

WASTEWATER CONTRACT

THIS AGREEMENT, made and entered into this 8th day of August 2003, by and between the City of Springfield, Missouri, hereinafter called "Springfield," and English Village Not For Profit Sewer Corporation, a Missouri not-for-profit corporation, organized pursuant to sections 393.825 through 393.86, hereinafter called "English Village."

WITNESSETH:

WHEREAS, Springfield and English Village have determined that it is in their mutual interest for Springfield to treat the sewage from properties currently connected to an existing sewer system operated by Ozark Water and Waste Water Management Co., Inc., d/b/a English Village Sewer System (OWWM), a for-profit corporation certificated by the Missouri Public Service Commission (PSC); and

WHEREAS, OWWM has entered into a contract with English Village to sell its sewer system to English Village and discontinue the treatment of sewage on certain terms and conditions so English Village can operate a sewer collection system; and

WHEREAS, it is in the mutual interest of Springfield and English Village to enter into a cooperative agreement for the collection of sewage by English Village and treatment of sewage by Springfield; and

WHEREAS, it is in the best interest of the region for English Village to operate and maintain the collection system and to convey the wastewater from the English Village Sewer System to Springfield's wastewater system; and

WHEREAS, it is appropriate that if Springfield is to assume the obligation and expense of treating the sewage from English Village, English Village shall cooperate with Springfield in providing assurances that the English Village Sewer System is maintained and operated in an environmentally sound way in accordance with the law and this agreement; and

WHEREAS, Springfield and English Village have determined that this agreement is substantially similar to the agreements between Springfield and the cities of Willard, Strafford and Battlefield; and

WHEREAS, the City has entered into an agreement to treat the sewerage from English Village with the Attorney General of the State of Missouri (Exhibit A), a copy of which is attached hereto, as an environmental improvement project as part of the settlement of a claim made by the State of Missouri.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between Springfield and English Village as follows:



ARTICLE I

SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS

Section 101. Short Title.

This Contract may be referred to as the "Wastewater Contract" (herein sometimes designated as the "Contract").

Section 102. Duration of Contract.

This Contract shall continue in full force and effect from the date first above written in perpetuity until the contract is terminated as set forth herein.

Section 103. Definitions.

All terms which are defined herein shall have the same meanings for all purposes of this Contract as amended and supplemented, except where the context by clear implication otherwise requires.

Act or "The Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

Connection Point. That point designated by Springfield for connection of the English Village Sewer System with the English Village Connector, which Connection Point shall be at the manhole now located immediately upstream of the existing package treatment plant for the English Village Sewer System.

English Village Connector. Either a gravity sewer line or force main and lift station from the Connection Point for the Existing Service Area to Manhole No. 6 of Springfield, located in the northeast quarter of Section 35, Township 28, Range 22, Christian County, Missouri.

English Village Sewer System. All sewer facilities, including all of the interceptors, collection system, pumping stations, lift station, force main and other facilities and appurtenances built, owned or operated by English Village from the connection with the discharge piping of Users located within the Existing Service Area to the Connection Point to the English Village Connector. The term "English Village Sewer System" excludes, however, the sewer laterals and plumbing which serve existing premises, buildings or structures and the existing treatment plant and appurtenances. The existing treatment plant and appurtenances within the Existing Service Area shall be closed by OWWM where located in accordance with the requirements of the Department after connection of the English Village Sewer System to the POTW.

Existing Service Area. The real property described in Exhibit "2", and as depicted on the map which is attached hereto and marked as Exhibit "3."

Industrial User. Any nonresidential user identified in Division A, B, D, E or I of the Standard Industrial Classification Manual, or any user which discharges wastewater containing toxic or poisonous substances or any substance(s) which cause(s) interference or pass through

in the POTW.

Necessary Approvals. The approval by the City Council for Springfield and the Commissioners for Greene County, Missouri authorizing an exception to the Springfield-Greene County Urban Service Area to allow service to be extended to the Users of the English Village Sewer System.

National Categorical Standard or Pretreatment Standard. Any regulations containing pollutant discharge limits promulgated by the EPA in accordance with 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to Section 403.5 of the Act.

Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in the wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR, Section 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR, Section 403.6(e).

Publicly Owned Treatment Works (POTW). "POTW" is a treatment works as defined by Section 212 of the Federal Water Pollution Control Act, also known as the Clean Water Act (33 U.S.C.A. 1251 et. seq.) owned or operated by Springfield, which includes any devices and systems used in the storage, treatment, recycling and reclamation of sewage or industrial waste of a liquid nature in the sewers, pipes and other conveyances that convey wastewater to the Springfield Southwest Wastewater Treatment Plant, excluding English Village, Battlefield, Strafford and Willard sewer systems.

Regulations. Rules adopted by English Village which constitute conditions for the use of the English Village Sewer System by Users which shall be approved by the DNR as conditions for service.

Sewage. The same as the word "wastewater" and is used interchangeably herein.

Sewer Connection Fee. The fee charged by Springfield to connect to the POTW as set forth in section 120-246 of the Springfield City Code.

User. The owner or occupant of property or premises now or in the future which is or becomes connected directly or indirectly to the English Village Sewer System and is located within the Existing Service Area.

Wastewater. The industrial waste or domestic waste from any source which is contributed into or permitted to enter the POTW.

ARTICLE II

IMPROVEMENTS TO THE SYSTEM

Section 201. Costs and Process.

(a) Springfield Responsibility. Springfield shall construct at its costs the English Village Connector within 270 days after the Necessary Approvals have been obtained and Springfield has been provided by the Missouri Department of Natural Resources (DNR) or English Village all easements necessary to construct and maintain the English Village Connector to the Connection Point and the recording of such easements. The connector shall be constructed in accordance with the existing standards in effect within Springfield for the construction of all such sewage facilities.

Springfield shall use due diligence to obtain the Necessary Approvals as soon as possible after the Effective Date of this Agreement.

Springfield shall have no responsibility to pay for any easements required to permit the construction and maintenance of the English Village Connector nor shall it have any responsibility whatsoever to construct or maintain any sewer line or sewer facilities except for the English Village Connector within the Existing Service Area.

Upon the execution of this Agreement Springfield shall permit OWWM to dispose of sewage and sewerage sludge by transporting the same from the English Village Sewer System to Springfield's POTW after payment from OWWM of Springfield's usual and customary charges for the treatment of such sewage and sewerage sludge; provided, however, that Springfield shall accept no such sewage and sewerage sludge for treatment after the English Village Sewer System is connected with the English Village Connector and the existing treatment plant has been properly closed or in the event this provision becomes invalid as provided in section 620. B. Springfield shall have no responsibility to provide any transportation or transportation equipment for such sewage.

(b) English Village Responsibility. English Village at its costs shall make all improvements, if any, to the English Village Sewer System without cost to Springfield. Prior to making any improvement, English Village shall obtain approval from DNR. Such improvements shall be made in accordance with plans and specifications approved by DNR. English Village shall provide DNR with all required certifications relating to such improvements. Any application to provide service pursuant to section 393.175 shall limit service to Users. Only those properties or premises within the Existing Service Area shall be connected to the English Village Sewer System served by the POTW. No other sewer connections shall be allowed to the English Village Sewer System.

