BILL NO. 398 ORDINANCE NO. 398

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND CLERK OF THE CITY OF WOOD HEIGHTS, MISSOURI, TO ENTER INTO A CONSTRUCTION COMMENCEMENT CONTRACT WITH STERLING EXCAVATION & ERECTION, INC., A MISSOURI CORPORATION, FOR THE PURPOSE OF COMMENCING CONSTRUCTION OF SEWAGE PUMPING AND TREATMENT FACILITIES IN COMPLIANCE WITH THE PROVISIONS OF THAT CERTAIN CONTRACT NO. 1 AT SAID CONTRACTOR'S OWN RISK.

WHEREAS, the Mayor and Board of Aldermen of the City of Wood Heights, Missouri, after mature consideration, consider it necessary to enter into a Construction Commencement Contract with Sterling Excavation & Erection, Inc, a Missouri corporation, prior to formally executing that certain Contract No. 1 for the construction of Sewage Pumping and Treatment Facilities; and

WHEREAS, the said contractor was the lowest and best bidder under that certain proposed Contract No. 1; and

WHEREAS, said bid under said proposed Contract No. 1 was in the total amount of $473,104.00 and said bid was duly accepted by the party of the second part; and

WHEREAS, the said contractor desires to commence work immediately on the said construction project in accordance with and in compliance with the requirements set forth in that certain Contract No. 1 although said contract has not been executed by the City of Wood Heights, Missouri; and

WHEREAS, the party of the second part desires to execute said Contract No. 1 for said construction project only after certain general obligation bonds are sold, the bond transcript approved, and the said bonds are issued; and

WHEREAS, it is the intention of the party of the second part to execute that certain Contract No. 1 upon the sale of its said bonds, the receipt of the bond attorney's approval of the bond transcript, and the issuance of the said bonds, and upon final approval by its legal counsel;

NOW THEREFORE, be it ordained by the Board of Aldermen of the City of Wood Heights, Missouri, as follows:

Section 1: The present Mayor of the City of Wood Heights, Missouri, is hereby duly authorized by the Board of Aldermen of the City of Wood Heights, Missouri, to enter into a certain Construction Commencement Contract with Sterling Excavation & Erection, Inc., a Missouri corporation, for the purpose of commencing construction work in accordance with the provisions of said contract.

Section 2: A copy of the said contract hereby authorized and approved by the Board of Aldermen is attached hereto, made a part hereof and incorporated herein.

Section 3: The Clerk of the City of Wood Heights, Missouri, is hereby authorized to attest the said Mayor's signature on said contract.

Section 4: This Ordinance shall be in full force and effect from and after the date of its passage and approval.

Read three times and PASSED by the Board of Aldermen and approved by the Mayor this 25 day of May, 1982.

Stephen A Schmidt
Mayor

ATTEST:

Dorothy Covington
City Clerk

APPROVED by the Mayor this 25 day of May, 1982.

Stephen A Schmidt
Mayor

ATTEST:

Dorothy Covington
City Clerk

CONSTRUCTION COMMENCEMENT CONTRACT

THIS CONTRACT, Made and entered into this 25th day of May, 1982, by and between Sterling Excavation & Erection, Inc., a Missouri corporation, party of the first part, and the City of Wood Heights, Missouri, the party of the second part, WITNESSETH:

WHEREAS, the party of the first part was the lowest and best bidder under a certain proposed Contract No. 1 for the construction of sewage pumping and treatment facilities; and

WHEREAS, said bid under said proposed Contract No. 1 was in the total amount of $473,104.00 and said bid was duly accepted by the party of the second part; and

WHEREAS, the party of the first part has caused to be executed that certain Contract No. 1 entitled Specifications & Contract Documents for Sewage Pumping and Treatment Facilities as contained in the Project Manual for Wood Heights, Missouri; and

WHEREAS, the party of the first part desires to commence work immediately on the said construction project in accordance with and in compliance with the requirements set forth in that certain Contract No. 1 at its own risk knowing that said contract has not been executed by the party of the second part at the present time; and

