

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**



**WHATCOM COUNTY PUBLIC WORKS
SOLID WASTE DIVISION**

322 N. Commercial St. Suite 220
Bellingham, WA 98225
Phone: (360) 676-7695
Fax: (360) 738-4561

JEFFREY M. MONSEN, P.E.
Director

June 13, 2006

Terri Wallace
WA Utilities and Transportation Commission

RE: VanderVeen Family Transport

Dear Terri,

VanderVeen Family Transport holds the contract with the Whatcom County Solid Waste Division for hauling leachate from the Cedarville Landfill here in Whatcom County. This contract expires on December 31st, 2006. Russ VanderVeen, owner, has informed this office that he has incorporated his business and is now known as VanderVeen Family Transport, Inc.

If there are any questions, please call this office at 360-676-7695.

Thank You,

Penni Lempres
Solid Waste Specialist
Whatcom County Public Works

VanderVeen Family Transport

(signature and title)

Date: June 14 2006

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year at a time, and for a total of no longer than three years.

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience: Not Applicable

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with state and federal requirements, as applicable, pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service on a Schedule C, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

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Cedarville Leachate Hauling Contract

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Docket: TG-041186

Effective Date: 02-01-05

- 30.3 No Guarantee of Employment:
The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.
- 31.2 Patent/Copyright Infringement: Not Applicable
- 32.1 Confidentiality:
The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.
- 33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.
- 34.1 Proof of Insurance and Proof of Contract Bond: The Contractor shall obtain and maintain during the life of the Contract, the following, or equivalent, public liability and property damage insurance:

"A broad form Contractor's Public Liability Insurance policy, naming the County as an additional insured, providing a single limit combined comprehensive liability policy with a total limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injury or death of one or more persons in one accident and for all damages arising out of injury to or destruction of property in any one accident."

The Contractor shall direct its insurance company to provide the County with a current certificate of insurance to this effect. Upon request of the County, the Contractor shall furnish a copy of the insurance policy or policies for review. Contractor shall also obtain a contract performance bond in the amount of \$4,000.00, and shall provide written proof of the same to the County. The performance bond shall remain in effect for the full term of the contract.
- 34.2 Industrial Insurance Waiver: Not Applicable
- 34.3 Defense & Indemnity Agreement:
The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.
- 35.1 Non-Discrimination in Employment:
The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, age, marital status, disability, or veteran status. The

Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services: Not Applicable

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Penni Lempere, Solid Waste Specialist. 322 N. Commercial St., Suite 220; Bellingham, WA 98225.

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

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41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)

The Contractor shall be responsible for loading leachate collected at Cedarville Landfill, transporting it to the pretreatment facility at the City of Ferndale Wastewater Treatment Plant, and discharging it into the receiving station at the pretreatment facility.

A. LOADING LEACHATE

1. The Cedarville Landfill leachate collection system includes a 10,000 gallon reservoir with a 6-inch transmission pipe extending to the truck loading pad. The loading pad is shown in the Appendix. The Contractor can gravity load or pump the leachate from the 6-inch pipe by way of a 6-inch flange coupling. Contractor shall furnish necessary fitting and connections for connecting to coupling.
2. The Contractor will monitor the leachate level in the reservoir and be responsible for loading the leachate when the reservoir is full.
3. The Contractor shall be required to record beginning and ending volumes from the electromagnetic flowmeter located at the Cedarville landfill.
4. The Contractor shall be responsible for maintaining an adequate leachate removal schedule to avoid pressure build up in the system.
5. The Contractor shall be responsible for cleaning up only spills at either the loading station or pretreatment facility as well as on the haul roads between the two locations.
6. The Contractor will normally load leachate from the collection system after 7:00 a.m. and before 3:00 p.m. of any weekday, Monday through Friday (except legal holidays) to correspond with the leachate treatment agreement between Whatcom County and the City of Ferndale.

B. TRANSPORT OF LEACHATE

1. Vehicles delivering leachate to the leachate pre-treatment facility shall not normally use any City of Ferndale streets in traveling to or from said facilities. Exceptions may be granted by the City if the County roads are impassable due to flooding or other obstructions.
2. Normally, vehicles delivering leachate shall not enter the City of Ferndale Wastewater Treatment Plant on Saturdays, Sundays, and legal holidays, with the exception of holidays for emergency reasons, upon mutual agreement between the City of Ferndale Public Works Director and Whatcom County Solid Waste.
3. Normally, no more than ten (10) vehicles per day shall be allowed to deliver leachate to the pretreatment facility at the City of Ferndale Wastewater Treatment Plant, but exceptions may be granted by the City for more deliveries per day during periods of heavy rain or other emergencies at Cedarville Landfill.
4. The Contractor shall furnish operators and adequate equipment to transport leachate from the Cedarville Landfill to the pretreatment facility. The equipment shall be in good working order and able to negotiate the turning movements at the landfill and the pretreatment

facility. It is expected that the Contractor will utilize truck tankers, possible with trailers, to haul the greatest legal load.

C. DISCHARGING LEACHATE INTO PRETREATMENT FACILITY

1. The leachate discharge rate shall be monitored so it does not exceed 1,000 gallons per minute (gpm) so as not to overburden the flow meter and flow recorder. The amount of leachate hauled will be based on information provided by the flow recorder.
2. The Contractor shall conform to all rules and regulations as established by the City of Ferndale regarding access to the pretreatment facility through the Wastewater Treatment Plant, hours of disposal, sampling, and other activities of this operation.
3. The pretreatment facility shall not normally receive more than an average daily flow of 20,000 gallons of leachate during any single calendar month nor more than an average daily flow of 12,050 gallons of leachate during any twelve-month period.
4. The Contractor delivering leachate to the pretreatment facility shall spray the facility with clean water after each delivery to assure maximum cleanliness and containment of leachate within the facility.

CONSIDERATION

As consideration for the services provided by the Contractor, the County agrees to compensate the Contractor at a rate of \$0.0189 cents per gallon of leachate hauled and discharged. This figure includes all costs incidental to and necessary to undertaking the performance of the service, including all taxes. The leachate volume will be based on the recording from the electromagnetic flowmeter located inside the building at the Cedarville Landfill. VanderVeen Family Transport truck drivers will be required to record the beginning volume before filling the truck and once again after the truck is filled. This information, along with the date, time, truck and trailer number, driver's signature and any other pertinent information will be recorded on each and every load of leachate removed from the Cedarville Landfill. The drivers will be required to complete a log posted inside the Cedarville leachate building listing the date, time, driver's name and the beginning and ending meter volumes. The VanderVeen Family Transport driver will deposit the truck tickets at a prearranged place at the Ferndale leachate collection facility. The truck tickets will be verified and tabulated, with monthly invoices prepared by the City of Ferndale and submitted to Whatcom County for payment. Whatcom County will record the volume of the electromagnetic flowmeter monthly and verify with the tabulated trip tickets.

In the event the annual leachate volume falls below 1,000,000 gallons, the Contractor shall be compensated at the rate of \$0.0191 cents per gallon. The necessary adjustment, if any, shall be made in the billing and payment during the month of January for services rendered in the month of December of the previous year. The adjustment, though contained in the billing and payment for December, shall cover the entire volume for the previous year.

BILLING PROCEDURES

The Contractor shall submit to the Whatcom County Solid Waste Division written claims for reimbursement for services provided on a monthly basis. All payments shall be based upon services provided unless otherwise approved in writing by the County. Each request for payment shall be submitted and supported by documentation of the service actually performed. The County agrees to make payment for services provided promptly in accordance with the County's customary procedures.