

PYRITIC SLATE AGREEMENT

Between

- and -

**HALIFAX PORT
AUTHORITY**

Version 7.5

June 2015

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THIS AGREEMENT made this _____ day of _____ 201__.

BETWEEN:

HALIFAX PORT AUTHORITY, a body corporate established pursuant to the *Canada Marine Act*, formerly known as Halifax Port Corporation, having its head office at 1215 Marginal Road, Ocean Terminals, P. O. Box 336, Halifax, Nova Scotia, B3J 2P6 ("Authority")

- and -

_____;

("Generator")

WHEREAS:

- A. The Generator wishes to dispose of pyritic slate (Pyritic Slate) in a manner that is consistent with the applicable environmental laws of Nova Scotia and Canada;
- B. The Authority is able to dispose of Pyritic Slate at sites located in Fairview Cove as indicated in Schedule "A" ("**Authority Lands**");

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 DEFINITIONS

"**Agreement**" means this agreement including all schedules;

"**Authority Lands**" has the meaning assigned to it in the recitals;

"**Business Day**" means any day other than a Saturday, Sunday, or holiday on which Canadian chartered banks are open for business in Halifax, Nova Scotia;

"**Generator's Contact**" means:

Attention:

Phone: () -

Facsimile: () -

"**Effective Date**" means the signing date of this agreement.

"**Force Majeure**" means any act, event, cause or occurrence beyond the reasonable control of the Party claiming excuse, which partially or entirely prevents that Party's performance of its obligations and includes, without limitation, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs or maintenance (including regularly scheduled repairs and maintenance) to machinery or equipment, weather related events such as hurricanes or freezing; (ii) acts of others such as strikes, lockouts, labour disruption, riots, sabotage, terrorism, insurrection or war, or the threat of any of the foregoing; (iii) governmental actions, such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction; and (iv) any other causes, whether of the kind herein enumerated or otherwise that are not reasonably within the control of the affected Party to prevent or overcome.

"**Originating Location of Pyritic Slate**" means _____.

"**Fairview Cove Sequestration Facility**" (the Facility) means the Authority's Lands authorized, equipped and purposed for disposal of Pyritic Slate at 6245 Africville Road, Halifax, Nova Scotia.

"**Party**" means any one of the Generator or the Authority as the case requires and

"**Parties**" means both of them;

"**Pyritic Slate Cost**" means \$15.00 + HST per metric tonne of Pyritic Slate accepted by the Authority for disposal.

"**Site Manager**" means a person authorized to represent the Authority at the Fairview Cove Sequestration Facility.

"**Term**" means the period of time the contract is in effect and to a maximum of 180 days from the Effective Date.

"**Contract Quantity**" means _____ metric tonnes of Pyritic Slate and is the maximum tonnage of slate to the nearest haul day that will be accepted for delivery to the Facility.

"**Working Day**" means 7:00 a.m. to 6:00 p.m. Monday to Friday, excluding statutory holidays.

"**Haul Unit**" means the trucks, trailers or other such acceptable conveyance employed by the Generator for the purpose of transporting the Pyritic Slate to the facility.

"**Scale Person**" means the person authorized by the Authority to operate, manage and maintain the Authority's weigh scales.

1.02 NUMBER, GENDER

In this Agreement, when the context so requires, the singular includes the plural, and *vice versa* and the masculine gender includes the feminine and neuter genders and the neuter gender includes the masculine and feminine genders.

1.03 INTERPRETATION NOT AFFECTED BY HEADINGS

The division of this Agreement into Articles, Sections, Clauses and other subdivisions, and the insertion of headings, are for convenience of reference only and shall not affect the construction of this Agreement.

1.04 CURRENCY

All references to amounts of money contained herein are in Canadian currency, unless otherwise specified.

1.05 CONFLICTS

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or any document delivered pursuant to this Agreement, the provision of the body of this Agreement shall prevail.

