant sewerage connections for sanitary sewage treatment as set forth in paragraph 1 of the Original Agreement, which shall have the bounds and area described on the aforesaid Exhibit B as “15 Foot

Easement Maintenance of Sanitary Sewer for Tract 1.” In the event of any conflict between the respective descriptions or depictions of any of the foregoing contained in the Original Agreement or elsewhere in this Amendment, and the respective descriptions and depictions of any of the foregoing contained on the aforesaid Exhibit B, the descriptions and depictions contained on the aforesaid Exhibit B shall govern. The portion of the Ancillary Parcel to be retained by the Corporation and the City shall have the bounds and area set forth as “Tract 1” on the aforesaid Exhibit B, which description shall govern in the event of any conflicts with descriptions or depictions of any areas contained in the Original Agreement or elsewhere in this Amendment.

2. Undertakings by Corporation. In consideration of the undertakings and covenants of the Contractor and of the City, each as set forth in paragraph 3 of this Amendment, the Corporation hereby agrees, represents and covenants to the City and the Contractor that the Corporation shall transfer and convey to the Contractor by warranty deed fee simple title to the Additional Parcel, not later than December 31, 2019. Closing on the conveyance of the Additional Parcel shall take place contemporaneously with the Closing and shall be subject to all provisions of paragraph 4 of the Original Agreement which provisions are hereby incorporated in this Amendment by reference in full as if set forth in full at this place. The Contractor may, but shall not be obligated, to obtain at the Contractor’s sole cost and expense, a commitment for an ALTA Owner’s Policy (6-17-06) of title insurance for the Additional Parcel.

3. Undertakings by Contractor. The Contractor hereby agrees and covenants to the Corporation and the City that at the closing on the conveyance to the Contractor of the Additional Parcel, the Contractor shall execute a lease in substantially the form of Exhibit C, attached to and incorporated by reference in this Amendment (the “Lease”) providing for the leasing of the Additional Parcel to the City from year to year; subject to Ninety (90) day prior notification by Contractor to the City of the Lease, whereupon the City shall have the right to move and relocate at the City’s sole cost and expense the improvements located on the Additional Parcel including, without limitation, the sod nursery and irrigation facilities currently located on or at the Additional Parcel, to adjacent land owned by the Corporation. In further consideration of the Corporation’s and the City’s undertakings pursuant to this Amendment, the Contractor hereby agrees to grant to the City, at the City’s option, either (i) a \$5,000 credit against and reduction in the costs of materials as provided for the Work specified in paragraph 2 and Exhibit E of the Original Agreement; or (ii) a \$5,000 credit against Contractor’s labor costs in respect of future anticipated improvements to golf cart paths and other amenities at the Golf Course as specified by the City. The City shall declare which of the foregoing options shall be effective on or before the Closing Date.

4. Covenant to Connect to Public Sewerage Affirmed; Covenant to Apply for Annexation. The Contractor hereby represents, warrants and covenants to the City and the Corporation and confirms and acknowledges the obligation of the Contractor set for in the Original Agreement that, upon receiving written notice from the City that public sanitary sewerage is available to service the Additional Parcel and the Residential Portion, the Contractor shall promptly connect the Additional Parcel together with the Residential Portion to such sanitary sewerage system at such cost and expense to the Contractor as may be applicable under then-current policies and practices of the City for such connections and shall at the Contractor’s sole cost and expense abandon, cap, and close down in full accordance with all applicable local, State

and federal environmental standards the lagoon and attendant sewerage connections. In addition to the foregoing, the Contractor further agrees, represents, warrants and covenants to the City and to the Corporation that upon the first occurrence of a lawful opportunity to annex the Residential Portion or the Additional Parcel within the corporate limits of the City, whether pursuant to section 71.012 of the Revised Statutes of Missouri, as amended, or other statutory or common law authority (collectively, “**Annexation Authority**”), such occurrence to be evidenced by a written notice from the City to the Contractor or the Contractor’s successor in title to the Residential Portion or the Additional Parcel, as applicable, the Contractor or the Contractor’s successor in title, as applicable, shall within Fifteen (15) days of receipt of such notice prepare and submit irrevocably to the City one or more verified petitions or other similar requirement of the applicable Annexation Authority requesting that the City annex the Residential Portion and the Additional Parcel within the corporate limits of the City and shall cooperate with and take such further actions and execute and deliver such other instruments to the City as may be required to extend the corporate limits of the City to include the Residential Portion and the Additional Parcel. It is intended that the foregoing covenants to connect the Additional Parcel together with the Residential Portion to the public sanitary sewerage system and to request that the City annex the Residential Portion and the Additional Parcel within the corporate limits of the City at the first lawful opportunity shall each run with the land and be binding upon any and all successors in interest to the Residential Portion and the Additional Parcel and the parties further agree to cooperate with one another to take such actions as may be required to cause to be recorded promptly following closing on the conveyances of the Additional Parcel and the Residential Portion to the Contractor the foregoing covenants in the land records of the office of the Randolph County Recorder.