English Village shall pay Springfield's customary impact fee, which is calculated to be the sum of \$97,400 for Users connected to the English Village Sewer System as of November 1, 2001 and those persons within the District who are on holding tanks-as of November 1, 2001 within sixty (60) days after connecting to the POTW. English Village represents to Springfield that it has obtained or it has reasonable assurances that it can obtain a loan from the Rural Development Office, which will be used by English Village to pay Springfield's customary impact fee. Proceeds from the loan shall be used to pay Springfield's customary impact fee. English

Village shall also pay the then customary impact fee being assessed by Springfield for any User connecting to the English Village Sewer System after November 1, 2001 prior to the connection of such User to the English Village Sewer System. Any User who connects to the English Village Sewer System after the above fee has been paid shall pay at the time of connection the impact fee in force and effect for the Springfield customers.

Section 202. Inspection.

During the construction of any improvements to the English Village Sewer System, Springfield and its appointed engineer(s) or representative(s) shall have the right of access to the project site and all records, reports, estimates and correspondence pertaining thereto. Springfield shall not act as the inspecting engineer for the project.

ARTICLE III

LIABILITIES AND INDEMNIFICATION

Section 301. Liabilities.

In no event shall Springfield be liable to English Village for indirect or consequential damages unless caused by or resulting from Springfield's gross negligence or willful and wanton disregard. No claim of any kind by English Village shall be greater in amount than the value of the services performed in connection with the particular project for which damages are claimed.

Section 302. Indemnification.

English Village shall defend, indemnify, and hold Springfield harmless from and against all claims, losses, and causes of action arising out of English Village's performance of its contractual agreements involving the project, and against all claims, losses, and causes of action arising out of personal injuries, including death, and damage to property which are incurred as a result of English Village's use, maintenance, and operation of the English Village Sewer System, except for the gross negligence of Springfield or willful and wanton acts by Springfield, its agents, servants, or employees. Should Springfield have validly imposed upon it a monetary penalty or judgment by any agency of instrumentality of the State of Missouri or the United States of America having competent jurisdiction, and should such penalty be imposed because of some action or failure to take action on the part of English Village with regard to its sewer system, English Village shall immediately indemnify Springfield for any moneys so paid or so required to be paid because of said penalty or judgment.

ARTICLE IV

OPERATION AND MAINTENANCE

Section 401. Connection to POTW by English Village

Upon completion of the English Village connector and completion of any other

precondition of this agreement to accepting sewerage from English Village, English Village may discharge sewerage at the connection point from Users within the Existing Service Area and shall thereafter continue the connection to the POTW. Springfield shall treat the sewage from Users of the English Village Sewer System for the user charges as set out herein. Such connection point shall be maintained by English Village as part of the English Village System and shall include all other facilities as may be necessary to cause all sewage delivered at said point of connection to be discharged to the POTW. English Village, shall at its own expense and cost, maintain any and all improvements to the English Village Sewer System necessary to continue the delivery of sewage to the Connection Point as long as this agreement is in force and effect.

Springfield shall permit the English Village Sewer System to discharge into the English Village Connector until such time as the City of Nixa (Nixa) extends sewer service to the Users or provides the connection of the English Village Sewer System to the Nixa municipal sewer system at which time Springfield shall disconnect the English Village Sewer System provided, however, English Village shall not be required to disconnect from the Springfield POTW if charges for connecting to the Nixa system are unreasonable. In the event English Village objects on the grounds that the charges for connecting to the Nixa system are unreasonable the issue of the reasonableness shall be subject to arbitration as set forth in section 614. If it is determined that the charges to connect to the Nixa system are unreasonable English Village shall not be required to disconnect from the Springfield POTW. In the event Nixa treats the sewerage from English Village the costs, if any to English Village, to connect to the Nixa system shall be offset by a refund from Springfield in an amount not to exceed the \$97,400 impact fee paid by English Village as set forth in section 201(b). Except for treatment of English Village sewerage as set forth above by Nixa, English Village sewerage shall be treated by Springfield until Springfield, English Village and the DNR mutually agree to permit the treatment of the sewage from the English Village Sewer System by another party.

No one shall be permitted to connect to the English Village Sewer System except Users or the grantees, tenants, successors or assigns of Users who use the English Village Sewer System for the same or similar use with the same or similar type and quantity of discharges as current Users. English Village shall prevent anyone who is outside of the Existing Service Area from connecting to the English Village Sewer System.

Section 402. Operation, Maintenance and Repair.

English Village shall properly operate, maintain, and repair all portions of the English Village Sewer System up to and including the point of connection to the POTW subject to the following:

(a) The wastewater from English Village Sewer System shall be received by Springfield at the connection point from English Village and conveyed to and treated by Springfield in Springfield's POTW for discharge, in accordance with the requirements of any valid NPDES permit in effect during the term of this Contract.

(b) English Village shall require as part of its Regulations the right to do all things necessary to authorize appropriate officials of the City of Springfield to act within the jurisdictional service limits of the area which the DNR has authorized English Village to act and to the same extent and with the same authority they would have when

acting within the City of Springfield, when bearing proper credentials and identification, to enter any premises for the purpose of examination and copying, and the performance of any duties relating to the enforcement of pretreatment requirements, local discharge limitations, inflow and infiltration, restricted discharges, wastewater regulations, or emergency abatement. Failure of any User to provide access to the premises for the purposes stated herein shall constitute cause for termination of Users sewer service by Springfield after notice and opportunity for a hearing before the Director of Sanitary Services of Springfield or his or her designee who shall after hearing all of the evidence determine if the provisions of this contract. Any such decision may be appealed in accordance with provisions of Chapter 536 RSMo pertaining to contested cases.

Section 403. English Village's Service Rules to Conform to Springfield Ordinances.

English Village covenants and agrees as follows:

(a) English Village shall adopt and maintain at all times while this contract is in effect, Regulations governing usage and connection to such sewers at least as restrictive as Springfield may require and apply from time to time within Springfield, and shall amend such Regulations as needed which shall at all times conform to Springfield ordinances as amended.

(b) English Village shall be responsible for collection of fees and charges for use of the POTW and shall include in the billing to Users a component for the fees and charges set forth in Section 501, as they may be increased or decreased by Springfield. English Village shall pass through such increases or decreases to users within 45 days after notification by Springfield of a change in said component. The fees and charges billed by the City of Springfield per Section 501 shall be deemed to be expenses of operating the system.

Section 404. Customer Discharge of Wastewater.

English Village's plumbing and sewer use Regulations shall be filed with and approved by Springfield and the DNR prior to completion and acceptance of construction. Any amendment or changes proposed to standards accepted by Springfield shall be submitted by English Village for approval by Springfield and the DNR prior to adoption.

Only sewage from Users shall be discharged into the English Village Sewer System.

