

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
JAMES CITY, VIRGINIA, HELD ON THE 4TH DAY OF OCTOBER, NINETEEN HUNDRED
NINETY-THREE, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM,
101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

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A. ROLL CALL

Judith N. Knudson, Chairman, Jamestown District
Stewart U. Taylor, Vice Chairman, Stonehouse District

Perry M. DePue, Powhatan District
Jack D. Edwards, Berkeley District
David L. Sisk, Roberts District
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

B. MINUTES - September 20, 1993

Ms. Knudson asked if there were corrections or additions to the minutes.

Mr. Edwards made a motion to approve the minutes with a corrected page 9 as distributed.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5).
NAY: (0).

C. CONSENT CALENDAR

Ms. Knudson asked if any Board member wished to remove an item from the Consent Calendar.

Ms. Knudson asked that Item No. 1 be removed.

Mr. DePue made a motion to approve the remaining Consent Calendar.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5).
NAY: (0).

2. Affordable Housing Awareness Month

R E S O L U T I O N

AFFORDABLE HOUSING AWARENESS MONTH

WHEREAS, decent, safe, and affordable housing is the cornerstone upon which our families and our communities are built; and

WHEREAS, substandard or deteriorating housing, inadequate plumbing, and overcrowding threaten the health and safety of Virginia's households and diminish the economic vitality of Virginia's communities; and

WHEREAS, those Virginians with special needs for accessibility or supportive services have additional difficulty finding adequate affordable housing; and

WHEREAS, the dream of decent affordable housing will only become a reality through the leadership and partnership of State and local governments, businesses and civic organizations; and

WHEREAS, James City County's Comprehensive Plan, Strategic Plan, Operating and Capital Improvement Budgets demonstrate a strong commitment to addressing affordable housing needs.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, recognizes the month of October, 1993, as AFFORDABLE HOUSING AWARENESS MONTH.

3. Longhill Connector Road Construction

R E S O L U T I O N

LONGHILL ROAD CONNECTOR, PROJECT: 0615-047-139, C-501

WHEREAS, Secondary Route 615 (Longhill Connector Road) from Route 615 (Ironbound Road) northwest to Route 612 (Longhill Road), a distance of 0.92 miles, has been altered and a new road has been constructed and approved by the Virginia Department of Transportation; and

WHEREAS, the Virginia Department of Transportation has provided this Board with the attached sketch dated June 23, 1993, depicting the additions, discontinuances and abandonments required in the secondary system of State highways as a result of Project 0615-047-139, C-501; and

WHEREAS, the portions of the old road identified to be discontinued are deemed to no longer serve public convenience warranting maintenance at public expense; and

WHEREAS, the new road serves the same citizens as those portions of old road identified to be abandoned and those segments no longer serve a public need.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the Department of Transportation be requested to add to the secondary system of State highways those portions of road identified by the attached sketch to be added, pursuant to Section 33.1-229, Code of Virginia.

BE IT FURTHER RESOLVED this Board concurs with the discontinuance as part of the secondary system of State highways, those portions of road identified by the sketch to be discontinued, pursuant to Section 33.1-150, Code of Virginia.

BE IT FURTHER RESOLVED this Board abandons as part of the secondary system of State highways those portions of road identified by the sketch to be abandoned, pursuant to Section 33.1-155, Code of Virginia.

BE IT FURTHER RESOLVED that this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

4. Jolly Pond Road Reconstruction and Relocation

R E S O L U T I O N

JOLLY POND ROAD RELOCATION, PROJECT: 0611-047-137, M-501

WHEREAS, Secondary Route 611 (Jolly Pond Road) from Route 614 (Centerville Road) west a distance of 2.63 miles, has been altered and a new road has been constructed and approved by the Virginia Department of Transportation; and

WHEREAS, the Virginia Department of Transportation has provided this Board with the attached sketch dated July 31, 1992, depicting the additions, discontinuances and abandonments required in the secondary system of State highways as a result of Project 0611-047-137, M501; and

WHEREAS, the portions of the old road identified to be discontinued are deemed to no longer serve public convenience warranting maintenance at public expense; and

WHEREAS, the new road serves the same citizens as those portions of old road identified to be abandoned and those segments no longer serve a public need.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the Department of Transportation be requested to add to the secondary system of State highways those portions of road identified by the attached sketch to be added, pursuant to Section 33.1-229, Code of Virginia.

BE IT FURTHER RESOLVED this Board concurs with the discontinuance as part of the secondary system of State highways, those portions of road identified by the sketch to be discontinued, pursuant to Section 33.1-150, Code of Virginia.

BE IT FURTHER RESOLVED this Board abandons as part of the secondary system of State highways those portions of road identified by the sketch to be abandoned, pursuant to Section 33.1-155, Code of Virginia

BE IT FURTHER RESOLVED that this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

1. Firefighter Appreciation Day

Ms. Knudson made a motion to approve the Firefighter Appreciation Day resolution.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5).
NAY: (0).

Ms. Knudson read and presented the resolution to Volunteer Fire Chief R. Lacy Banks.

R E S O L U T I O N

FIREFIGHTER APPRECIATION DAY

WHEREAS, firefighters provide a vital contribution to the quality of life enjoyed by the citizens and visitors of James City County; and

WHEREAS, access to quality fire protection limits the loss of jobs or property and the loss of life or injury due to the ravages of fire; and

WHEREAS, the members of the fire career and volunteer department are trained, prepared, and ready; and

WHEREAS, Firefighter Appreciation Day will serve to educate the citizens of James City County about fire prevention and fire survival techniques.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby proclaims October 4, 1993, as Firefighter Appreciation Day and encourages County citizens to observe it with appropriate programs, ceremonies, and activities.

D. PUBLIC HEARINGS

1. Case No. SUP-2-93. Williamsburg Crossing
2. Case No. SUP-3-93. Master Plan Amendment - Outdoor Center of Amusement

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that Mr. Calvin Davis applied on behalf of University Square Associates for a special use permit for an outdoor center of amusement and to amend the binding master plan for three acres to be redesignated from reserved to commercial to allow the area to function as part of the outdoor center of amusement. He stated that the project was on 32.3 acres zoned B-1, General Business, located southwest of the intersection of Routes 5 and 199, further identified as Parcel (1-1) on James City County Real Estate Tax Map No. (48-1).

Mr. Sowers described the project as having 535,065 square feet of existing and proposed development and 198 residential units, if approved; traffic study accepted by staff and Virginia Department of Transportation projected adequate levels of service; public water and sewer are available; proposal is generally consistent with the Comprehensive Plan; staff was concerned about lighting study projections and impact on surrounding development; and, proposed development will not impact public safety.