5. Covenant for Mutual Cooperation. The Corporation, the City, and the Contractor each agree, represent warrant, and covenant to the other parties that each shall cooperate in good faith with the others as reasonably required (i) to execute any such instruments as may be necessary or convenient to effectuate the conveyances of the Residential Portion as set forth in the Original Agreement and of the Additional Parcel as set forth in paragraph 2 of this Amendment, (ii) effectuate and abide by the terms of the Lease including, without limitation, the City’s right to move and relocate the improvements located on the Additional Parcel including, without limitation, the sod nursery and irrigation facilities currently located on or at the Additional Parcel; (iii) to effectuate the applicable credit to the City as set forth in paragraph 3 of this Amendment; and (iv) to effectuate the recording in the office of the Randolph County Recorder of a covenant running with the land respecting the obligation to submit to the City a petition and request for annexation in respect of the Residential Portion and the Additional Parcel at the first lawful opportunity as set forth in paragraph 4 of this Amendment.

6. Extension of Term. This Amendment and the Original Agreement shall commence on the respective dated dates thereof and shall be extended and remain in full force and effect until the expiration and termination of the Lease; *provided that* any rights and obligations contemplated by this Amendment to extend beyond the term of this Amendment including, without limitation, the \$5,000 credit against Contractor’s labor costs in respect of future anticipated improvements to golf cart paths if such option is elected by the City pursuant to paragraph 3 of this Amendment, shall

survive expiration of the Lease and termination of this Amendment and the Original Agreement for any reason.

7. Execution; Counterparts. Each person executing this Amendment in a representative capacity warrants and represents that he or she has authority to do so, and upon request by the other party, proof of such authority will be furnished to the requesting party. This Amendment may be executed at different times and in two or more counterparts, and all counterparts so executed shall for all purposes constitute one and the same instrument, binding on the parties hereto, notwithstanding that both parties may not have executed the same counterpart. In proving this Amendment, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement is sought.

8. Remaining Portions of Original Agreement Unchanged; Conflicts. The Original Agreement as modified and amended by this Amendment is hereby ratified and confirmed and, except for the modifications and amendments contained in this Amendment, all other terms of the Original Agreement shall remain unchanged and in full force and effect; *provided that* in the event of any conflict between the terms of this Amendment and those of the Original Agreement, the terms of this Amendment shall govern and the Original Agreement shall be deemed modified to the extent of the conflict.

IN WITNESS WHEREOF, the parties have each caused this Amendment to be executed in their respective names and caused their respective seals to be affixed thereto, and attested to as of the date first above written.

MOBERLY, MISSOURI, PUBLIC BUILDING CORPORATION

By: _____
Printed name:
Title:

ATTEST:

Printed name:
Title:

CITY OF MOBERLY

By: _____
Jerry Jeffrey, Mayor

ATTEST:

D. K. Galloway, CMC/MRCC
City Clerk

DMC CONCRETE LLC

By: _____
Printed name:
Title:

ATTEST:

Printed name:
Title:

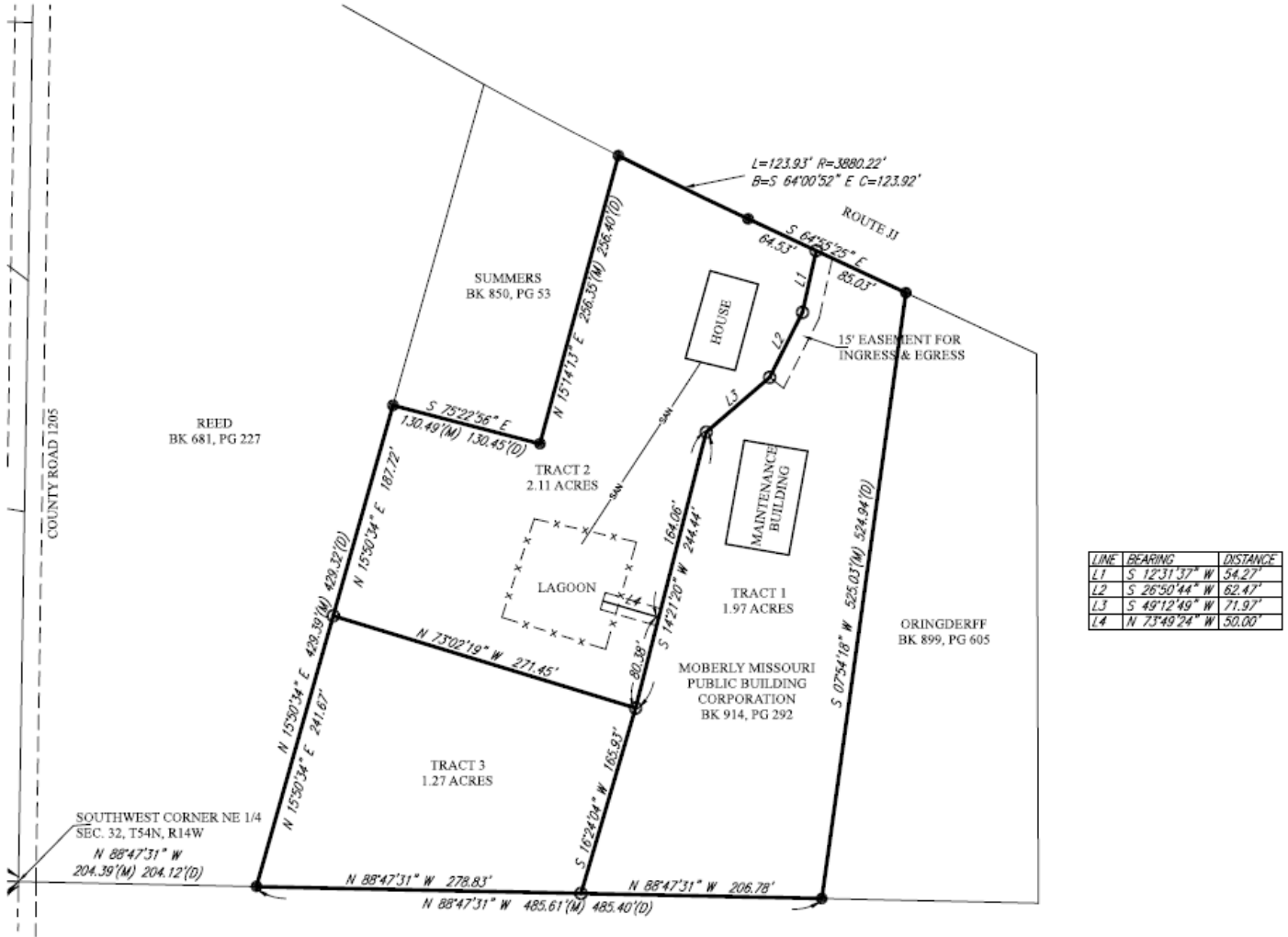
EXHIBIT A-1

The Additional Parcel (depicted in Blue Shading)



EXHIBIT B

Definitive Descriptions of Various Parcels, Tracts and Easements



DESCRIPTION TRACT 1:

A tract of land being part of the Southwest Quarter of the Northeast Quarter of Section 32, Township 54 North, Range 14 West of the fifth principal meridian, Randolph County, Missouri, being more particularly described as follows:
 Commencing at the Southwest corner of the Northeast Quarter of said Section 32; thence along the South line of said Northeast Quarter, South 88 degrees 47 minutes 31 seconds East, a distance of 483.22 feet to an iron rod and the POINT OF BEGINNING; thence North 16 degrees 24 minutes 04 seconds East, a distance of 165.93 feet to an iron rod; thence North 14 degrees 21 minutes 20 seconds East, a distance of 244.44 feet to an iron rod; thence North 49 degrees 12 minutes 49 seconds East, a distance of 71.97 feet to an iron rod; thence North 26 degrees 50 minutes 44 seconds East, a distance of 62.47 feet to an iron rod; thence North 12 degrees 31 minutes 37 seconds East, a distance of 54.27 feet to an iron rod on the Southerly right-of-way of Route JJ; thence along said right-of-way, South 64 degrees 55 minutes 25 seconds East, a distance of 85.03 feet to an iron rod; thence leaving said right-of-way, South 07 degrees 54 minutes 18 seconds West, a distance of 525.03 feet to an iron rod on the South line of said Northeast Quarter; thence North 88 degrees 47 minutes 31 seconds West, a distance of 206.78 feet to the POINT OF BEGINNING, containing 1.97 acres.