If tests conducted by Springfield indicate wastewaters discharged from any User to the POTW exceeds the quality criteria set forth in ordinances and regulations of Springfield, Springfield may enforce the provisions of the Regulations of the English Village and may impose whatever lawful penalties and restrictions, and invoke whatever lawful remedies against the User that Springfield officials deem appropriate, in English Village's name and entitlement.

Section 405. Industrial User Discharge of Wastewater.

English Village states that there are currently no Industrial Users connected to the

English Village Sewer System and that prior to allowing any User to discharge any Industrial Wastes to the English Village Sewer System English Village shall notify Springfield and obtain permission from Springfield for such discharge. No Industrial User shall discharge sewerage to the English Village Sewer System except in accordance with requirements set forth in Title 40, Code of Federal Regulations, Part 403, or other Federal or State law pertaining to pretreatment by Industrial Users. Springfield and English Village shall require Industrial User compliance with applicable pretreatment standards and requirements. English Village's Regulations governing its sanitary sewers shall regulate the introduction of Industrial User discharges into the system as strictly as Springfield's ordinances and regulations. English Village shall enforce its Regulations. Trucked or hauled waste shall not be allowed to be introduced into the English Village Sewer System. In the event of inactivity, delay or default in the enforcement of such Regulations by English Village, or at English Village's request, Springfield may proceed with implementation and/or enforcement of such ordinances and regulations in English Village's name and entitlement.

ARTICLE V

USER CHARGES

Section 501. User Charges.

Springfield will charge English Village a fee for the treatment and use of the POTW based upon rates and charges, including sewer connection fees established by Springfield from time to time for the use of Springfield sewer lines and the treatment of wastewater, which rates and charges shall be equal to and be the same as apply to users within Springfield, except for *authorized deductions or exceptions as set forth herein*. Such fees and charges shall include, but not be limited to, all user fees and connection fees charged by Springfield to its residents for the use of the Springfield POTW. Metering of more than one User shall not be permitted by English Village except for the English Village mobile home park nor shall any sewerage be accepted from any User unless the User has established a system of direct metering of the Users water consumption. English Village shall enact Regulations to establish such rates and charges, including sewer connection fees, within 45 days after notification of the rates and charges by Springfield, and shall pay to Springfield a sum of money for each User of the English Village Sewer System equal to the amount Springfield charges its residents, less authorized deductions. Failure by English Village to pay to Springfield a sum of money equal to rates and charges made by Springfield to its residents for use of the Springfield POTW, and connection fees less authorized deductions, is a breach of this agreement entitling Springfield to discontinue treatment of sewage from the English Village Sewer System and seek appropriate judicial relief.

If authorized by law English Village shall require the local water company providing water service to Users to disconnect water service in the event sewer service charges are not paid and shall further require each User, by Regulation, to pay such rates and charges, and to collect the same from each of its Users. English Village agrees to pay a monthly fee to Springfield in consideration for the treatment of the wastewater received from Users, based upon the above-stated rates and charges, whether or not the same have been collected successfully from the Users, except for the credits set forth below. Said fees shall be payable to Springfield by English Village not later than forty-five (45) days after the end of each month's billing period.

a. English Village may deduct and retain a 4 1/2% fee from the amount due to defer its administrative costs; plus

b. English Village may deduct and retain a percentage of the amount due for the operation, maintenance, rehabilitation and repair of its collector sewer system calculated to the nearest one-tenth of one percent according to the following formula:

Total revenues expended by the City of Springfield in the previous fiscal year for the operation, maintenance, rehabilitation, and repair of the Springfield collection system divided by total revenues generated by Springfield sewer use rates and charges for the previous fiscal year; plus

c. English Village may deduct and retain a percentage of the amount due, which represents the portion of Springfield's fees charged from time to time, to protect for bad debts, calculated to the nearest one-tenth of one percent, being a percentage equal to the percentage of bad debts experienced by Springfield in collecting sewer use charges in the previous fiscal year.

The right to use the Springfield POTW is dependent upon English Village paying to Springfield the fees set forth in this section. Upon English Village failing to make any such payment, then the right to use the POTW shall cease. The duty of English Village to pass necessary implementing Regulations to impose sewer charges upon its customers as required by this contract is deemed to be a ministerial duty and an operating expense of the English Village Sewer System. In the event English Village has an objection to a rate or charge included by Springfield in the fee for the use by English Village of the Springfield POTW, English Village shall be obligated to collect such rate or charge and pay under protest that portion of the fee to which it objects, stating therein the reason for the protest. Procedures set forth in Section 614 shall apply to any such protest.

Section 502. Records of Water Use.

English Village shall require the local water company providing water service to Users to provide the City and English Village with records showing the use of water by Users. It will be the responsibility of English Village to submit to Springfield certified monthly sewer use records for all Users of the English Village Sewer System. Failure to provide these records shall cause English Village and the Users to be billed based upon estimated water usage, as determined by the City of Springfield.

Section 503. Records and Reports.

Springfield shall furnish and make available to English Village, any and all records, information, plans and other data necessary for the establishment, operation and maintenance of the wastewater system and for the establishment of the sums to be paid by the Users in English Village to Springfield pursuant to the terms and conditions of this Contract.

ARTICLE VI

MISCELLANEOUS

Section 601. Effective Date.

The effective date of this Contract is the date as set out in the first paragraph of this document.

Section 602. Performing Duties.

Springfield will faithfully and punctually perform all duties with respect to the System required by the Constitution and Laws of the State and the ordinances of Springfield, Missouri. Similarly, English Village will so perform all duties with respect to the System required by the Constitution, the laws of the State, and the Regulations of English Village, including, but not limited to, the prompt payment of all user charges in respect of the System.

Section 603. Modification.

Except as herein provided, this Contract may be changed or modified only upon mutual consent. Such change or modification may be requested by either party, in which event a meeting of the representatives of both parties shall be held within ninety (90) days after giving them a written notice, at which meeting the requested changes or modifications shall be considered and discussed. Rate changes for treatment and use of the POTW shall not be made except under the provisions of Section 501.

Section 604. Limitations upon Consent.

Acceptance by Springfield into the POTW from English Village of sewage with characteristics exceeding or violating any limit or restriction provided for by or pursuant to this Contract in one or more instances or under one or more circumstances shall not constitute a waiver of such limit or restriction or of any of the provisions of this Contract, and shall not in any way obligate Springfield thereafter to accept or to make provisions for sewage delivered and discharged into the System with characteristics exceeding or violating any such limit or restriction in any other instances or under any other circumstances.

Section 605. Form of Consent.

All consents of any party required under this Contract shall be given in writing. Whenever, under the terms of this Contract, English Village is authorized to give its consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its minutes adopted by English Village. Whenever, under the terms of the Contract, Springfield is authorized to give its consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its City Clerk and under its seal, of an ordinance adopted by City Council and giving such consent.

Section 606. Conformity with the Laws and Ordinances.

Each party hereto agrees to abide by and to conform to all applicable laws and regulations of the United States of America, the State, or any political subdivision thereof having

any jurisdiction in the premises, and the parties further expressly agree that English Village's Regulations shall at all times be at least as restrictive as or consistent with and in conformity to Springfield Ordinances pertaining to the usage of and connection to the POTW.