Staff recommended approval of Case Nos. SUP-2-93 and SUP-3-93 with conditions listed in the resolutions. The Planning Commission, by a 5-3 vote, recommended denial for reasons that included compatibility of the proposal with surrounding development and impacts generated by the proposal.

The Board clarified statements about road improvements schedule; validity of lighting study; size of development currently permitted by right; comparison of traffic generated; and length of time parcel has been zoned commercial.

Ms. Knudson opened the public hearing.

1. Mr. Alvin Anderson, Esq., representing the interest of University Square Associates, described the approximately 87 acres as zoned for intense development with the current proposal as interim development. He showed slides of similar development and explained there would be less impact from noise, deliveries, traffic and security lighting than for more intense development. He introduced Mr. William E. Dashiell, P.E., and Mr. Calvin Davis, a partner of University Square Associates.

The Board expressed interest in the age of adjacent subdivisions, use of existing well for watering greens, visibility from Route 199 of miniature golf course, and hours of operation.

2. Mr. George Wright, 148 Cooley Road, President of Historic Route 5 Association, spoke in opposition to the outdoor amusement center for having late night hours in the residential neighborhoods.

3. Mr. Robert Hershberger, Executive Vice President, Chamber of Commerce, spoke in favor of the outdoor amusement center as support for increased golf in the area.

4. Mr. Larry Fowler, 326 Merrimac Trail, immediate past president of Economic Progress Committee, Chamber of Commerce, supported the requests as an educational opportunity for parents and children to learn golf together.

5. Mr. John Corson, 3620 Bridgewater Drive, President of Mill Creek Landing Homeowners, stated the proposal was incompatible with residential atmosphere of the area.

6. Ms. Jane Carroll, 2894 John Tyler Highway, opposed the proposal by stating the economy does not warrant this type of interim development to bring additional customers.

7. Mr. Charles Haines, 118 Kingspoint Drive, urged the Board to support residents' preference of top quality development.

8. Mr. Robert L. Hurley, 406 Mill Neck Road, spoke in opposition to noise disturbance late at night.

9. Mr. John Kellogg, 114 Winston Drive, expressed his opinion that the proposal did not take full advantage of the economic potential for the site.

10. Mr. John Brendel, 311 Burns Lane, spoke in opposition to the nuisances of the presence of an outdoor amusement center in a first-rate neighborhood.

11. Ms. Kathy Gill, 141 Winston Drive, asked that the land remain undeveloped and green for the wildlife.

12. Mr. Jay Everson, 130 Oslo Court, spoke in favor of the request to allow the applicant a return for taxes paid on high value commercial land.

13. Mr. Paul Anderson, 122 Druid, spoke against interim development of the site.

14. Mr. Carl Moody, 113 Braddock, expressed his opinion that the outdoor amusement center was not a golf facility, and opposed the development in the neighborhood.

15. Mr. Tim Murphy, 129 Leon Drive, noted that after much delay, the lighting report and hours of operation were still unsatisfactory.

16. Mr. Scott Bracy, 125 Winston Drive, spoke in opposition to the proposed development, which would run parallel with his back yard, for safety reasons.

17. Mr. Bill Ferguson, 310 The Maine, spoke in opposition to added growth and traffic to the area.

18. Mr. Mac Mestayer, 115 Gilley, felt that nearby property values would be lowered by the requested development and by the additional traffic.

19. Mr. Martin Garrett, Planning Commission member, stated that his concern was the impact of the facility on the character of the community, and the Planning Commission members who supported the request were concerned about the lighting.

20. Mr. Grant Olson, 105 Holman Road, stated the character of the neighborhood should be preserved, and golf driving ranges were available in other areas of the County.

Ms. Knudson closed the public hearings.

Mr. Sisk made a motion to approve Case Nos. SUP-2-93 and SUP-3-93.

After a brief discussion, Mr. DePue made a motion to eliminate the batting cage.

On a roll call, the straw vote was: AYE: Taylor, Edwards, DePue, Knudson (4).
NAY: Sisk (1).

After discussion of concerns, the Board suggested staff to review area lighting, hours of operation, aesthetics of miniature golf course, status of existing well and size of detention pond.

Mr. Sisk withdrew his motion.

Ms. Knudson deferred Case Nos. SUP-2-93 and SUP-3-93 until Wednesday, October 20, 1993, Board of Supervisors' meeting.

Ms. Knudson declared a 10-minute break at 9:25 p.m.

Ms. Knudson reconvened the Board into open session at 9:35 p.m.

3. Case No. SUP-27-93. Laura R. Hyman Duplex

Mr. Trenton L. Funkhouser, Senior Planner, stated Ms. Laura R. Hyman had applied for a special use permit to allow conversion of a single-family home unit to a duplex on

approximately 1.2 acres, zoned R-2, General Residential, located at 138 Red Oak Landing Road, further identified as Parcel (1-32A) on James City County Real Estate Tax Map No. (47-3).

In concurrence with staff, the Planning Commission unanimously recommended approval of the Case No. SUP-27-93 with the condition listed in the resolution.

Ms. Knudson opened the public hearing, and as no one wished to speak, she closed the public hearing.

Mr. Sisk made a motion to approve Case No. SUP-27-93.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5).
NAY: (0).

R E S O L U T I O N

CASE NO. SUP-27-93. LAURA ROSE HYMAN DUPLEX

WHEREAS, the Board of Supervisors of James City County has adopted by Ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the Planning Commission of James City County, unanimously recommended approval of Case No. SUP-27-93 to permit the development of a duplex in the R-2, General Residential, District on property identified as Parcel (1-32A) on James City County Real Estate Tax Map No. (47-3).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-27-93 as described herein with the following condition:

1. If construction has not commenced on this project within a period of 18 months from the date of issuance of the special use permit, it shall become void.

4. Case No. SUP-30-93. Rawls Byrd Elementary School/Satellite Receiver

Mr. Funkhouser stated that Mr. Edward Qualtrough had applied on behalf of the Williamsburg-James City County Schools for a special use permit to allow the placement of a satellite dish on the roof of Rawls Byrd Elementary School, zoned R-2, General Residential, located at 112 Laurel Lane, further identified as Parcel (6-171A) on James City County Real Estate Tax Map No. (48-1).

In concurrence with staff, the Planning Commission unanimously recommended approval of the Case No. SUP-30-93 with conditions listed in the resolution.

Ms. Knudson opened the public hearing, and as no one wished to speak, she closed the public hearing.

Mr. DePue made a motion to approve Case No. SUP-30-93.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5).
NAY: (0).