1.06 SCHEDULES

The following schedule, attached hereto, form part of this Agreement:

- Schedule "A" – Authority Lands
- Schedule "B" – Acceptance Application

ARTICLE 2 - PYRITIC SLATE DISPOSAL

2.01 RIGHT TO PLACE PYRITIC SLATE ON AUTHORITY LANDS

The Authority hereby grants The Generator the right to place the Quantity of Pyritic Slate on Authority Lands in an area as indicated by the Site Manager. The Site Manager shall direct which site to use subject to the conditions as set out in 2.02 and 2.03 herein and where on that site to place the Pyritic Slate.

2.02 SOURCE AND QUANTITY

The Pyritic Slate approved for placement under this agreement is to come from the Originating Location of Pyritic Slate.

The Generator shall provide information with respect to the source of the slate, including but not limited to the history of use of the property and surrounding properties, depths from which the slate has been removed, length of time of exposure, etc. This information will be reviewed by the Authority to determine whether other testing is appropriate, prior to acceptance of Pyritic Slate by the Authority. The information gathered shall be attached to this Agreement as Schedule "B".

2.03 TESTING REQUIREMENTS

The Generator shall engage an independent third party consultant to conduct representative sampling of the Contract Quantity of Pyritic Slate and submit samples to an accredited laboratory for analysis. Prior to delivering Pyritic Slate to the Facility the Generator shall submit to the Site Manager for review a signed report issued by an accredited environmental consultant, with supporting laboratory certificates of analysis, comparing analytical results to the table below.

Parameter	Maximum Concentration
Benzene, toluene, ethylbenzene, xylene (BTEX)	Non-detectable
Total petroleum hydrocarbons (TPH)	Non-detectable
Polyaromatic hydrocarbons	Non-detectable

A minimum of one sample per 750 metric tonnes shall be collected and submitted for laboratory analysis, tested and results included in the report for each 750 metric tonnes (or part thereof) of Contract Quantity.

For example, a Contract Quantity of 3500t will require the Generator to provide a signed report by an accredited environmental consultant showing non-detect results from five representative and distributive samples for the three specific parameters ($3500t / 750 = 4.67$ rounded up to 5 tests).

Testing for other parameters may be required based on current or historical use of the property or adjacent properties.

2.04 WEIGH SCALE

For each delivery, The Generator's vehicles shall report to the weigh scale upon arrival at Facility.

In the event of a weigh scale failure or for any reason, the Authority reserves the right to measure the quantity of Pyritic Slate by volumetric truckload capacity. The volumetric truckload capacity for each truck will be established prior to trucks commencing dumping.

2.05 ON-SITE INSPECTION AND PLACEMENT

The Site Manager shall have the responsibility to inspect the Pyritic Slate for quality and for included materials as it comes to the Authority Lands and shall have authority to reject any Haul Unit load for stated cause in their absolute discretion. The Site Manager will have authority and responsibility to direct the Generator's Haul Units while on Authority Lands to the appropriate working face within the Facility.

2.06 SCHEDULING

The Generator shall provide the Authority and Site Manager one day notice of delivery.

The Generator will review the proposed trucking operations with the Site Manager and advise the Site Manager of scheduled hauling times and dates at least 24 hours prior to commencement.

The Site Manager will suspend delivery of slate to the Facility should the Generator fail to adhere to the Testing Requirement or Payment criteria.

2.07 HAUL UNITS

Pyritic Slate material may be trucked along Africville Road to the Facility entrance at 6245 Africville Road. Haul Units will proceed to the Weigh Scale observing and obeying all signage.

The Haul Unit operators shall use the personal protective equipment required by NS Department or Labour for similar sites. The Haul Units operators shall take direction from the Site Manager or Scale Person. Haul Units used in the delivery of Pyritic Slate to the Authority Lands are, in every respect, the responsibility of the Generator. The Generator shall ensure that the Haul Units are mechanically sound, licensed and insured and shall ensure that the operators who operate them are legally entitled to operate them for the purposes of safety and efficiently transporting the Pyritic Slate to the Authority Lands. The Haul Units are subject to all applicable jurisdictions having authority over them. When on Authority Lands, the Haul Units shall operate at the direction of the Site Manager in a safe, efficient and professional manner. The Site Manager shall have authority to refuse to receive any Haul Unit for just cause in their absolute discretion and shall advise the Generator of any Haul Unit behaving in a way that is not conducive to the safe and efficient operation of the Facility.