Section 607. Acts of God.

No party hereto shall be responsible or liable in any way for Acts of God or any other act or acts or omissions beyond the control of such party which may in any way cause an interruption or a discontinuance of service appertaining to the System or to English Village's sewer system.

Section 608. Nonassignability.

No party to this Contract may assign any interest herein to any person without the consent of all the other parties hereto at that time; and subject to the terms of the bond resolutions, the terms of this Contract shall inure to the benefit of and be binding upon the respective successors of each party hereto. Nothing herein contained, however, shall be construed as preventing the reorganization of any party hereto, nor as preventing any other body, corporate and politic, succeeding to the rights, privileges, powers, immunities, liability, disabilities, functions and duties of a party hereto, as may be authorized by law, subject to the terms and conditions of the bond resolutions and in the absence of any prejudicial impairment of any obligation of contract hereby imposed. It is specifically agreed, however, that the United States Department of Agriculture may succeed to the rights of English Village pursuant to its loan agreements.

Section 609. Amendments.

Subject to and in accordance with the bond resolutions, this Contract may be amended from time to time by written agreement, duly authorized and executed by the parties hereto.

Section 610. Severability.

If any provision of this Contract shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Contract, and this Contract shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

Section 611. Execution of Documents.

This Contract shall be executed in four (4) or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all deeds, documents or other instruments, and take such other action as is necessary to give effect to the terms of this Contract.

Section 612. Waiver.

No waiver by either party of any term or condition of this Contract shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be

deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsequent paragraph, clause, phrase, or other provision of this Contract.

Section 613. Remedies.

If permitted by law, this Contract shall be specifically enforceable by any party thereto.

Section 614. Dispute Resolution.

In the event of a dispute as to any matters involving the duties or obligations of any of the parties to this agreement, such dispute shall be presented in writing, and the parties, by their designated representatives, shall meet, confer and discuss such disputes and possible resolutions within thirty (30) days after presentation. The representatives thereafter shall again meet, confer and discuss the disputed issues within fifteen (15) days after the conclusion of the first meeting and after conferring with the governing bodies of each of the signatories to this agreement, or their representatives, and shall reduce to writing their points of agreement, points of disagreement, and recommendations. In the event the dispute is not resolved, the parties may, by mutual consent, agree to arbitrate, proceed to litigate the matter in court or take any other action authorized by this agreement. Such arbitration shall be binding or nonbinding, as the parties may at that time agree.

(a) Subject to any recognized privilege, discovery shall be available to each party to the arbitration as it would be available in the Circuit Court of Greene County under the Missouri Rules of Civil Procedure in effect at the time of demand for arbitration. Notices, time periods and other procedural matters shall be governed by the Rules of Civil Procedure, which shall be enforced by the Arbitrator in the same manner as in the Circuit Court.

(b) A pre-hearing conference shall be held not sooner than sixty (60) days after the filing of the answer, at which time a pre-hearing summary shall be filed by each party, setting forth all claims and counterclaims with specificity, all witnesses expected to be called at the hearing, all documents proposed to be introduced, and all items of claimed damages including dollar amount therefor.

(c) All discovery and amendments to the pre-hearing summary shall be concluded thirty (30) days prior to the arbitration date. Failure to provide the foregoing discovery and disclosure shall render any claim supported by witnesses or documents not so disclosed excludable by the arbitration panel in its discretion.

(d) In the event of any arbitration demanded by one party and agreed to by the other party, each party shall select an arbitrator, and the two so selected shall select a third.

(e) The arbitrator(s) shall render a written decision, with conclusions of law and findings of fact, breaking down the items of any award on the claim or counterclaim in sufficient detail to enable the parties to seek any grant reimbursement as may be available.

The parties acknowledge that financing by the federal government is an integral component of the acquisition of assets which comprise English Village. In the event that the federal government or its assigns exercise their rights under the financing documents to take over English Village's assets, this section in its entirety shall not apply.

Section 615. Entirety.

This Contract, inclusive of Exhibit A which is attached hereto and made a part hereof, merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof, and constitutes the entire agreement between the parties hereto in respect.

Section 616. Injunctive Relief.

English Village hereby agrees to request injunctive relief at the request of Springfield to restrain the violation or attempted violation of any of the provisions of this contract and all appendices thereto. Upon failure of English Village to act within ten (10) days of written request, Springfield shall be authorized to so proceed, in English Village's name if necessary.

Section 617. Authority.

English Village shall have, upon completion and acceptance and connection of the English Village Sewer System, a continuing right to discharge wastewater into Springfield's Interceptor on condition that English Village agrees to promptly enforce the restrictions, proscriptions and penalties provided for herein against polluters and any violators of the terms of their agreement and pays fees to Springfield for the use of the Springfield Sewer System. In default of English Village's action at Springfield's request, English Village authorizes Springfield to take all legal actions necessary to enforce the terms of this agreement and all appendices thereto, in English Village's name if necessary.

(a) English Village shall seek immediate injunctive relief at the request of the City of Springfield to restrain the violation or attempted violation of any provision of the Regulations pertaining to wastewater discharge. English Village stipulates that its failure to perform its permitting, compliance monitoring, enforcement, and emergency abatement responsibilities under this agreement may cause irreparable harm for which there is no adequate remedy at law, and upon failure of English Village to act immediately upon the City of Springfield's request to perform any of its responsibilities hereunder, officials of the City of Springfield shall be authorized to do all things necessary, in English Village's name and as English Village's agents, including but not limited to the following:

(i) In the event English Village's designated official cannot be contacted within a reasonable time, or fails or refuses to abate or correct an emergency condition, the City of Springfield is authorized to abate or correct the same.

(ii) In the event of failure to administer or implement Pretreatment program

responsibilities, included but not limited to permitting, compliance monitoring, and enforcement, the City of Springfield is authorized to do all things necessary to administer or implement the program.

(b) In the event officials of the City of Springfield have proceeded in English Village's name and as English Village's agent pursuant to the authority of this Section, English Village shall be liable to the City of Springfield for all costs attributable to such actions, including materials, tools, equipment, fuel, wages and salaries of City employees of the City of Springfield, for the time directly attributable to such actions. Such costs shall be paid by English Village in addition to and in no consideration of any user charges or fees as prescribed in section 501 of this agreement.

Section 618. Compliance with Agency Requests.

This contract shall be amended from time to time by the parties as required by the EPA or MDNR.

Section 619. Ratification by Springfield City Council.

This contract shall not be effective until approved and ratified by the City Council of the City of Springfield and the English Village.

Section 620. Termination of Agreement.

A. Termination by Springfield for Breach. Springfield may terminate this agreement for a Material Breach, provided prior to such termination Springfield has followed the procedures set forth in section 614.