R E S O L U T I O N

CASE NO. SUP-30-93. RAWLS BYRD ELEMENTARY SCHOOL - SATELLITE RECEIVER

WHEREAS, the Board of Supervisors of James City County has adopted by Ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the Planning Commission of James City County, unanimously recommended approval of Case No. SUP-30-93 to permit the placement of a satellite dish on the roof of Rawls Byrd Elementary School in the R-2, General Residential, District on property identified as Parcel (6-171A) on James City County Real Estate Tax Map No. (48-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-30-93 as described herein with the following conditions:

1. If construction has not been completed on this project within a period of 18 months from the date of issuance of the special use permit, it shall become void.
2. A minimum of two evergreen trees, meeting the minimum tree size standards set forth in the Zoning Ordinance and having a minimum height at maturity of 40 feet, shall be planted to screen the satellite dish from view along Laurel Lane. The trees shall be planted within a period of 12 months from the date of installation of the satellite dish.
3. The location of the satellite dish receiver shall be as generally shown on the plan submitted with the special use permit application.

5. Case No. MP-2-93. Greensprings Master Plan Amendment

Ms. Elizabeth R. Friel, Senior Planner, stated that Mr. Marc B. Sharp, of Greensprings Plantation, Inc., had applied to amend the Greensprings Plantation Master Plan to allow 52 additional units, for a total of 300 multifamily units, and a 120-bed nursing home in Land Bay M-10, and to amend the proffers for the Greensprings Plantation Planned Community to accommodate this development. She described the site as 53 acres, located on the north side of John Tyler Highway, 1500 feet northwest of John Tyler Highway's intersection with Centerville Road, further identified as Parcel (1-1) on James City County Real Estate Tax Map No. (46-1).

Staff generally concurred with the Community Impact Statement, found proffers acceptable, and the proposed master plan amendment was consistent with the Comprehensive Plan, and generally consistent with surrounding residential development and zoning.

In concurrence with staff, the Planning Commission unanimously recommended approval of the master plan amendment with proffers.

Ms. Knudson opened the public hearing.

1. Mr. Vernon Geddy, Esq., representing the applicant, stated that the fiscal impact would be less for services and traffic, and urged the Board to approve the case.

2. Ms. Jane Carroll, 3894 John Tyler Highway, as Treasurer of Historic Route 5 Association, stated the Association was pleased to support this case.

Ms. Knudson closed the public hearing.

Ms. Knudson made a motion to approve Case No. MP-2-93.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5).
NAY: (0).

R E S O L U T I O N

CASE NO. MP-2-93 GREENSPRINGS MASTER PLAN AMENDMENT

WHEREAS, in accordance with Section 15.1-431 of the Code of Virginia, and Section 20-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified and a hearing scheduled on Master Plan Case No. MP-2-93 for a Master Plan amendment for Land Bay M-10 to allow 52 additional dwelling units, a 120-bed nursing facility and to redesignate this area from Residential Area D to Residential Area B, C and D to allow a variety of multifamily dwelling types. The site can be identified as a portion of Parcel (1-1) on James City County Real Estate Tax Map No. (46-1); and

WHEREAS, the Planning Commission of James City County, unanimously recommended approval of Case No. MP-2-93.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Master Plan Amendment Case No. MP-2-93 and accept the voluntary proffers.

E. BOARD CONSIDERATION

1. Solid Waste Disposal Agreement

Mr. Larry M. Foster, General Manager, James City Service Authority, explained that the James City County Landfill on Jolly Pond Road would close October 8, 1993 when Environmental Protection Agency requirements of Subtitle D regulations take effect. Mr. Foster stated that staff issued Request for Proposals to provide services associated with a transfer station with the firm of Sanifill of Virginia, Inc. selected.

Staff recommended approval of the Solid Waste Disposal Agreement.

Board discussion followed regarding current landfill standards, cost of disposal initially remained the same fee of \$45.00 per ton, and contract written for a five-year term, with option to renew.

Mr. Edwards made a motion to approve the resolution.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5).
NAY: (0).

R E S O L U T I O N

SOLID WASTE DISPOSAL AGREEMENT

WHEREAS, the Board of Supervisors of James City County has decided to close the County's Landfill by October 8, 1993, to avoid excessive costs associated with Subtitle D Regulations; and

WHEREAS, the County is building a transfer station to consolidate solid waste delivered to the transfer station by the County, its citizens, and businesses for transportation and disposal at a landfill; and

WHEREAS, the County has solicited proposals from private firms for the provision of the operation of the transfer station and the transportation and disposal of solid waste deposited at the transfer station; and

WHEREAS, a staff committee has reviewed the proposal negotiated with one of the firms and recommends that the County enter into a contract with Sanifill of Virginia, Inc., for the provisions of the solid waste service.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes its Chairman to sign on behalf of James City County a contract defining the terms for the provision of the solid waste service to James City County.

F. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, questioned County code for door-to-door solicitation.

Mr. Frank M. Morton, III, County Attorney, responded that the County code reflected State law.

G. REPORTS OF THE COUNTY ADMINISTRATOR - None

H. BOARD REQUESTS AND DIRECTIVES

Ms. Knudson made reference to the Hampton Roads Planning District's Legislative Priorities, and stated that further discussion would be held on the issues.

Ms. Knudson mentioned a letter from Mayor Barry Duval of Newport News requesting a \$1,000 contribution by the County to the activities of the Newport News-Williamsburg Airport Blue Ribbon Commission.

Mr. Sisk, as Commission representative, stated that activities of the Newport News-Williamsburg Airport Blue Ribbon Commission had little effect on the County, and he would recommend no contribution be made.

Ms. Knudson asked staff to reply to Mayor Duval's request.

Mr. Norman responded in the affirmative.

Ms. Knudson made a motion to recess until a work session in Building C Board Room at 5:00 p.m., Wednesday, October 20, 1993.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5).
NAY: (0).

The Board recessed at 10:10 p.m.



David B. Norman
Clerk to the Board

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FIRST AMENDMENT TO
AMENDED AND RESTATED
GREENSPRINGS PROFFER AGREEMENT

This First Amendment to Amended and Restated Proffer Agreement is made as of this 29th day of September, 1993, by Greensprings Plantation, Inc., a Virginia corporation ("Owner").

RECITALS

A. Greensprings Plantation, Inc. is the owner of certain real property consisting of approximately 1402 acres, located in James City County, Virginia (the "Property") along Route 5 and being more particularly described in Exhibit A attached hereto.

B. In 1989 the Owner applied for and James City County (the "County") granted a rezoning of the Property from the Limited and General Agricultural Districts, A-2/A-1, to the Residential Planned Community District, R-4, with proffered conditions as set forth in a Greensprings Proffer Agreement dated February 6, 1989 and recorded in James City County Deed Book 427, page 466 (the "Original Proffers").