EXHIBIT B, cont'd.

DESCRIPTION TRACT 2:

A tract of land being part of the Southwest Quarter of the Northeast Quarter of Section 32, Township 54 North, Range 14 West of the fifth principal meridian, Randolph County, Missouri, being more particularly described as follows:

Commencing at the Southwest corner of the Northeast Quarter of said Section 32; thence along the South line of said Northeast Quarter, South 88 degrees 47 minutes 31 seconds East, a distance of 483.22 feet to an iron rod; thence North 16 degrees 24 minutes 04 seconds East, a distance of 165.93 feet to an iron rod and the POINT OF BEGINNING; thence North 73 degrees 02 minutes 19 seconds West, a distance of 271.45 feet to an iron rod; thence North 15 degrees 50 minutes 34 seconds East, a distance of 187.72 feet to an iron rod; thence South 75 degrees 22 minutes 56 seconds East, a distance of 130.49 feet to an iron rod; thence North 15 degrees 14 minutes 13 seconds East, a distance of 256.35 feet to an iron rod on the Southerly right-of-way of Route JJ; thence along said right-of-way the following two courses, Southeasterly, along the arc of a curve to the left, having a radius of 3880.22 feet, for a length of 123.93 feet (chord = S64°00'52"E - 123.92') to an iron rod; thence South 64 degrees 55 minutes 25 seconds East, a distance of 64.53 feet to an iron rod; thence leaving said right-of-way, South 12 degrees 31 minutes 37 seconds West, a distance of 54.27 feet to an iron rod; thence South 26 degrees 50 minutes 44 seconds West, a distance of 62.47 feet to an iron rod; thence South 49 degrees 12 minutes 49 seconds West, a distance of 71.97 feet to an iron rod; thence South 14 degrees 21 minutes 20 seconds West, a distance of 244.44 feet to the POINT OF BEGINNING, containing 2.11 acres.

DESCRIPTION TRACT 3:

A tract of land being part of the Southwest Quarter of the Northeast Quarter of Section 32, Township 54 North, Range 14 West of the fifth principal meridian, Randolph County, Missouri, being more particularly described as follows:

Commencing at the Southwest corner of the Northeast Quarter of said Section 32; thence along the South line of said Northeast Quarter, South 88 degrees 47 minutes 31 seconds East, a distance of 204.39 feet to an iron rod and the POINT OF BEGINNING; thence North 15 degrees 50 minutes 34 seconds East, a distance of 241.67 feet to an iron rod; thence South 73 degrees 02 minutes 19 seconds East, a distance of 271.45 feet to an iron rod; thence South 16 degrees 24 minutes 04 seconds West, a distance of 165.93 feet to an iron rod on the South line of said Northeast Quarter; thence North 88 degrees 47 minutes 31 seconds West, a distance of 278.83 feet to the POINT OF BEGINNING, containing 1.27 acres.

15 FOOT EASEMENT FOR INGRESS AND EGRESS FOR TRACT 2:

A 15 foot wide tract of land being part of the Southwest Quarter of the Northeast Quarter of Section 32, Township 54 North, Range 14 West of the fifth principal meridian, Randolph County, Missouri, being 15 feet East of and parallel to the following described line:

Commencing at the Southwest corner of the Northeast Quarter of said Section 32; thence along the South line of said Northeast Quarter, South 88 degrees 47 minutes 31 seconds East, a distance of 483.22 feet to an iron rod; thence North 16 degrees 24 minutes 04 seconds East, a distance of 165.93 feet to an iron rod; thence North 14 degrees 21 minutes 20 seconds East, a distance of 244.44 feet to an iron rod; thence North 49 degrees 12 minutes 49 seconds East, a distance of 71.97 feet to an iron rod and the POINT OF BEGINNING; thence North 26 degrees 50 minutes 44 seconds East, a distance of 62.47 feet to an iron rod; thence North 12 degrees 31 minutes 37 seconds East, a distance of 54.27 feet to an iron rod on the Southerly right-of-way of Route JJ and the POINT OF ENDING.