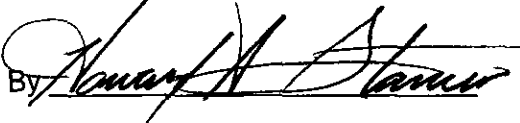
B. Termination for Failure to Satisfy Conditions All obligations of Springfield to construct the English Village Connector, to allow the English Village System to connect to the POTW, and to accept sewage sludge or sewage of any kind from the English Village System shall terminate and expire in the event the following has not occurred on or before 8th April of 2006: (i) Necessary Approvals have been received; and (ii) DNR or English Village has obtained and recorded all easements giving Springfield the right to excavate and install the English Village Connector and have given a copy thereof to the Director of Public Works for Springfield.

All obligations of Springfield to accept and treat sewerage under section 401 permit construct the English Village Connector shall terminate and expire in the event English Village has not paid the impact fee required under section 201 (b) within 60 days after English Village has connected the English Village Sewer System to the POTW.

C. Termination by English Village. English Village may terminate this agreement when the property located within the area served by the English Village Sewer System is served by the sewer system of the City of Nixa, or other treatment of the water from the English Village sewer system has been provided for.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on behalf of Springfield by its City Manager and attested to by the City Clerk, and on behalf of English Village by the President of the Board of Directors and/or their designate at the dates shown respectively.

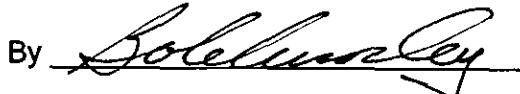
ENGLISH VILLAGE

By 

President

Date: 9-9-03

CITY OF SPRINGFIELD, MISSOURI

By 

Asst. City Manager

Date: 8-27-03

ATTEST:

City Clerk

Date: _____

ATTEST:



City Clerk

Date: 8-28-03

Approved as to Form: , City Attorney, Springfield

Contract No: 2003-0892



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

June 25, 2003

Gary Nelms
City of Springfield Law Department
840 Boonville Ave.
Springfield, MO 65802

RE: *City of Springfield - 180 day Extension of ¶ 2.k of the January 13, 2003,
Settlement Agreement*

Dear Mr. Nelms:

Pursuant to my conversation with you and Bob Schaefer, it was agreed that the 270 day termination date as stated in ¶ 2.k of the January 13, 2003, Settlement Agreement between the Missouri Department of Natural Resources, the City of Springfield and the Attorney General of Missouri should be extended 180 days to total 450 days. This letter serves as the agreed upon amendment to ¶ 2.k of the January 13, 2003, Settlement Agreement and shall be binding on the parties therein. No other provisions of the Settlement Agreement are amended.

Please have your client sign this letter to amend the Settlement Agreement and return it to me. Upon my receipt of the appropriate signatures, I will forward a fully executed copy of this amendment to you.

Thank you and if you should have any questions, please feel free to contact me.

Sincerely yours,

JEREMIAH W. (JAY) NIXON
Attorney General


HARRY D. BOZOLAN
Assistant Attorney General

HDB:ka

c: Kevin Mohammadi

City of Springfield

June 25, 2003

Page 2

IN WITNESS WHEREOF, the parties have executed this amendment to ¶ 2.k of the January 13, 2003, Settlement Agreement as follows:

MISSOURI DEPARTMENT OF NATURAL RESOURCES


By: 

SCOTT TOTTON, Director

Water Protection and Soil Conservation Division

Date: 7-16-03

CITY OF SPRINGFIELD

By: 
Bob Camley, Asst. City Manager

Date: June 30, 2003

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

By: 
HARRY D. BOZOLIAN
Assistant Attorney General

Date: July 7, 2003

APPROVED AS TO FORM:

BY 
Assistant City Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement is made on this 13th day of JANUARY, 2007³, between the Missouri Department of Natural Resources (the "Department"), the Attorney General of Missouri ("Attorney General") and the City of Springfield ("Springfield").

WHEREAS, Springfield owns and operates the Springfield Southwest Wastewater Treatment Plant ("Southwest Treatment Plant") which receives and treats wastewater from residential, commercial and industrial sources, and then discharges said treated wastewater into Wilson Creek, which is a tributary of the James River, all waters of the State of Missouri.

WHEREAS, wastewater pipelines throughout Springfield collect and carry wastewater from these residential, commercial and industrial sources to the Springfield Treatment Plants. Springfield owns, operates and maintains these wastewater pipelines.

WHEREAS, the James River Force Main (herein the "JRFM"), is a 36-inch force main wastewater pipeline immediately preceding the Southwest Treatment Plant, crosses South Creek (a tributary of the James River) and carries approximately 6 millions of gallons of wastewater daily to the Southwest Treatment Plant, with higher flows coming during periods of rainfall.

WHEREAS, Burns & McDonnell Engineering Company, Inc. ("Burns & McDonnell") provided the design and engineering services for the installation of JRFM and Price Brothers Company ("Price Brothers") manufactured and supplied pipe for the JRFM.

WHEREAS, on or about July 29, 2000, at a location immediately preceding the Southwest Treatment Plant, the JRFM failed causing untreated wastewater to discharge directly into South Creek.

WHEREAS, as a result of said discharge, the Department issued Springfield Notice of Violation ("NOV") No. 4775SW, a copy of which is attached hereto, incorporated herein and marked Exhibit 1.

WHEREAS, Department employees spent substantial time inspecting, monitoring and evaluating the failure site and the discharge from the JRFM. In doing so, they incurred other costs and expenses, including, but not limited to, wastewater sampling analysis, photographs, and travel expenses.

WHEREAS, the Department alleges that the Missouri Clean Water Law renders Springfield responsible and liable for the environmental consequences of the failure of the JRFM and that other parties may bear responsibility for the failure, including, but not limited to, Burns & McDonnell and Price Brothers.

WHEREAS, Springfield settled its potential claims against Burns & McDonnell and Price Brothers and agreed to indemnify them in the event the State of Missouri brings claims against them. As such, it is appropriate that all of the State of Missouri's claims against Springfield, Burns & McDonnell and Price Brothers be resolved through this Agreement.

WHEREAS, the Department, the Attorney General and Springfield have discussed terms upon which to amicably resolve any and all claims which may be made against Springfield for any alleged violations of the Missouri Clean Water Law and/or regulations listed in NOV No. 4775SW as a result of the catastrophic failure of the JRFM causing untreated wastewater to discharge directly into South Creek.

WHEREAS, the Department, the Attorney General and Springfield desire to amicably resolve all disputes or claims that could be made against Springfield for the above-referenced

alleged violation of the Missouri Clean Water Law listed in NOV No. 4775SW, without Springfield admitting the validity or accuracy of any such claims.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Department, the Attorney General and Springfield agree as follows:

1. The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their agents, subsidiaries, affiliates and lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the parties agreeing hereto.