C. In 1992, Owner applied for an amendment to the approved Master Plan for the Property and, in connection therewith, amended and restated the Original Proffers by Amended and Restated Greensprings Proffer Agreement dated April 30, 1992 and recorded in James City County Deed Book 562 at page 794 (the "Restated Proffers").

D. Owner has now applied for an amendment to the approved Master Plan for the Property pursuant to Sections 20-215(b) and

20-15 of the County Zoning Ordinance and in connection therewith desires to amend the Restated Proffers in certain respects.

NOW, THEREFORE, in consideration of the County of James City granting approval of the amendment of the Master Plan and pursuant to Section 15.1-491.2:1, et seq. of the Code of Virginia, 1950, as amended, and Section 20-15, et seq. of Chapter 20 of the Code of James City County, Virginia, the Owner agrees that the Restated Proffers are hereby amended as set forth below. If the County fails to grant the requested amendment to the approved Master Plan, this First Amendment to Amended and Restated Greensprings Proffer Agreement shall thereupon be void and the Restated Proffers shall remain in full force and effect.

AMENDMENTS

1. The table in Condition 1 of the Restated Proffers is hereby amended to read as follows:

<u>Project Land Bay R-4 Master Plan Designation</u>		<u>Maximum Number of Dwelling Units</u>
S- 1	A	209
S- 2	A	141
S- 3	A	175
S- 4	A	15
M- 5	D	172
M- 6	D	130
M- 7	D	66
M- 8	D	132
M- 9	D	165
M-10	B	100
M-10	C	56
M-10	D	144
M-10	Nursing Home	120 beds

2. Condition 4 (b) of the Restated Proffers is hereby amended to read as follows:

(b) Multi-Family Neighborhood Recreation Centers. (i)

Unless Owner elects to construct a single central multi-family neighborhood recreational center pursuant to subparagraph (ii) below, before the County shall be obligated to issue Certificates of Occupancy for more than 50 units in Land Bays M-5 through M-9 shown on the Amended Master Plan, residents of each of those Land Bays shall have access to at least one Multi-Family Neighborhood Recreation Center ("MNRC") serving (but not necessarily located in) that Land Bay. There shall be recreational facilities which comply with requirements of the Zoning Ordinance located within Land Bay M-10 with the type and location of such facilities to be determined by Owner following consultation with the residents of Land Bay M-10. The recreational facilities shall be shown on site plans of Land Bay M-10 and subject to the approval of the Development Review Committee. The MNRCs for all multi-family Land Bays in the aggregate shall be provided with swimming pools with a total minimum water surface area of 5,000 square feet with no single pool having a minimum water surface area of less than 750 square feet and a total of at least six regulation size, hard surface tennis courts. The MNRCs in Land Bay M-5, M-6, M-8, and M-9 shall have an open play area of at least one-fourth an acre and a tot lot with playground equipment. The pools and tennis courts shall be distributed as follows:

<u>Land Bay</u>	<u>Minimum Facilities</u>
M-5	1 pool, 1 tennis court
M-6	1 pool, 1 tennis court
M-7 and M-8	1 pool, 1 tennis court
M-9	1 pool, 1 tennis court

Each MNRC shall be open for use by owners of units within the
Land Bay(s) which it serves subject to the provisions of any
applicable restrictive covenants and rules and regulations
adopted thereunder.

3. Condition 6 of the Restated Proffers is hereby amended
by the addition of the following two paragraphs:

If a previously unidentified archeological site is
discovered during land disturbing activities, all construction
work involving subsurface disturbance will be halted in the area
of the site and in the surrounding area where further subsurface
remains can reasonably be expected to occur and Owner will
immediately notify the County of the discovery. The County, or
an archeologist approved by it, will immediately inspect the work
site and determine the area and the nature of the affected
archeological site and its potential eligibility for inclusion on
the National Register of Historical Places. Construction work
may then continue in the project area outside the archeological
site. Within 15 working days of the original notification of
discovery, the County shall determine the National Register
eligibility of the site. The County may extend this 15 working
day period for determining the National Register eligibility one
time by an additional 5 working days by written notice to Owner
prior to the expiration date of said 15 working day period.

If the site is determined to meet the National Register
Criteria (36 CFR Part 60.0), Owner shall prepare a plan for its
avoidance, protection, recovery of information, or destruction

without data recovery. The plan shall be approved by the County prior to implementation. Work in the affected area shall not proceed until either (a) the development and implementation of appropriate data recovery or other recommended mitigation procedures, or (b) the determination is made that the located remains are not eligible for inclusion on the National Register.

4. Conditions 11 of the Restated Proffers is hereby deleted and the following is inserted in lieu thereof:

11. Realigned Route 614 and Future Right-of-Way Greenbelt. The Owner shall designate a greenbelt buffer along realigned Route 614 and along the right-of-way shown on the Amended Master Plan as "Future Right-of-Way" measured from a line 60 feet from the center line of realigned Route 614 and the "Future Right of Way". Such line shall hereinafter be called the "Greenbelt Line". No structure except the road and related improvements in Land Bay S-3 shown on the Amended Master Plan shall be located within 150 feet of the Greenbelt Line. Where the road in Land Bay S-3 parallels realigned Route 614, the greenbelt buffer shall be no less than 115 feet from the Greenbelt Line of realigned Route 614. Where golf course fairways abut relocated Route 614 or the "Future Right-of-Way", the greenbelt buffer shall have a minimum width of 75 feet. Where tee boxes or the putting surface of greens are located within 100 feet of the Greenbelt Line, enhanced landscaping approved by the Development Review Committee in the golf course site plan review process shall be provided between the tee or green and the 75

foot greenbelt buffer. In all other areas, a minimum 150 foot buffer shall be maintained. Where golf course fairways abut realigned Route 614 or the "Future Right-of-Way", selective hand thinning of trees (but no removal of stumps) shall be permitted as a part of a landscaping plan approved by the Development Review Committee. Within this greenbelt the land shall be exclusive of any lots and undisturbed except for approved utilities, stormwater management improvements, entrance roads to Land Bays as shown generally on the Amended Master Plan, pedestrian/bicycle trails, golf cart path crossings and tunnels and project signs as approved by the Development Review Committee. No signs other than project signs and those requested by VDOT and/or the County shall be allowed.

5. Paragraph 1 under the heading Proffers Improvements in Condition 15(f) of the Restated Proffers is hereby amended by deleting the second sentence thereof and inserting in lieu thereof the following:

A 120 foot right-of-way (or such wider right-of-way as may be necessary to accommodate required drainage structures) shall be dedicated to allow for future improvements.