2.08 CONSTRUCTION SAFETY MEASURES

The Generator will be responsible to ensure that his Haul Units, while at Facility observe and enforce construction safety measures required by any Federal, Provincial or Municipal Statutes or Regulations and without limiting the generality of the foregoing: National Building Code 2010, Part 8, Provincial Government, Workers' Compensation Board.

2.09 QUALITY OF MATERIAL

The Site Manager will have authority to inspect material on delivery. For the Pyritic Slate to be accepted, it is to be well-grade Pyritic Slate fill, generally free of clays, silts, debris or any other deleterious material or contaminant, including asphalt. The Site Manager, in his/her sole discretion, may reject any material delivered and the Generator shall be responsible for removing such material from Authority Lands to the satisfaction of the Site Manager at the Generator's cost.

2.10 CAPPING

The Authority shall be responsible for the supply and placement of capping material.

ARTICLE 3 - PAYMENT

3.01 FINANCIAL RESPONSIBILITY

The Generator agrees to supply Pyritic Slate from the specified site to the Authority Lands and to compensate the Authority at the rate of the Pyritic Slate.

The Authority accepts the responsibility for all costs related to the Authority's engineering and on-site inspection personnel and the costs to place and cap the slate.

3.02 PAYMENT

A) For Agreements up to and including 2000 metric tonnes of Pyritic Slate

On signing of this Agreement the Generator shall make to the Authority payment in full of the Contract Quantity. Final adjustment of payment will be made based on the final tonnage received. Any overpayment will be refunded by the Authority to the Generator within 30 days of notification from the Generator that the shipment has been completed. Any balance owed by the Generator shall be paid within 30 days of the Authority's final invoice.

B) For Agreements of 2000 to 8000 metric tonnes of Pyritic Slate

On signing of this Agreement the Generator shall make to the Authority payment

equivalent to fifty percent (50%) of the Contract Quantity. Within 5 days prior to shipping fifty percent (50%) of the Contract Quantity the Generator shall make to the Authority a second payment equivalent to fifty percent (50%) of the Contract Quantity. Final adjustment of payment will be made based on the final tonnage received. Any overpayment will be refunded by the Authority to the Generator within 30 days of notification from the Generator that the shipment has been completed. Any balance owed by the Generator shall be paid within 30 days of the Authority's final invoice.

C) For Agreements greater than 8000 metric tonnes of Pyritic Slate

On signing of this Agreement the Generator shall make to the Authority a payment of sixty thousand dollars (\$60,000). Within 5 days prior to shipping additional 4000 tonnes or the balance of the Contract Quantity the Generator shall make a sixty thousand dollar (\$60,000) payment(s) or a single payment for the balance of the Contract Quantity to the Authority. Final adjustment of payment will be made based on the final tonnage received. Any overpayment will be refunded by the Authority to the Generator within 30 days of notification from the Generator that the shipment has been completed. Any balance owed by the Generator shall be paid within 30 days of the Authority's final invoice.

Payment to be made by direct deposit using the information below:

CANADIAN DOLLARS & FOREIGN CURRENCIES (OTHER F.I.)

Pay Through: RBC Royal Bank, Toronto
Toronto, Ontario
ROYCCAT2

For Credit: RBC Royal Bank
1871 Hollis Street, Suite 100
Halifax, Nova Scotia B3J 0C3
Transit & account number 000031004290

US DOLLARS (FROM THE STATES OR FOREIGN COUNTRIES)

Intermediary Bank: JP Morgan Chase
New York, NY
#ABA 021 000021
Swift Code: CHASUS33

Destination Bank: ROYCCAT2
RBC Royal Bank
1871 Hollis Street, Suite 100
Halifax, Nova Scotia B3J 0C3

Beneficiary: Halifax Port Authority
Transit & account number 000031004290

Interest at 1.5% per month will be charged on payments not received within 30 days of issuing of the final invoice.