ENGLISH VILLAGE PROJECT

2. Springfield agrees to build a sanitary sewer pipeline from its existing sewer line south of the James River to the collection system now serving the English Village wastewater treatment facility located in the Northeast Quarter of the Southeast Quarter, Section 35, Township 28 North, Range 22 West, Christian County, Missouri, in the following manner:

a. Definitions: The following definitions shall apply to the English Village Project portion of this Agreement:

i) "English Village Service Area" shall mean that real property described in Exhibit "2", and as depicted on the map which is attached hereto and marked as Exhibit "3" hereof (said map being referred to herein as the "Map").

ii) "English Village Connector" shall mean either a gravity sewer line or force main and lift station from the Connection Point for the English Village Service Area to Manhole No. 6 located in the northeast quarter of Section 35, Township 28, Range 22, Christian County, Missouri.

iii) "English Village Sewer System" or "EVSS" shall mean all sewer facilities, including all of the interceptors, collection system, pumping stations, lift station, force main and other facilities and appurtenances built, owned or operated by the Qualified Party from the connection with the discharge piping of Users located within the English Village Service Area to the Connection Point with the

English Village Connector. The term "English Village Sewer System" or "EVSS" excludes, however, the sewer laterals and plumbing, which serve existing premises, buildings or structures and the existing package treatment plant and appurtenances. The treatment plant and appurtenances shall be closed by the owner of those facilities, Ozark Water and Wastewater Management, Inc. a Missouri Corporation (herein "OWWM"), in accordance with the requirements of the Department after connection of the EVSS to the POTW.

iv) "Connection Point" shall be defined as that point designated by Springfield for connection of the EVSS with the English Village Connector, which Connection Point shall be at the manhole now located immediately upstream of the existing package treatment plant for the EVSS.

v) "POTW" is a treatment works as defined by Section 212 of the Federal Water Pollution Control Act, also known as the Clean Water Act (33 U.S.C.A. 1251 et. seq.) owned or operated by Springfield, which includes any devices and systems used in the storage, treatment, recycling and reclamation of sewage or industrial waste of a liquid nature in the sewers, pipes and other conveyances that convey wastewater to the Springfield Southwest Wastewater Treatment Plant, excluding the EVSS, Battlefield, Strafford and Willard sewer systems.

vi) "Qualified Party" is English Village Sewer Company, a Missouri not-for-profit corporation.

vii) "Necessary Approvals" shall mean the approval by the City Council for Springfield and the Commissioners for Greene County, Missouri authorizing an exception to the Springfield-Greene County Urban Service Area to allow service to be extended to the Users of the EVSS.

viii) "User" is a present or future owner or occupant of property or premises located within the English Village Service Area, which is or becomes a member of the Qualified Party and is or becomes connected directly or indirectly to the EVSS. The current Users are customers of OWWM within its existing certified service area, and prior to the connection of the English Village Connector to the POTW shall be customers of the Qualified Party.

(ix) "Effective Date" is the date on which the last of the parties to this Agreement signs below.

b. Springfield shall complete construction of the English Village Connector within 270 days after written notification from the Department that the Qualified Party has obtained the necessary easements for Springfield to allow it to construct the English Village Connector and after Springfield has obtained the Necessary Approvals. Springfield shall use due diligence to obtain the Necessary Approvals as soon as possible after the Effective Date of this Agreement.

c. Springfield shall pay all costs incurred in the construction of the English Village Connector, but Springfield shall have no responsibility to pay for any easements required to permit the construction of the English Village Connector. Springfield shall have no responsibility whatsoever to construct or maintain any sewer line or sewer facilities except for the English Village Connector within the English Village Service Area. The connector shall be constructed in accordance with the existing standards in effect within Springfield for the construction of all such sewage facilities.

d. Springfield shall not allow the connection of the EVSS to the English Village Connector until after Springfield and the Qualified Party have entered into an agreement substantially similar to the agreements between Springfield and the cities of Willard, Strafford and Battlefield, unless otherwise stated in this Agreement.

e. Within 60 days after the EVSS is connected to the POTW, the Qualified Party shall pay Springfield's customary impact fee, which shall be (i) the sum of Ninety-seven Thousand Four Hundred Dollars (\$97,400.00) for Users connected to the EVSS as of December 13, 2002, and (ii) the amount of Springfield's customary impact fee for each User connecting to the EVSS or obtaining a larger water meter between December 13, 2002 and the date the EVSS is connected to the POTW. The Qualified Party represents to Springfield that it has obtained a loan from the Rural Development Office, part of which will be used by the Qualified Party to pay Springfield's customary impact fee. Proceeds from the loan shall be used to pay Springfield's customary impact fee.

f. The Qualified Party shall collect all fees and charges for sewer services charged by Springfield to its customers and Springfield shall provide the Users with the same sewer services as all other customers of Springfield. The Qualified Party shall, at such time as state or federal laws allow it to do so, require the water company providing service to the Users to collect the charges imposed by Springfield and the Qualified Party for sewer services. In any event, the Qualified Party shall require the water company providing service to the Users to provide to the Qualified Party and to Springfield all water meter readings obtained by the water company for each of the Users.

g. The Department recognizes that Springfield may, in its sole discretion, refuse to permit any person or entity to connect to the EVSS other than current Users. No User shall discharge industrial waste into the EVSS. No person or entity shall discharge into the EVSS or become a User without the prior approval of Springfield, which may withhold such approval for any reason in its sole discretion. The agreement between the Qualified Party and Springfield described in this Agreement shall include a restriction to prevent the extension of services by the EVSS to properties, developments or dischargers of sewage located outside of the English Village Service Area.

h. Springfield shall permit the EVSS to discharge into the English Village Connector until such time as the City of Nixa extends sewer service to the Users or permits the connection of the EVSS to its municipal sewer system, or until Springfield,

the Qualified Party and the Department mutually agree to permit the treatment of the sewage from the EVSS by another party.

i. Upon the execution of this Agreement, Springfield shall permit OWWM (which is the current operator of the EVSS) to dispose of sewage sludge by transporting the same from the EVSS to Springfield's POTW after payment of Springfield's usual and customary charges for the treatment of such sewage; provided, however, that Springfield shall not accept such sewage sludge for treatment more than 60 days after the EVSS is connected with the English Village Connector or if this provision becomes invalid as provided in subpart k below. Springfield shall have no responsibility to provide any transportation or transportation equipment for such sewage sludge.

j. The provisions of this paragraph 2 shall be incorporated into any agreement between the Qualified Party and Springfield concerning the EVSS.

k. All obligations of Springfield under this Paragraph 2, including, without limitation, its obligations to construct the English Village Connector, to allow the English Village System to be connected to the POTW, and to accept sewage sludge or sewage of any kind from the English Village System shall terminate and expire in the event that each of the following has not occurred within 270 days after the Effective Date of this Agreement:

- i) All Necessary Approvals have been received;
- ii) The Qualified Party has obtained and recorded all easements giving Springfield the right to excavate and install the English Village Connector and have given a copy thereof to Mr. Robert Schaefer, the Assistant Director of Public Works, Environmental Services for Springfield;
- iii) The Qualified Party has paid the impact fee required under subpart e of this Paragraph 2; and
- iv) The Qualified Party and Springfield have executed and exchanged the agreement for sewer services as provided in subpart d of this Paragraph 2.