6. The following conditions are hereby added to the Restated Proffers:

20. Turn Lanes into Land Bay M-10. Prior to the issuance of a certificate of occupancy for any structure on Land Bay M-10, a right turn lane from westbound Route 5 and a left turn lane from eastbound Route 5 into the entrance to Land Bay M-

EXHIBIT "A"

PARCEL I

562 527 5477

All those certain tracts, pieces, or parcels of land situate, lying and being in James City County, Virginia, and shown as Parcel "A", containing 916.77 acres, and Parcel "B", containing 572.30 acres, all as shown on that certain plat entitled, "Plat Showing a Portion of Green Springs," dated July 24, 1963, made by S. U. Camp, III, & Associates, Certified Land Surveyor, Courland, Virginia, a copy of which said plat is recorded in the Clerk's Office of the City of Williamsburg and County of James City in Plat Book 24, pages 18A and 18B.

LESS AND EXCEPT property conveyed by deed recorded June 3, 1966 in James City County Deed Book 104, Page 31, to Jorge Luna and Leticia Luna, husband and wife;

LESS AND EXCEPT property conveyed by deed recorded June 3, 1966 in James City County Deed Book 104, Page 37, to Herman Zamora and Josefina Zamora, husband and wife;

LESS AND EXCEPT property subject to a certain Option On Real Estate recorded July 24, 1966 in James City County Deed Book 109, Page 446, to Jorge Luna and Leticia Luna, and Herman Zamora and Josefina Zamora, or their assigns;

LESS AND EXCEPT property conveyed by deed recorded April 14, 1966 in James City County Deed Book 299, Page 534, to the Commonwealth of Virginia;

LESS AND EXCEPT property conveyed by deed recorded January 11, 1978 in James City County Deed Book 181, Page 533, to the United States of America;

LESS AND EXCEPT certain property under contract to be conveyed to John H. Smith and Sonda J. Smith, husband and wife, which property is more particularly described as being "Parcel 4", 20.35 Ac.±, on a certain plat entitled, "A SUBDIVISION OF PART OF THE GREEN SPRINGS TRACT", James City County, Virginia, dated November, 1986, and made by Lynn D. Evans, Certified Land Surveyor, a copy of which plat is to be recorded in the Clerk's Office of the City of Williamsburg and County of James City;

LESS AND EXCEPT any and all property in the said "Parcel 3" east of Powhatan Creek;

VIRGINIA: City of Williamsburg and County of James City, to Wit:

In the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City the

15 day of Nov, 1993 This Agreement was presented with certificate annexed and admitted to record at 1:31 o'clock

Teste: Helene S. Ward, Clerk

by [Signature]

Deputy Clerk

The foregoing instrument was acknowledged before me
this 29th day of SEPTEMBER, 19993 by Marc B. Sharp.

Lisa N. Stroud
NOTARY PUBLIC

My commission expires:

10-31-97.

CONTRACT NO. _____

CONTRACT
FOR
SOLID WASTE DISPOSAL SERVICES
FOR
JAMES CITY COUNTY

By and Between

JAMES CITY COUNTY, VIRGINIA
(County)

and

SANIFILL OF VIRGINIA, INC.
(Contractor)

AGREEMENT

THIS AGREEMENT ENTERED INTO THIS ninth day of October, 1993, by and between James City County, Virginia, hereinafter referred to as the "County" and Sanifill of Virginia, Inc., hereinafter referred to as "Contractor."

WHEREAS, the County desires to engage Sanifill of Virginia, Inc., as an independent contractor in accordance with the terms and conditions of this Agreement, to provide Solid Waste Disposal Services in the County of James City.

NOW, THEREFORE WITNESSETH: in consideration of the mutual covenants set forth herein and for the consideration hereinafter set forth, the County and Contractor agree as follows:

I. SCOPE OF SERVICES

The services furnished by Contractor shall include, but not be limited to, the following:

1. All acceptable waste delivered by the County, private haulers or County residents to a transfer station operated by Contractor under the terms of this Agreement shall be received and hauled by Contractor to a permitted disposal site on the same day said acceptable waste is delivered to the transfer station; provided acceptable waste delivered to the transfer station after 4:00 p.m., Monday through Friday, after 12:30 p.m. Saturday, or any time Sunday, may be stored overnight in a transfer trailer. Such trailers shall be moved to

the landfill for processing the following day which the landfill is open for business.

- a. The location and personnel for Sanifill of Virginia, Inc.'s operations and management shall be as follows:

i. Location/Local Management:

N. Howard Burns
100 North Park Lane
Hampton, VA 23666

- b. Transfer Station: Contractor shall schedule its employees in such a manner so as to avoid delays and back-up in receiving acceptable waste. Two employees (a scale operator and an equipment operator) shall be available at the transfer station site during operating hours as set forth below:

Monday through Friday: 7:00 a.m. to 4:30 p.m.
Saturday: 7:00 a.m. to 1:00 p.m.

Contractor shall also have one employee available on Saturday and Sunday to operate the transfer station for the handling of acceptable waste collected from the County's four Convenience Centers as set forth below:

Saturday: 1:00 p.m. to 4:00 p.m.
Sunday: 11:00 a.m. to 4:00 p.m.

At the County's request, Contractor agrees to keep the transfer station open beyond the hours set forth herein. The charge for such additional opening shall be as follows:

- (1) If it is necessary to open only the transfer station, \$100 per hour, or
 - (2) If it is necessary in the reasonable business judgment of Contractor to open both the transfer station and a landfill operated by the Contractor, \$500 per hour. Such additional hours may only be authorized by the County Administrator or the General Manager of the JCSA.
- c. The transfer station will be closed on the following:

New Years' Day
Thanksgiving Day
Christmas Day

- d. Contractor shall make available at all times an adequate permitted disposal site or sites, personnel and equipment to dispose of all acceptable waste in accordance with local, state and federal laws and regulations.

2. Approvals for Special Waste

Anyone bringing special waste to the transfer station for disposal shall present to the Contractor written evidence of approvals required by the Commonwealth of Virginia, its political subdivisions or the Contractor concerning the transportation and disposal of each load of special waste which requires such approvals prior to the Contractor loading such special waste into its vehicles at the transfer station. All such approvals shall be subject to verification by the Contractor.

- 3. Each vehicle containing acceptable waste shall be permitted to dump its acceptable waste in no more than twenty (20) minutes from the time a vehicle enters the transfer station site.

a. Exceptions to the above:

- (1) Collection vehicle breakdown at a transfer station.
- (2) Scale breakdown.
- (3) Utility power failure.
- (4) Loader breakdown.
- (5) Unacceptable waste.
- (6) Unpaid bills.
- (7) Force Majeure event.

- 4. Contractor shall comply with the provisions of all labor laws, the laws of the Commonwealth and all federal, state and local statutes, ordinances, and regulations which are applicable to the terms of this Agreement.

- 5. Contractor shall assist the County in maintaining all licenses and permits necessary for the operation of the transfer station.