WHEREAS, the party of the second part desires to execute said Contract No. 1 for said construction project only after certain general obligation bonds are sold, the bond transcript approved, and the said bonds are issued; and

WHEREAS, subject to the party of the second part accepting or rejecting any bids, all bids on said bonds are to be received

at a special meeting of the Board of Aldermen of the party of the second part on May 25, 1982, at the City Hall in the City of Wood Heights, Missouri; and

WHEREAS, it is the intention of the party of the second part to execute that certain Contract No. 1 upon the sale of its said bonds, the receipt of the bond attorneys' approval of the bond transcript, and the issuance of said bonds, and upon final approval by its legal counsel; and

WHEREAS, the present mayor of the City of Wood Heights, Missouri, was on the 25th day of May, 1982, duly authorized by the Board of Aldermen of the City of Wood Heights to enter into this Construction Commencement Contract with the party of the first part;

NOW THEREFORE, in consideration of the above recited premises, and of the mutual covenants hereinafter set out, it is mutually agreed between the said parties as follows:

1. The party of the first part agrees to commence construction in accordance with and in compliance with the specifications and requirements of that said certain Contract No. 1 at its own risk without any right to payment from the party of the second part for any and all costs, expenses, losses and liabilities whatsoever due to commencing said construction.

2. The party of the first part shall secure, pay for and maintain during the duration of this contract, insurance of such types and amounts as is required in that said certain Contract No. 1 providing coverage for the said parties, their agents and employees, as set forth therein.

3. In the event that the said bonds are not sold and issued, or the bond transcript is not approved, and the party of the second part does not execute said Contract No. 1, then all expenses, costs, losses, and liabilities incurred by the party

of the first part in commencing construction shall be the sole risk, obligation and responsibility of the party of the first part and the party of the first part shall indemnify and save harmless the party of the second part, its agents, servants, employees, and Engineer, from and against any and all said expenses, costs, losses, and liabilities.

4. The party of the first part shall indemnify and save harmless the party of the second part and Engineer and their officers and agents, of and from all losses, damages, costs, expenses, judgments, or decrees whatever arising out of action or suit that may be brought against the party of the second part or Engineer or any officer or agent of either of them, for or on account of the failure, omission, or neglect of the party of the first part to do and perform any of the covenants, acts, matters, or things by this contract undertaken to be done or performed, or for the injury, death or damage caused by any acts, omissions, negligence or alleged negligence of the party of the first part or his subcontractors or his or their agents, or in connection with any claim or claims based on the lawful demands of subcontractors, workmen, materialmen, or suppliers of machinery and parts thereof, equipment, power tools, and supplies incurred in the fulfillment of this contract, including any and all expense, legal or otherwise, which may be incurred by the party of the second part or the Engineer, their agents, servants, or employees, in defense of any claim, action, or suit.

5. The party of the first part shall not assign or transfer this contract nor sublet it as a whole, without the written consent of the party of the second part. No assignment, transfer or subletting, even though consented to, shall relieve the party of the first part of its liability under this contract.

6. In the event the party of the second part enters into

and executes that certain Contract No. 1 with the party of the first part, then upon the execution of said Contract No. 1 by the party of the second part, the provisions of said Contract No. 1 shall take precedence over and supersede the provisions of this contract.

7. In the event the said bonds are not sold, issued, or the bond transcript is not approved, and the party of the second part does not execute said Contract No. 1, then this contract shall terminate and the party of the second part shall be relieved from any and all liability whatsoever.

8. The party of the second part reserves the right to terminate this contract upon five (5) days written notice to the party of the first part without incurring any liability for said termination.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

STERLING EXCAVATION & ERECTION, INC.

By: _____
Bob Clevenger, President

Party of the First Part

ATTEST:

_____

CITY OF WOOD HEIGHTS, MISSOURI

By: _____
Mayor

Party of the Second Part

ATTEST:

_____
Clerk - City of Wood Heights, Missouri