SANITARY SEWER INVESTIGATION

3. Within six months after the date of this Agreement, Springfield shall undertake and complete an investigation of the gravity portion of each and every force main within the sanitary sewer system operated by Springfield and all gravity sections of the system located within 200 feet downstream of the discharge point of each force main to ascertain whether any

imminent danger of collapse or rupture exists within any such pipe and provide the Department with a full report of the results of said investigation and a schedule for all remedial actions planned to correct any deficiencies or defects in any such force mains or gravity sections as a result of such investigation.

ALTERNATIVE PAYMENT

4. In the event that Springfield is relieved of its obligations to participate in the English Village Project as provided in Paragraph 2(k) above, then in lieu of such participation Springfield shall pay the sum of Ninety-four Thousand Eight Dollars (\$94,008.00). Said sum shall be paid by a certified check made payable to "The Greene County Treasurer as Trustee for the Greene County School Fund" within 30 days after Springfield's obligation to participate in the English Village Project ends under Paragraph 2(k) of this Agreement. The check shall be forwarded by Springfield to Harry D. Bozoian, Assistant Attorney General, Attorney General's Office, P. O. Box 899, Jefferson City, MO 65102 on or before the due date.

RESPONSE COSTS

5. Springfield agrees to pay restitution to the Department in the amount of Forty-six Thousand Seven Hundred Forty-two Dollars and Fifty-six Cents (\$46,742.56) for investigation costs and expenses claimed by the Department as a result of the force main pipeline failure. Springfield denies any liability to the Department on the NOV marked as Exhibit 1.

RELEASE AND FUTURE COMPLIANCE

6. In consideration of the agreements set forth herein, the Department and the Attorney General agree not to bring or cause to be brought any civil action against Springfield,

Burns & McDonnell and/or Price Brothers arising out of any alleged violations of the Missouri Clean Water Law and/or regulations listed in NOV No. 4775SW relating to the failure of the JRFM during July, 2000, and does hereby release and forever discharge Springfield, Burns & McDonnell and Price Brothers, and each of them and their respective agents, servants, employees, predecessors, corporate entities, successors and assigns of and from all liabilities, claims, demands, losses, actions and causes of action which the Department or the Attorney General had, now has or may in the future accrue that relate to or arise from discharge, spill or release of sewage from the JRFM on or before October 26, 2001, including, without limitation, any claims relating to or arising from its design, manufacture, construction, operation or maintenance.

7. Springfield agrees to comply with the Missouri Clean Water Law and relevant regulations for any and all future operations.

8. Nothing in this Settlement Agreement shall be construed as excusing or forgiving future noncompliance with the Missouri Clean Water Law, Chapter 644, RSMo and its implementing regulations. Nothing in this Settlement Agreement shall be construed as an admission of fault or liability by any of the parties released or discharged under the provisions hereof.

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

CITY OF SPRINGFIELD

BY: 

Tom Finnie, City Manager

DATE: December 18, 2002

JEREMIAH W. (JAY) NIXON

Attorney General

BY: 

Harry D. Bozoian
Assistant Attorney General

DATE: 12/26/02

MISSOURI DEPARTMENT OF
NATURAL RESOURCES

BY: Scott B. Totten
Scott B. Totten, Director
Water Protection and Soil Conservation
Division

DATE: 1-13-2003



MISSOURI DEPARTMENT OF NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL QUALITY
NOTICE OF VIOLATION

P.O. BOX 176
JEFFERSON CITY, MO 65102

VIOLATION NUMBER
4775SW

DATE AND TIME ISSUED

November 22, 2000

10:00

☒ A.M.
☐ P.M.

SOURCE (NAME, ADDRESS, PERMIT NUMBER, LOCATION)
City of Springfield, MO

MAILING ADDRESS

P.O. Box 8368

CITY

Springfield

STATE

MO

ZIP CODE

65801

NAME OF OWNER OR MANAGER

Thomas Finnie

TITLE OF OWNER OR MANAGER

City Administrator

WATER REGULATION OR PERMIT VIOLATED

44.051.1(1) RSMo

44.076.1 RSMo

known as the Missouri Clean Water Law

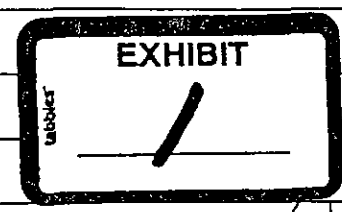
DATE OF VIOLATION

DATE(S):

TIME(S):

July 29, 30, & 31; August 1, 2000 Beginning at approximately 4:15 p.m.

The City of Springfield did discharge untreated sewage, a water contaminant, into South Creek, Wilson Creek and the James River, all of which are waters of the state. This discharge occurred as a direct result of a ruptured 6-inch sewage force main near the City's Southwest Treatment Plant.



SIGNATURE (PERSON RECEIVING NOTICE)

Sent Certified Mail

SIGNATURE (PERSON ISSUING NOTICE)

R. Bruce Martin

TITLE OR POSITION

TITLE OR POSITION-DNR REGION

Regional Director, SWRO

Exhibit "2"

English Village Service Area

The West Half (1/2) of the Southeast Quarter (1/4) of Section Thirty-Five (35), Township Twenty-Eight (28), Range Twenty-Two (22), and that portion of the Southwest Quarter (1/4) of the Southwest Quarter (1/4) of Section Thirty-Six (36), Township Twenty-Eight (28), Range Twenty-Two (22) lying south and west of CC Highway and also the Morris Corner Subdivision, a subdivision in Christian County, Missouri, and the North Half (1/2) of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of Section Two (2), Township Twenty-Seven (27), Range Twenty-Two (22), lying west of Missouri State Highway 160.