- 6. Contractor shall allow private haulers collecting acceptable waste within James City County to

dispose of said acceptable waste at the transfer station. Acceptable waste from outside the County shall not be received unless specifically permitted by separate agreement between the County and the other localities, the Commonwealth of Virginia or any agency thereof.

II. CHANGE ORDER FOR EXTRA OR ADDITIONAL SERVICES

There shall be no extra work permitted beyond the terms of this Agreement without prior written authorization in the form of a change order signed by the County Administrator. No officer, agent or employee of the County or Authority is authorized to give verbal instructions as the basis for additional costs. Requests for changes in the scope of work shall be made in writing by Contractor, reviewed by the County, and either approved or denied in writing prior to initiation of any extra or additional work.

All written notices required under the terms of this Agreement shall be deemed to have been properly given if mailed, postage paid, to the following representatives of each party at the addresses indicated herein:

County:

County Administrator
James City County
P. O. Box 8784
Williamsburg, VA 23187-8784

Contractor:

N. Howard Burns
Sanifill of Virginia, Inc.
100 North Park Lane
Hampton, VA 23666

III. ENVIRONMENTAL REQUIREMENTS

1. Contractor shall obtain all necessary federal, state and local permits required to operate a permitted landfill for acceptable waste and provide a copy of each to the County. Copies of said landfill permits shall be obtained prior to commencement of the work as set forth in this Agreement. When Contractor secures future landfill related permits or renews existing landfill related permits copies shall be immediately provided to the County.
2. The County shall be notified immediately of any action by any governmental entity to revoke, suspend or otherwise alter a landfill permit

necessary to operate the landfill in which the County's acceptable waste is being disposed.

IV. MAINTENANCE PROGRAM - TRANSFER STATION

1. Contractor shall maintain the transfer station in good working order, including necessary minor repairs and replacement, consistent with accepted procedures for acceptable waste handling. Contractor shall be responsible for all maintenance and repairs to the transfer station up to a \$2,000 aggregate per year. Contractor shall maintain the transfer station in neat and orderly condition so as to protect it from deterioration. The aesthetic quality of the station and the grounds shall be maintained. All litter on the transfer station property shall be collected on a daily basis.
2. At the expiration or termination of this Agreement, Contractor shall return the transfer station including any modification to the County in its original condition except for normal wear and tear. All modifications by the Contractor shall be approved in writing by the County prior to their installation. County shall not object to said modification, at any point thereafter.

V. EMERGENCY CONDITIONS

1. Transfer Station:
 - (a) Contractor shall be responsible for continuing to dispose of acceptable waste if the transfer station is inoperable due to any reason. If the station is inoperable due to the fault of the Contractor, the County shall be compensated for any additional direct costs incurred. If the station is inoperable due to a force majeure event or due to the fault of the County, the Contractor shall be compensated for any additional direct costs incurred. If a transfer station is closed due to a force majeure event, Contractor and the County shall make every effort to reopen the transfer station as soon as possible.
2. Disposal Site:
 - (a) If Contractor's disposal sites do not open or are closed due to a force majeure event, Contractor shall continue to transfer the acceptable waste and haul the grit and

screenings to a permitted disposal site. Contractor shall be compensated by the County for additional direct costs incurred due to a force majeure event.

- (b) In the event any change in law or regulation occurs during the term of this Agreement, the Contractor and the County shall agree to adjust the fees payable under the Agreement for direct costs attributable to said change. If the County and the Contractor cannot agree on what constitutes direct costs, the Contract may be terminated by either party giving a six (6) month written notice to the other party.

VI. COUNTY RESPONSIBILITIES

1. Prior to Contractor taking possession of the transfer station, the County shall be solely responsible for its operation and funding, including the operation of the temporary transfer station. County shall give Contractor at least ten (10) days notice of the completion of the transfer station before it is turned over to Contractor. It is understood and agreed that during the period of time the temporary transfer station is open, Contractor shall be responsible only for pick up and disposal of acceptable waste from ~~the transfer station under the terms of this Agreement from the temporary waste transfer station.~~ During the operation of the temporary transfer station, County shall be responsible for all damage to Contractor's vehicles and equipment occurring at the temporary transfer station not caused by the negligence of Contractor's employees. dnt
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2. Prior to Contractor commencing to operate the transfer station, the County and Contractor shall jointly conduct a detailed inspection of the transfer station. This inspection shall specify the condition of the transfer station at the time it is turned over to Contractor. This inspection report shall establish a base for the County to determine "normal wear and tear" upon termination or completion of the Agreement and return of the transfer station to the County.

3. The County shall permit Contractor to have access to the transfer station to operate the facilities at all times.
4. The County shall maintain weighing scales at the transfer station.
5. The County shall maintain all licenses and permits required of the transfer station.
6. The County shall provide a primary and a back-up Loader capable of transferring acceptable waste from the transfer station floor to the transfer trailers in the time allotted to Contractor; the County shall be responsible for regular maintenance and repair of the Loader.
7. County shall be responsible for all major maintenance and repairs to the transfer station. Costs in excess of \$2,000 in the aggregate, per year, shall be considered major.
8. The County shall be bound under this Agreement only to the extent that there are funds available to perform its obligation hereunder; should the Board of Supervisors of James City County fail to appropriate sufficient monies to fund the obligations set forth in this Contract, the Contract shall terminate as of the date this Agreement is not funded.
9. County shall be responsible for arranging for the proper handling and disposal of unacceptable waste delivered by the County to the transfer station or directly to the landfill.
10. During the operation of the temporary transfer station the County agrees that if unacceptable waste is delivered to the landfill, the County shall be responsible for arranging for the proper handling and disposal of the unacceptable waste.

VII. CONTRACTOR'S RESPONSIBILITIES

1. Contractor shall be responsible for arranging for the proper handling and disposal of unacceptable waste delivered to the transfer station other than unacceptable waste delivered by the County; except pursuant to VI, 10 above.

2. By the fifth day of each month, the Contractor shall provide the County with data as to the tonnage of acceptable waste received at the transfer station and volume to the Contractor's landfill related to this Agreement during the previous month. Contractor will pay the County the difference between the amount set out in Attachment B and the fee set annually by the County as the gate rate at the transfer station.
3. In the event the weighing scale is inoperable, the County shall use its best efforts to repair or replace the scale. During a scale breakdown, the Contractor shall estimate each truck's acceptable waste tonnage based upon its volume and historical weight data.
4. Contractor shall be responsible for the collection of all fees associated with the disposal of acceptable waste at the transfer station.
5. Contractor shall have the right to deny access to the transfer station to private haulers or residents hauling acceptable waste who are more than thirty (30) days in arrears to Contractor for past transactions at the transfer station.
6. Contractor shall promptly report to the County any event that forces the closing of the transfer station during normal hours. If the County offices are not open (normal business hours: 8:30 a.m. to 5:00 p.m., Monday-Friday), Contractor shall contact the County's Central Dispatch, 566-0112.