The Site Manager will prepare and distribute to the Generator's contact a Daily Report of Pyritic Slate delivered to the Facility. The Report will show details of load counts, time and weights

delivered by each Haul Unit from the Generator's site. A separate sheet will be distributed for each day and for each Originating Location of Pyritic Slate. Reports will be considered reconciled and agreed unless a credible challenge is registered with the Site Manager within 72 hours of the distribution of the Report being challenged.

ARTICLE 4 - ENVIRONMENTAL

4.01 ENVIRONMENTAL REGULATIONS

The Generator will strictly adhere to all applicable laws, codes and requirements including but not limited to:

- A) Environmental Construction Practice Specifications for the Province of Nova Scotia;
- B) Environment Canada;
- C) Nova Scotia Department of Environment;
- D) Halifax Regional Municipality Noise Control By-Law; and,
- E) Sulphide Bearing Material Disposal Regulations.

In accordance with the recommendation from Environment Canada, Pyritic Slate shall not be left exposed above the low waterline for more than 30 days after excavation at the source.

4.02 PERMIT

The Authority has completed an environmental assessment and has a Fisheries Act authorization from DFO to place Pyritic Slate as infill material at the Fairview Cove site. Any other approvals or permits required for the Pyritic Slate placement operation are the responsibility of the Generator.

4.03 WATER QUALITY MONITORING

The Authority will be responsible for obtaining and testing any water sampling as requested by the regulatory authorities. The costs for this testing are included in the rate charged for disposal.

ARTICLE 5 - LIABILITY

5.01 INSURANCE

The Generator shall carry general liability insurance coverage which includes the standard exception to the environmental excluding whereby such excluding shall not apply to emission, release, discharge, dispersal or escape that is caused by accident insofar as the Generator is concerned. Prior to acceptance of Pyritic Slate by the Authority, the Generator, by submittal, shall provide the Authority with proof of this insurance in the amount of two million dollars (\$2,000,000). The Generator shall accept liability for, or ensure the independent insurability of the actions of his Haul Units within the Facility.

5.02 INDEMNITY

The Generator shall indemnify and save harmless Her Majesty in right of Canada, the Authority, its successors and assigns, its officers, directors, employees and agents from and against any and all liabilities, damages, costs, counsel and/or legal fees, expenses, causes of action, actions, claims, suits and judgments which Her Majesty in right of Canada, the Authority, its successors and assigns, its officers, directors, employees or agents may incur or suffer or be put to by reason of or in connection with or arising from:

- (i) any breach, violation or non-performance by the Generator of any covenant, condition or term set forth in this Agreement or any misrepresentation made by the Generator to the Authority;
- (ii) any damage to property of the Authority, the Facility or any other person, invitee or any of them, or damage to any other property, occasioned by or in connection with the disposal of Pyritic Slate by the Generator or its employees;
- (iii) any injury to any person, including death, resulting at any time therefrom, occurring on or about the Facility or resulting from the disposal of Pyritic Slate by the Generator or its employees;;
- (iv) any act or omission of the Generator or its employees.

Notwithstanding any other provision of this Agreement, the waiver and indemnification provided for in this Article shall survive any termination of this Agreement (whether by effluxion of time or otherwise).

5.03 DISCLAIMER

Notwithstanding any other provision of this agreement, neither party shall be liable to the other party or any other person or entity for any special, indirect, incidental, consequential, or punitive damages of any character, including but not limited to loss of use, lost profits (past and future), additional out of pocket expenses incurred by the Generator or other parties, or other claims resulting from, arising out of, in connection with or in any way incident to any act or omission of such party related to the provisions of this agreement, irrespective of whether claims or actions for such damages are based upon tort, contract, warranty, negligence, strict liability or any other doctrine or remedy, at law or in equity, or otherwise howsoever arising. Each party has a duty to mitigate damages for which the other party is responsible.

ARTICLE 6 - TERMINATION/DISPUTE RESOLUTION

6.01 TERMINATION

Either Party may at any time, for its convenience and for any or no reason, terminate this Agreement in its entirety by giving the other Party seven days notice in writing of such termination. Upon termination the Generator shall pay the Authority, in accordance with this Agreement, all amounts owing to the effective date of the termination notice.

