

Comments and recommended changes. Also, below is the alternative language referenced in the attached. Let me know if you need anything further.

1. **INDEMNIFICATION.** Customer shall defend, hold harmless and indemnify Operator, its officers, directors, members, affiliates, employees, and representatives (the "Indemnified Parties") from and against any and all loss, damage, suit, liability, penalties, fines and other expenses (including, but not limited to, reasonable investigation, consulting, expert and legal expenses) related to (i) bodily injury, including death; (ii) property damage; (iii) environmental harm of any sort; (iv) violations or alleged violations of environmental, safety, or other applicable laws; (v) environmental remediation or clean-up of any kind; (vi) business loss; (vii) operational changes; or (viii) other similar events arising out of (a) Customer's violation or alleged violation of any law, rule, regulation or order; (b) Customer's breach of this Agreement or of any certification, warranty, representation, or statement contained in any documents associated with the delivery of Customer's waste to the Disposal Site, including those contained in Waste Profiles, manifests or other shipping documents; or (c) the negligent or willful acts or omissions of Customer, its employees or agents. Customer shall further defend, hold harmless and indemnify the Indemnified Parties, from and against any personal injury, death, or property damage suffered by an employee, agent, invitee or visitor of Customer while at the Disposal Site, except to the extent caused by Operator's negligence. The indemnification obligations under this Agreement shall apply whether such claim is made by a third party or Operator or both.
2. **INSURANCE.** Customer and any agent delivering Acceptable Waste on behalf of Customer shall procure and maintain during the Term of this Agreement, the following minimum insurance coverage: (i) Comprehensive general liability, including broad form liability of \$1,000,000 per occurrence and \$2,000,000 general aggregate; (ii) Vehicle liability, including coverage for owned, now-owned and hired vehicles, with a combined single limit of no less than \$1,000,000 and containing broad form pollution endorsement; (iii) Workers Compensation in the amount of state and federal statutory requirements; (iv) Employers liability of \$1,000,000; and (v) Pollution liability of \$2,000,000 including non-owned disposal site (NODS) coverage. Operator shall be named as an additional insured for completed and ongoing operations on General Liability, Vehicle and Pollution Liability policies. All policies shall (a) be written with a carrier whose A.M. Best rating is not less than AX; (b) not be cancelled or materially altered without 30 days written notice to Operator; (c) be primary and non-contributory in favor of Operator; and (d) waive any and all rights of recovery or subrogation as to Operator and its affiliates. Prior to the Effective Date, Customer shall provide Operator with certificates of insurance evidencing the same. Nothing herein shall waive, restrict or limit the liability of Customer whether or not the same are covered by insurance.
3. Please also propose adding the following provisions:
 - a. **APPROVED WASTE.** Customer represents and warrants that all materials tendered by or on behalf of Customer are nonhazardous solid waste or Special Waste (together "Approved Waste"). Special Waste is non-hazardous waste material consistent with an Operator approved Waste Profile (defined below), which may include treated or de-characterized wastes; petroleum or petroleum products; industrial process wastes; asbestos containing material; chemical containing equipment; demolition debris; incinerator ash; medical waste; off-spec chemicals; sludge; spill cleanup waste; or underground storage tank soil. Approved Waste does not include, and Customer shall not tender: (i) any hazardous, biohazardous, infectious, radioactive (including naturally occurring radioactive materials (NORM) or technologically enhanced naturally occurring radioactive material (TENORM) if not acceptable for disposal at the Disposal Site), flammable, explosive, biomedical, or toxic waste as defined by applicable laws or regulations, including, without limitation, any hazardous waste regulated under the Resource Conservation & Recovery Act, 42 U.S.C. §§6901 *et seq.*, and associated regulations, 40 C.F.R. Part 261; and the Toxic Substance Control Act, 15 U.S.C. §§2601 *et seq.*, and associated regulations, 40 C.F.R. Part 761; (ii) other materials that are inappropriate for disposal at the Disposal Site; or (iii) material that requires special handling, storage, management, transfer or disposal or because of its size, durability or composition cannot be disposed of at the Disposal Site or may adversely affect the Disposal Site (collectively "Excluded Waste"). Customer is responsible for any labeling, placarding, marking, manifest or other documentation required by applicable laws. Customer shall provide a representative sample and detailed written physical and chemical description of any Special Waste, including unique characteristics and safety precautions associated therewith ("Waste Profile"). Customer shall update the Waste Profile to reflect any changes and warrants that all Special Waste shall conform to the Waste Profile and no Excluded Waste shall be delivered by or on behalf of Customer. Customer represents and warrants that it has inspected all waste to ensure it constitutes Approved Waste.