VIII. PERSONNEL

Contractor shall secure all personnel, including subcontractors, required to perform and complete the scope of work on this contract at Contractor's expense.

IX. TIME OF PERFORMANCE

This Agreement is for a five year term beginning on October 9, 1993 and terminating on October 8, 1998 unless terminated earlier in accordance with other provisions herein. This Agreement may be extended by mutual agreement for another five year term.

X. COMPENSATION AND METHOD OF PAYMENT

Compensation shall be as set forth in Attachment B, attached hereto and made a part hereof.

XI. AMENDMENTS

This Contract may be amended in writing from time to time by agreement of the parties.

XII. DISPUTES

Should alternatives, disputes, or other disagreements related to the performance of the work hereunder arise between the County and Contractor, the parties hereto shall negotiate in good faith in an attempt to resolve same; such negotiations shall be a condition precedent to any remedy at law.

XIII. CONFIDENTIALITY

Contractor shall not use an indication of its services to the County for commercial or advertising purposes without prior approval of the County. However, it is understood that Contractor is permitted to use the County as a reference for future Request for Proposals or Invitation for Bids that are submitted in the normal course of acceptable waste disposal services.

Any reports, information, data, specifications, estimates, and summaries given to or prepared or assembled by Contractor under this Agreement shall not be made available to any individual or organization without prior approval of the County; provided, a disclosure required by applicable law, or a judgment of a Court of competent jurisdiction, shall be permitted.

XIV. RIGHT OF ENTRY

The County shall have the right to enter upon and inspect the transfer station and disposal site(s) at reasonable times throughout the duration of this Agreement.

XV. AUTHORIZED REPRESENTATIVE

The County shall designate to Contractor its representative who shall serve as the principal contact with the Contractor throughout the duration of the work.

XVI. EMPLOYMENT DISCRIMINATION

During the performance of this contract, Contractor agrees as follows:

- a. Contractor shall not discriminate against any employee or applicant for employment because of age, physical disability, race, religion, color, sex, or national origin except where age, physical disability, religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Solid Waste Disposal Transfer Services. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, shall state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

Contractor shall include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase of over \$10,000, so that the provisions shall be binding upon each subcontractor or vendor.

XVII. CONFLICT OF INTEREST

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor any fee, commission, percentage, brokerage fee, gifts or other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul or void this Agreement without liability, or, in its discretion to deduct from the Agreement prior consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XVIII. INSURANCE

Insurance in the following amounts will be required:

<u>Type of Insurance</u>	<u>Each Person</u>	<u>Each Occurrence</u>	<u>Aggregate</u>
Workers Compensation			
Public Liability	\$ 500,000	\$1,000,000	
Property Damage			\$ 250,000
Contractor's Protective Public Liability	\$1,000,000	\$2,000,000	
Contractor's Protective Property Damage			\$ 250,000
Contractual Liability	\$ 500,000	\$1,000,000	
Contractual Property Damage			\$ 250,000
Completed Operations and Products Liability	\$ 500,000	\$1,000,000	\$2,000,000
Vehicle Liability	\$ 500,000	\$1,000,000	\$1,000,000
Property Damage		\$ 200,000	

1. Within ten (10) days after execution of this Agreement, Contractor shall submit proof of all insurance, required to be furnished under this Agreement, in a form satisfactory to the County Attorney. All required insurance shall be signed by an authorized representative of a company licensed to do business in the Commonwealth of Virginia.
2. Contractor shall be required to obtain insurance in a form approved by the County Attorney, for Workers' Compensation and Liability for those activities associated with the transfer station, transfer hauling, the hauling of grit and screenings and the disposal method. These insurance policies shall be sufficient to protect Contractor, its agents and/or its employees from claims for damages for personal injury, including wrongful and accidental death and property damage, which may arise from operations under

the Agreement, whether such operations be performed by Contractor or its agents or employees. The policy or policies shall name the County as an additional insured to the extent of the liability assumed by Contractor under this Agreement specifically excluding the negligence or willful misconduct of the County, and shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the County thirty (30) days prior written notice.

3. Contractor shall provide minimum limits of insurance coverage pursuant to its performance of the obligations under this Agreement.

XIX. INDEMNITY

1. Contractor

The said Contractor hereby binds himself and his successors to indemnify, defend, and save harmless James City County and James City Service Authority, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from negligence or carelessness in the performance of the work, or in guarding the same, or by, or on account of any act or omission of the Contractor or his agents; and that the whole or so much of the monies due to the Contractor, under and by virtue of this Contract, as such or may be considered necessary by the County and Authority, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the County and Authority. The said Contractor further agrees to indemnify and save harmless the County and Authority against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any employee in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto;

provided, Contractor shall not be liable under this indemnity clause for any loss occasioned by the willful misconduct or negligence of the County, the JCSA or its agents and employees. The Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

2. County

County shall indemnify and hold harmless Contractor and its respective officers, directors, representatives and employees, from and against all liabilities, losses, penalties, charges, claims, damages and expenses whatsoever (including, but not limited to, reasonable attorneys' fees and expenses of investigation and litigation), which Contractor and its respective officers, directors, representatives and employees suffer or sustain or become liable for, by reason of the negligence, gross negligence or willful misconduct of County, its agents, representatives and employees in connection with County's obligations under this Agreement, which cause or otherwise result in damages or injuries (either to persons or property, real or personal, or both), including, without limitation, injuries resulting from death; provided, the County shall not be liable under this indemnity clause for any loss occasioned by the negligence or wilful misconduct of the Contractor, its respective officers, directors, representatives and employees; and provided, that this indemnity clause shall be effective only to the extent any valid and collectible insurance carried by the County at the time of the claim; and provided the County does not waive its right of governmental immunity.

3. Survival

The obligations set forth in this Section shall survive the performance and termination of this Agreement for a period of three years.

XX. TERMINATION

1. Either the County or Contractor shall have the

right to terminate this contract, without cause, provided the terminating party shall give written notice to the other party twelve (12) months in advance of the termination date.

2. The County may terminate the Agreement upon written notice to Contractor and its surety for:
 - a. Failure to provide services in accordance with the Contract terms and conditions, and the violation is not corrected within thirty (30) calendar days or such longer period as may be reasonably necessary in the opinion of the County; or
 - b. Contractor abandons all or part of the work to be performed under this Agreement; or
 - c. Contractor is adjudged bankrupt; or
 - d. Contractor makes an assignment for the benefit of its creditors; or
 - e. Contractor's landfill operating permit issued by the State is revoked.