6.02 DISPUTE RESOLUTION

If any question, difference or dispute shall arise between the parties hereto in respect of any matter arising under this Agreement, the resolution of which is not otherwise provided for herein, the parties hereto agree to first negotiate and discuss the dispute with a view to agreeing on a resolution. If, after ten Business Days of negotiation, the parties are unable to reach an agreement regarding the dispute, the dispute shall be determined by a single arbitrator if the parties can agree on such arbitrator. Otherwise each party shall pick an arbitrator which arbitrators shall pick a third arbitrator for a total of three arbitrators.

The arbitration shall be conducted in accordance with the provisions of the *Commercial Arbitration Act* (Nova Scotia), and the decision of the arbitrator or a majority of the arbitrators, as the case may be, shall be conclusive and binding upon the parties. The decision of the majority of the arbitrators shall be made within thirty days after the selection of the later of them. The allocation of the costs of the arbitration between the parties shall form part of the decision of the arbitrators. If either party fails to appoint an arbitrator within the time limits, or fails to proceed with the arbitration, the arbitrator named may decide the issue. Any arbitration under this Agreement shall be conducted in the City of Halifax, Nova Scotia or at any other location as mutually agreed upon between Parties.

ARTICLE 7 - MISCELLANEOUS

7.01 NON-ASSIGNMENT

This Agreement shall not be assignable by the Generator without the written permission of the Authority.

7.02 WAIVER

No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.

7.03 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein. There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Agreement, save as expressly set out or incorporated by reference herein, and no amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the Parties.

7.04 SEPARATE COMMERCIAL IDENTITIES

This Agreement does not create and shall be interpreted as creating any partnership or joint venture among the parties, or any joint liability under the law of any jurisdiction.

7.05 NOTICES

Any notice, request or demand provided for or given under this Agreement shall be in writing and shall be served to the addresses specified below:

To Generator: Generator's Contact

To The Authority: 1215 Marginal Road
Ocean Terminals
P. O. Box 336
Halifax, Nova Scotia, B3J 2P6

Attention: Chief Executive Officer
Facsimile: (902) 426-9277

7.06 FURTHER ASSURANCE

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement, except to the extent that doing any such acts and things and executing and delivering any such further documents would impose any liability or obligation on a Party beyond the liabilities and obligations set forth in this Agreement.

7.07 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns, and shall ensure to the benefit of the parties hereto, their respective successors and permitted assigns.

7.08 TIME

Time shall be of the essence in this Agreement.

7.09 FORCE MAJEURE

If by reason of an event of Force Majeure, a Party is not reasonably able to fulfill an obligation in accordance with the terms of this Agreement, then such Party shall:

- a) forthwith Notify the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
- b) be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;
- c) employ all reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;

- d) as soon as reasonably possible after such Force Majeure, fulfil or resume fulfilling its obligations hereunder;
- e) provide the other Party with prompt Notice of the cessation or partial cessation of such Force Majeure; and,
- f) not be responsible or liable to the other Party for any loss or damage that the other Party may suffer or incur as a result of such Force Majeure.

7.10 APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein and the parties attorn to the exclusive jurisdiction of the Courts of Nova Scotia and if applicable, the Federal Court of Canada.

7.11 CONTRA PROFERENTEM

The rule of contractual interpretation known as "contra proferentem" shall not apply in the interpretation or construction of this Agreement. For greater certainty, in interpreting this Agreement, it shall be irrelevant which party drafted any particular provision thereof.

7.12 CONFIDENTIALITY

The Parties shall keep this Agreement and the terms hereof in strict confidence and shall not disclose such information to any third party other than to such Party's professional advisors and other than as required by law (and then only to the extent necessary).

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date set out above.