15 FOOT EASEMENT MAINTENANCE OF SANITARY SEWER FOR TRACT 1:

A 15 foot wide tract of land being part of the Southwest Quarter of the Northeast Quarter of Section 32, Township 54 North, Range 14 West of the fifth principal meridian, Randolph County, Missouri, the centerline of which is more particularly described as follows:

Commencing at the Southwest corner of the Northeast Quarter of said Section 32; thence along the South line of said Northeast Quarter, South 88 degrees 47 minutes 31 seconds East, a distance of 483.22 feet to an iron rod; thence North 16 degrees 24 minutes 04 seconds East, a distance of 165.93 feet to an iron rod; thence North 14 degrees 21 minutes 20 seconds East, a distance of 80.38 feet to the POINT OF BEGINNING; thence North 73 degrees 49 minutes 24 seconds West, a distance of 50.00 feet to the POINT OF ENDING.

EXHIBIT C

Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Lease**”) is made and entered into as of this ____ day of _____ 2019 by and between DMC CONCRETE LLC, a Missouri limited liability company having a principal office at 3658 Highway JJ, Moberly, Missouri (“**Lessor**”) and the CITY OF MOBERLY, a city of the third class and Missouri municipal corporation having a principal office at 101 West Reed Street, Moberly, Missouri, 65270 (“**Lessee**”). For and in consideration of the covenants and obligations contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree and covenant as follows:

1. PROPERTY. Lessor owns a certain parcel of real property and improvements depicted and legally described on Exhibit A, attached to and incorporated by reference in this Lease (the “**Premises**”). Lessor desires to lease the Premises to Lessee and Lessee desires to lease the Premises from Lessor upon the terms and conditions contained in this Lease.

2. TERM. This Lease shall commence on the date defined as the “Closing Date” (the “**Commencement Date**”) in that certain Cooperative Agreement dated as of _____, 2019 by and between Lessor, Lessee, and the Moberly Public Building Corporation, which is hereby incorporated in this Lease by reference (the “**Cooperative Agreement**”) and shall continue for a term of years from the Commencement Date (the “**Term**”) with the termination of this Lease occurring at 11:59 PM on the date which is ninety (90) days from the obtaining by or on behalf of Lessor of a valid building permit for a single family residence at the Premises with a copy of such permit delivered to Lessee (the “**Notice of Construction**”). Upon the giving of the Notice of Construction, Lessee shall have ninety (90) days to remove and relocate the improvements located at or on the Premises including, without limitation, the sod nursery and irrigation facilities currently located on the Premises at Lessee’s sole cost and expense and upon the expiration of such ninety day period, Lessee shall be required to vacate the Premises.

3. RENTS. Lessee shall pay to Lessor without demand the sum of One Dollar (\$1.00) per year for each calendar year or fraction thereof of during which Lessee occupies the Premises under this Lease (collectively, the “**Rentals**”) as rent for the Term of this Lease. Due date for Rental payments shall be the third day of each calendar year and shall be considered advance payment for that year.

4. USE OF PREMISES; QUITE ENJOYMENT. The Premises may be and occupied by Lessee and Lessee’s agent, employees, and invitees for any lawful purpose. Lessee shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the use, occupancy and preservation of the Premises. Lessee, upon payment of Rentals and observance of all requirements of this Lease applicable

to Lessee shall and may peacefully and quietly have, hold and enjoy said Premises for the Term.

5. CONDITION OF PREMISES. Lessee stipulates, represents and warrants that Lessee has examined the Premises, and that the Premises are as of the Commencement Date in good order, repair, and in a safe, clean and tenable condition. Lessor does not warrant the fitness for any purpose or uninterrupted use or enjoyment of the Premises and any interruption of Lessee’s use and enjoyment of the Premises or any portion thereof for any reason shall not constitute “constructive eviction” nor form the basis for any defense, set-off or counterclaim by Lessee.

6. ASSIGNMENT AND SUB-LETTING; LICENSE PERMITTED. Lessee shall not assign this Lease or sub-let the Premises or any part thereof without the prior written consent of Lessor; *provided that* Lessee may freely grant one or more licenses to use all or a portion of the Premises for any lawful purpose so long as such licensee shall abide by each of the conditions imposed upon Lessee under this Lease.

7. UTILITIES. Lessee shall be responsible for arranging for and paying for all utility services required on the Premises. Lessor shall have no obligation to pay for such services and in the event of any such charges paid by Lessor for any reason, Lessee upon written demand, shall promptly reimburse Lessor for all such payments.