XXI. PERFORMANCE AND PAYMENT BOND

Within ten (10) days of execution of this Agreement, Contractor shall submit to the County a Performance and Payment Bond or equivalent surety, in a form satisfactory to the County Attorney, for the faithful performance of the Agreement and the payment of all persons performing labor or furnishing materials and/or services in connection with the Agreement. The bond shall be executed by a surety company licensed to do business in the Commonwealth of Virginia. The bond shall indemnify the County against any loss or damage resulting from any failure up to the penal sum of the bond by Contractor to perform as required by the terms of this Agreement.

Contractor shall provide the bond for the first year of the Agreement in the amount of seven hundred and fifty thousand dollars (\$750,000). Contractor agrees to provide the above referenced Performance and Payment bond on the terms and conditions provided herein for every subsequent year that the contract is in effect. The yearly bond amount shall be adjusted on the basis of the previous year's tonnage processed by Contractor pursuant

to this Agreement plus revised annual cost of operation of transfer station.

XXII. TAXES

The County shall not be liable for the payment of any taxes levied by the local, state or federal government against Contractor. All such taxes shall be paid by Contractor.

XXIII. SEVERABILITY

It is agreed that the illegality or invalidity of any term or clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid terms or clauses were not contained herein.

XXIV. AUDIT

The County reserves the right to audit, with twenty-four (24) hours notice, all of Contractor's records associated with the contract, and subsequent contract supplements. County shall act in such a manner as to limit to the extent possible disruption of Contractor's day-to-day operations.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year above written.

CONTRACTOR

BY: 

DATE: 10/2/93

ATTEST: _____

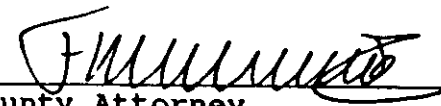
COUNTY OF JAMES CITY

BY: 

DATE: 10/9/93

ATTEST: 

APPROVED AS TO FORM


County Attorney

10-9-93
Date

ATTACHMENT ADEFINITIONS

1. Acceptable Waste shall mean waste hauled to the transfer station by the County, a private hauler or a County resident and shall include household waste, non-household waste which does not require special handling or procedures, halved or quartered tires, refuse, garbage, business waste, yard waste, solid non-hazardous industrial waste which does not require special handling or procedures, and small dead animals.
2. Private Haulers are those individuals or entities authorized and permitted by the County to haul and dispose of acceptable waste collected within the County.
3. Transfer Station is the County facility to which County acceptable waste shall be delivered and from which Contractor shall remove the acceptable waste to another permanent disposal site.
4. Force Majeure includes acts of God, epidemics, acts of the County, landslides, earthquakes, fire, lightning, explosion, storm, flood or similar occurrence, act of public enemy, war, blockade, insurrection, change in law, riots, general arrest or restraining of government and people, civil disturbance or any similar occurrence beyond the control of Contractor.
5. Grit and screenings are the dirt and large solid objects that separate from municipal sewage at the first processing point (course screen or bar rack) at the waste water treatment plant, or at waste water pump stations, are at least 85% solids and contain no free liquid.
6. Ton shall mean 2,000 pounds.
7. Change in Law shall mean (a) the adoption, promulgation or modification after the date of this Agreement of (i) any federal statute, law, regulation, ruling or executive order not enacted, adopted or officially recorded on or before the date of this Agreement; or (ii) any Virginia or other applicable state, local or municipal statute, regulation, ordinance or ruling not enacted, adopted or officially recorded before the date of this Agreement; (b) the imposition by a Government or Governmental Agency after the date of this Agreement of any material conditions in connection with the issuance, renewal or modification of any Permit, which impose requirements affecting the obligations of Contractor requirements in effect as of the date of this Agreement or (c) the imposition after the date of this Agreement of new or increased taxes, or fees, or similar taxes or duties on the work of

ATTACHMENT BSchedule of Compensation and Method of Payment

1. As compensation to Sanifill of Virginia, Inc. for transportation and disposal of acceptable waste, grit and screenings, the County agrees to pay \$24.34 per ton. This is Contractor's proposed rate for 25,000 or more tons during the first contract year, as set forth in the Table below. In the event less acceptable waste is delivered to the transfer station during the first contract year, Contractor will bill, and the County will pay, the difference on the last billing (for September 1994) of the year. [For example, if only 20,100 tons is delivered in the first contract year, the County will be billed an additional \$1.46/ton $(\$25.80 - \$24.34) \times 20,100$ tons or \$29,346, on the September 1994 bill, \$25.80/ton being the rate for 20,000-22,000 tons annually.]

2. As compensation for Transfer Station operation, the County agrees to pay Contractor \$11,119 per month. This amount remains fixed throughout the first contract year, regardless of acceptable waste volume. Contractor will not begin operation of the transfer station, nor bill the County for such operation, until the permanent facility has been released for occupancy and written authorization is received from James City County. For the second, and subsequent, contract years, the price for transfer station operation will increase at a fixed rate of 4% per year.

3. The following schedule of charges applies to transportation and disposal of acceptable waste, grit and screenings for the first and second contract years. The 4% fixed rate increase is reflected in the second year charges:

<u>Annual Tonnage</u>	<u>Per Ton Fee</u>	
	<u>Year 1</u>	<u>Year 2</u>
0 - 16,699	\$27.50	\$35.36
16,700 - 19,999	\$27.24	\$35.09
20,000 - 21,999	\$25.80	\$33.59
22,000 - 22,499	\$25.13	\$32.90
22,500 - 24,999	\$24.99	\$32.75
25,000 and greater	\$24.34	\$32.07

4. For the third, and subsequent, contract years, the prices for transportation and disposal at each tonnage level will increase at a fixed rate of 4% per year.

5. Prior to entering into this contract for transportation, disposal, and transfer station operation, Contractor accepts 20 tons/day (5 1/2 days per week) from James City County waste generators, under existing contracts. This totals 5,736 tons per year, or 478 tons per month. Contractor agrees to rebate to the County an amount equal to \$7.00 per ton for each ton of County refuse (defined as commercial haulers only, not material hauled by the County, private businesses or residents), over and above the 478 tons per month, which is hauled directly to Sanifill of Virginia, Inc.'s Bethel landfill after the commencement of the services covered in this Agreement. This rebate will be applied to the County's bill on a monthly basis. For truckloads of direct hauled acceptable waste which are solely from County generators, the Contractor will rebate \$7.00 per ton. For truckloads of direct hauled acceptable waste which are partially from County generators, the Contractor will rebate \$3.50 per ton. Sanifill, in the exercise of its reasonable business judgment, shall determine whether a particular load is full or partial.

6. Billings under this Agreement are due and payable by the County within thirty (30) days of receipt.