Operator may, but is not required to, inspect any load, provided the failure of Operator to inspect shall in no way relieve Customer of its obligations to deliver only Approved Waste. Operator may refuse any load it suspects contains Excluded Waste and may at any time require Customer to remove Excluded Waste and any materials contaminated therewith at Customer's sole expense. If such materials are not removed immediately Operator may arrange for lawful disposal at Customer's sole expense. Customer shall be responsible for all costs of any type in connection with its (a) failure to properly characterize waste; (b) tender of Excluded Waste, including, but not limited to costs of loading, preparing, transporting, storing, caring for, removing, decontaminating, remediating, testing, disposing or returning Excluded Waste and other material contaminated therewith; or (c) breach of this Agreement.

- b. **TITLE.** Title to Approved Waste, including any value received in connection therewith, shall transfer to Operator at the time it is fully unloaded at the Disposal Site and Customer or its agent's vehicle has departed. Until title has transferred to Operator all risks and responsibilities shall remain with Customer. **At all times, title to and liability for Excluded Waste shall remain with Customer, including occasions in which waste is tendered as Approved Waste but is later found to be Excluded Waste.**
- c. **COMPLIANCE WITH LAW & OPERATING RULES.** In its performance of this Agreement, Customer shall comply with all applicable laws and Operator rules and procedures. Customer shall adhere to all safety precautions to prevent accident or injury. Operator may provide assistance with any immobile vehicle or unloading of waste, without liability to Customer for damage or injury, except to the extent caused by Operator's gross negligence. Operator may charge a fee for such service. Customer's drivers shall sign load tickets for all loads delivered. The volume or weight of Approved Waste as determined at the Disposal Site shall be conclusive.

4. Consider including the following:

- a. **CHARGES & PAYMENT.** Initial rates charged to Customer are set forth on Exhibit A. Customer agrees to pay all invoice charges within 10 days of the invoice date. If payment is not made when due Operator may charge a late fee in any amount up to the maximum allowed by law. Operator may suspend service if payment is late or for any other breach by Customer without prejudice to Operator's other rights and such suspension shall not constitute termination of this Agreement unless Operator elects. Customer shall pay fees related to suspension, reinstatement, non-sufficient funds, environmental, fuel, energy, administrative and other fees included on Customer's invoice whether implemented on or after the Effective Date. Operator may, in its sole discretion, increase rates and fees for any: (i) change in law, regulation, permit or approval, including any fees, taxes, franchise fees, tolls, host charges or similar charges related to Operator's business or whether affecting the construction, operation or maintenance of the Disposal Site; (ii) increase in disposal or transportation costs; (iii) increase in Consumer Price Index or successor index; (iv) change in composition or handling of Approved Waste; or (v) change in Operator's fee or rate programs. Operator may increase or impose additional rates and fees for reasons other than those set forth above upon prior written notice (which may be given in an invoice) and consent by Customer which may be evidenced verbally, in writing, or by the actions and practices of the parties including payment. Customer shall have conclusively agreed to any Change in Terms or any invoiced amounts upon the earlier of: (i) payment of the invoice; or (ii) failure to deliver a written objection within 30 days after the notice date. Customer acknowledges and agrees that any rate or fee assessed or increased is not represented to be an offset or pass through of Operator's costs and may actually reflect an amount for gross profit or margin. Operator may assess a surcharge for non-hazardous contaminated soil that cannot be used for alternative daily cover. Operator may require Customer to pay a deposit or post payment security in an amount and type satisfactory to Operator to guarantee Customer's performance.
- b. **DISPUTES, JURY TRIAL & CLASS ACTION WAIVER.** THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM OR CROSS-CLAIM BROUGHT BY SUCH PARTY AGAINST THE OTHER AND WAIVE THE RIGHT TO PARTICIPATE OR BE REPRESENTED IN ANY CLASS ACTION, ANY ACTION ON A CONSOLIDATED BASIS OR ANY OTHER COLLECTIVE OR REPRESENTATIVE PROCEEDING. Any action by Customer against Operator whether related to this Agreement or any prior Agreement, must be brought within one year of the date of any alleged wrongful act. Proceedings shall be conducted in and governed by the laws of the state in which the Disposal Site is located. Customer shall notify Operator in writing of any alleged breach by Operator and allow Operator at least ten days

to cure the same. Operator shall not be liable for any indirect, incidental or consequential damages and its aggregate liability, if any, arising out of this Agreement shall not exceed the aggregate fees paid to Operator by Customer, regardless of the recovery sought. This paragraph and Customer's representations, warranties and indemnification shall survive termination.