8. MAINTENANCE AND REPAIR. Lessee shall, at Lessee’s sole cost and expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the Term of this Lease

9. SURRENDER OF PREMISES. Upon the expiration of the Term, Lessee shall surrender the Premises in as good a state and condition as they were at the Commencement Date, reasonable use and wear and tear thereof and damages by the removal and relocation of improvements by Lessee and by the elements excepted.

10. DEFAULT. In the event of breach of this Lease, other than the covenant to pay Rentals, by either party, the aggrieved party may seek any relief provided by law or in equity including, without limitation, specific performance. If Lessee fails to pay Rentals when due and such default continues for seven (7) days after delivery of notice thereof to Lessee, Landlord may, at Landlord’s option, declare the entire balance of Rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to Landlord at law or in equity.

11. REMEDIES CUMULATIVE; ATTORNEYS’ FEES. All remedies conferred upon and available to the parties under this Lease shall be deemed cumulative and no one exclusive of the other or of any other remedy conferred by law. Should it become necessary for any party to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of Rentals or gaining possession of the Premises, the breaching party agrees to pay all expenses so incurred, including reasonable attorneys’ fees.

12. NO RECORDING OF LEASE. Neither Lessor nor Lessee shall record this Lease on the public records of any public office.

13. GOVERNING LAW; VENUE. This Lease shall be governed, construed and interpreted by, through and under the laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflict of laws provisions. The parties hereto agree that any action at law, suit in equity, or other judicial proceeding arising out of this Lease shall be instituted only in the Circuit Court of Randolph County, Missouri and waive any objection based upon venue or *forum non conveniens* or otherwise.

14. SEVERABILITY. If any provision of this Lease or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Lease nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

15. BINDING EFFECT. The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

16. COMPUTATION OF TIME. Wherever this Lease calls for the performance of any act by reference to a day or number of days, to a month or number of months or to a year or number of years, each such computation shall be made based upon calendar days, calendar months, and calendar years, as applicable, unless otherwise expressly provided.

17. CONSTRUCTION; ENFORCEMENT; NO PRESUMPTIONS. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons. The headings and captions of this Lease are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Lease of any provision thereof and shall in no way be deemed to explain, modify, amplify or aid in the interpretation or construction of the provisions of this Lease. All parties to this Lease and their attorneys have had full opportunity to review the final form of this Lease and all documents attached as exhibits. This Lease shall be construed without regard to any presumption or other rule of construction whereby ambiguities within this Lease or such other document would be construed or interpreted against the party causing the document to be drafted. The parties hereto each further represent that the terms of this Lease and the documents attached as exhibits hereto have been completely read by them and that those terms are fully understood and voluntarily accepted by them. In any interpretation, construction or determination of the meaning of any provision of this Lease, no presumption whatsoever shall arise from the fact that the Lease was prepared by or on behalf of any party hereto. Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an

express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

18. NON-WAIVER. No delay, indulgence, waiver, non-enforcement, election or non-election by either party under this Lease will be deemed to be a waiver of any other breach by any party, nor shall it affect such party's duties, obligations, and liabilities hereunder.

19. ENTIRE AGREEMENT: MODIFICATION. The parties hereby agree that this document contains the entire agreement between the parties and this Lease shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

20. NOTICE. Any notice required or permitted under this Lease or under state law shall be delivered in accordance with the terms of the Cooperative Agreement.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS AS OF THE DAY AND DATE FIRST ABOVE WRITTEN.

Lessor:

DMC CONCRETE LLC, a Missouri limited liability company

By: _____

Printed name: _____

Lessee:

The CITY OF MOBERLY, a city of the third class and Missouri municipal corporation

By: _____

Printed name: _____

Exhibit A (to Lease)
Premises Description



A tract of land being part of the Southwest Quarter of the Northeast Quarter of Section 32, Township 54 North, Range 14 West of the fifth principal meridian, Randolph County, Missouri, being more particularly described as follows:
Commencing at the Southwest corner of the Northeast Quarter of said Section 32; thence along the South line of said Northeast Quarter, South 88 degrees 47 minutes 31 seconds East, a distance of 204.39 feet to an iron rod and the POINT OF BEGINNING; thence North 15 degrees 50 minutes 34 seconds East, a distance of 241.67 feet to an iron rod; thence South 73 degrees 02 minutes 19 seconds East, a distance of 271.45 feet to an iron rod; thence South 16 degrees 24 minutes 04 seconds West, a distance of 165.93 feet to an iron rod on the South line of said Northeast Quarter; thence North 88 degrees 47 minutes 31 seconds West, a distance of 278.83 feet to the POINT OF BEGINNING, containing 1.27 acres.