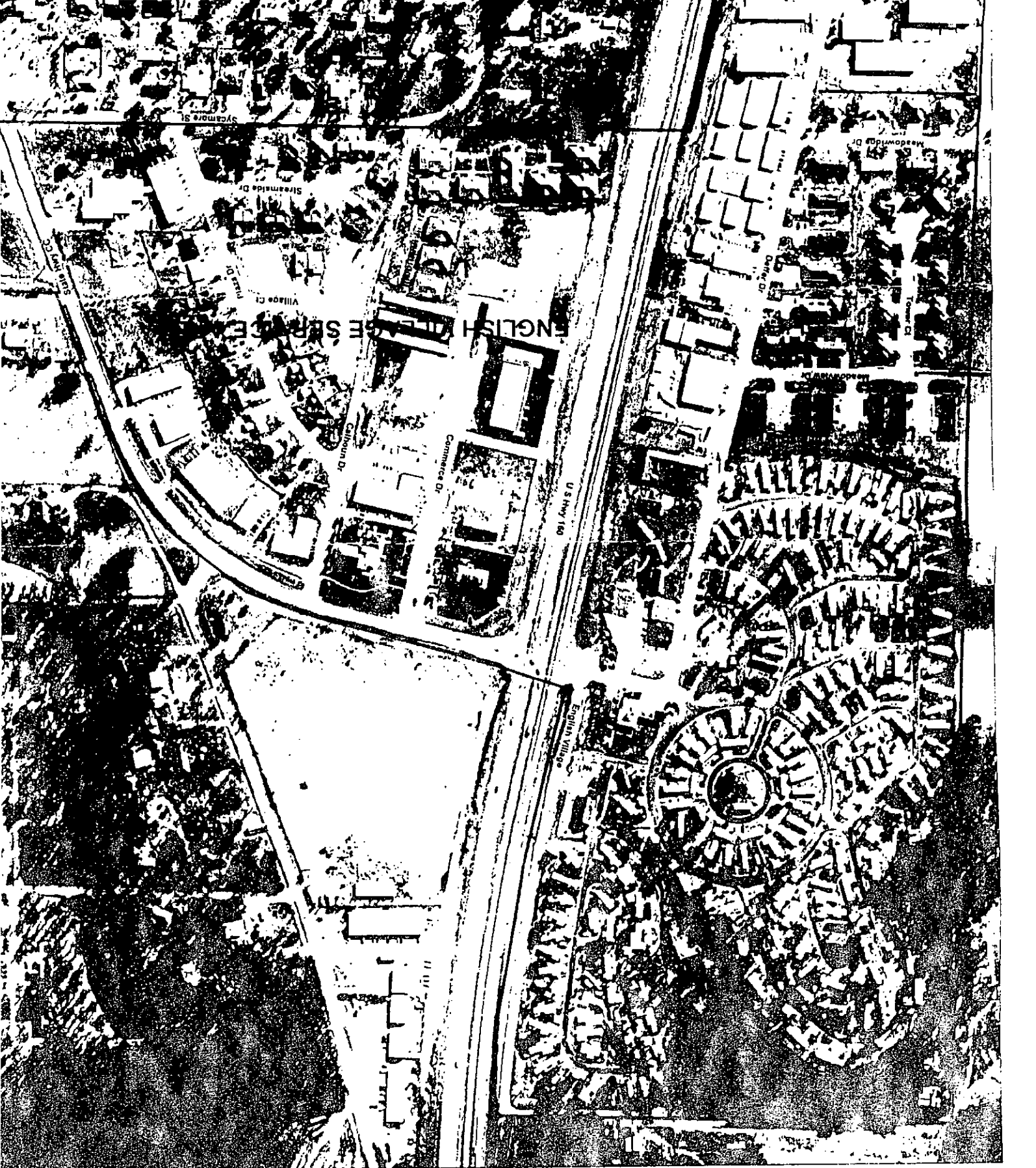
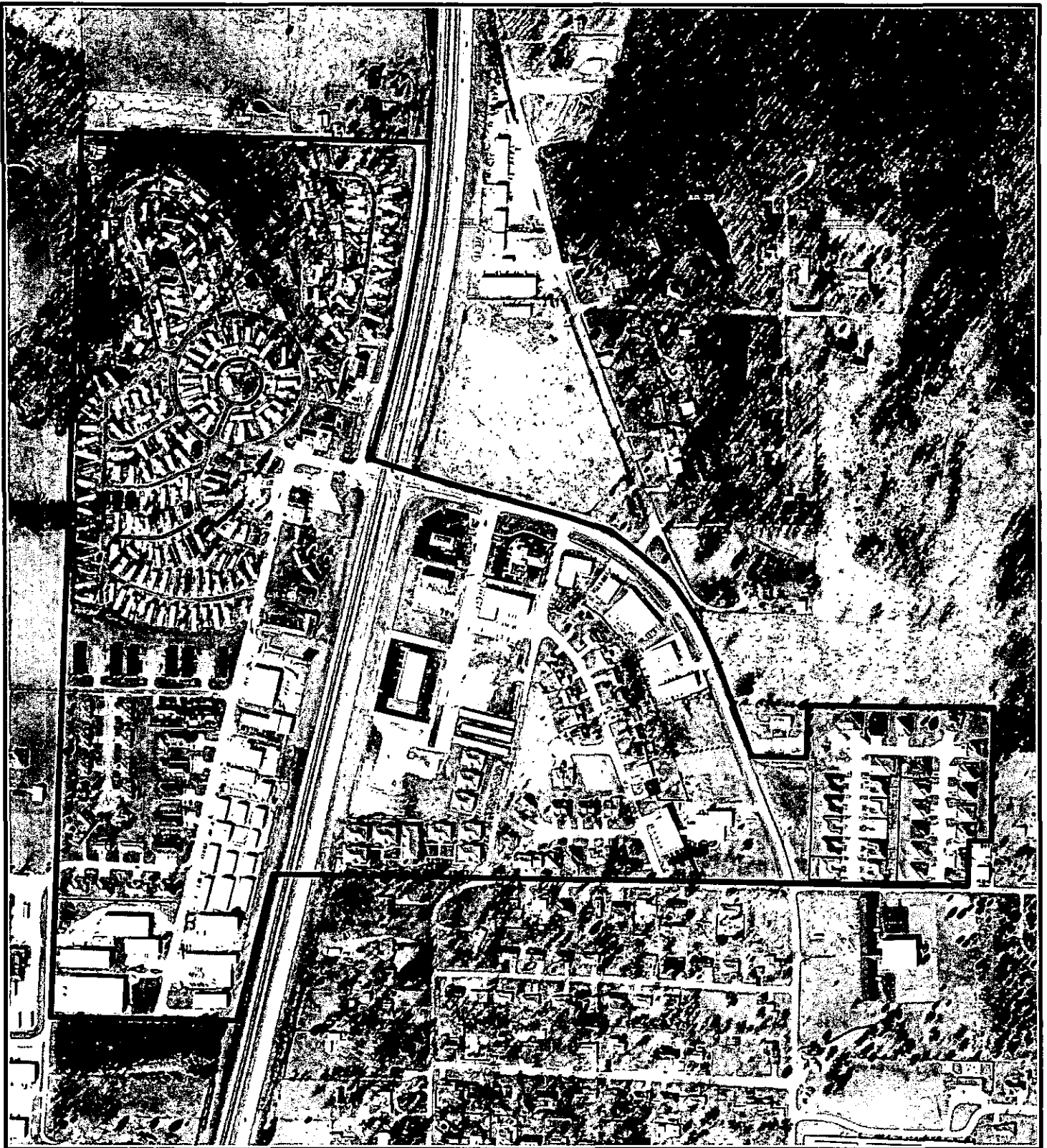


Exhibit "2"

English Village Service Area

The West Half (1/2) of the Southeast Quarter (1/4) of Section Thirty-Five (35), Township Twenty-Eight (28), Range Twenty-Two (22), and that portion of the Southwest Quarter (1/4) of the Southwest Quarter (1/4) of Section Thirty-Six (36), Township Twenty-Eight (28), Range Twenty-Two (22) lying south and west of CC Highway and also the Morris Corner Subdivision, a subdivision in Christian County, Missouri, and the North Half (1/2) of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of Section Two (2), Township Twenty-Seven (27), Range Twenty-Two (22), lying west of Missouri State Highway 160.

English Village Service Area



500 0 500

1 Inch = 500 Feet

Created by City of Springfield GIS
C:\enhome\enr\2003\englishvill.apr
August 28, 2003