Witness

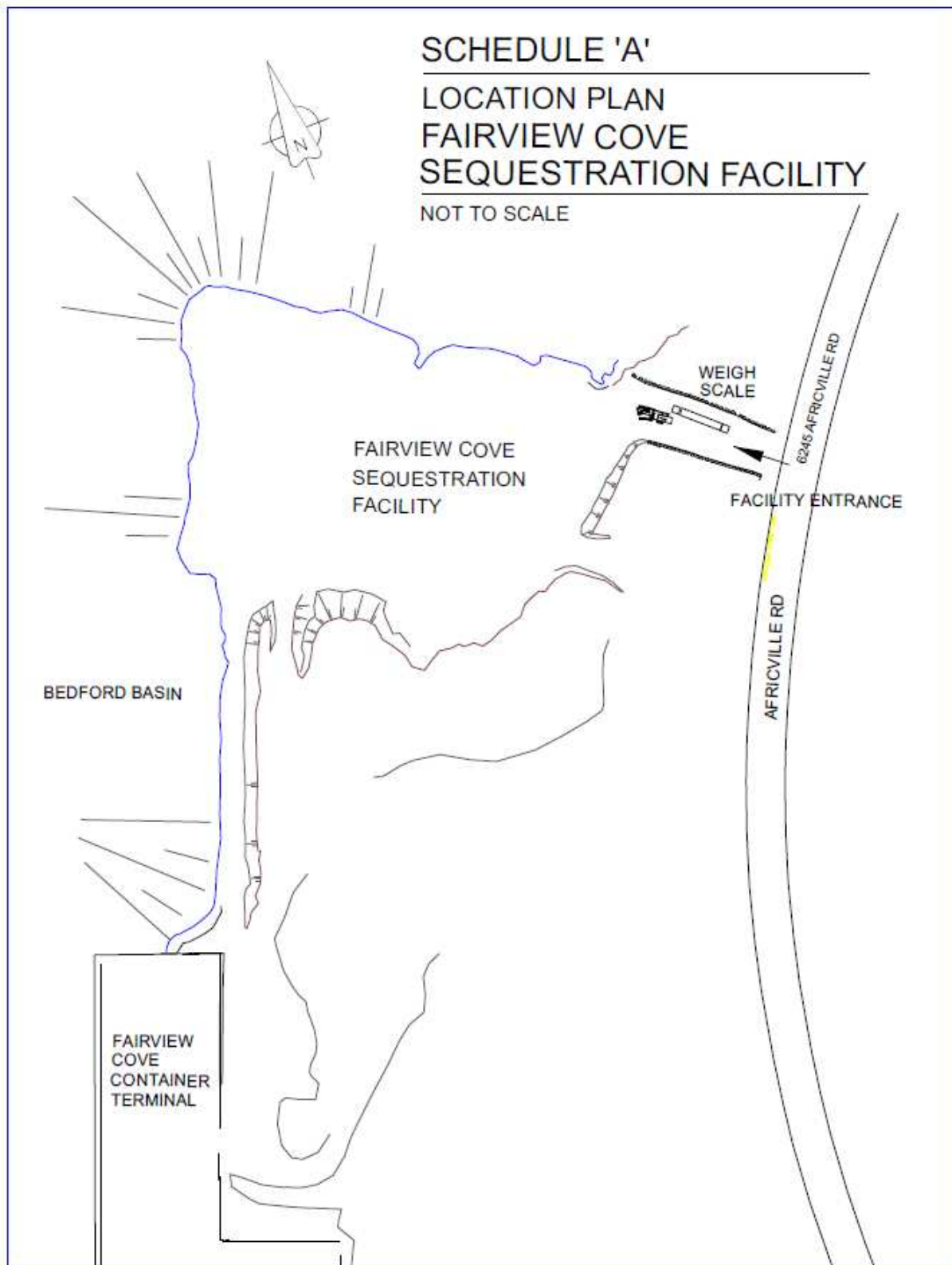
HALIFAX PORT AUTHORITY

Per: _____
Name:
Title:

GENERATOR

Per: _____
Name:
Title:

SCHEDULE "A"





**Fairview Cove Sequestration Facility
SCHEDULE B - Acceptance Application**

Section A	Generator Information
Generator Name: _____	Generating Location: _____
Address: _____	Site Address: _____
_____	_____
Contact Name: _____	Site Contact Name: _____
Contact Title: _____	Site Contact Title: _____
Contact Phone: _____	Site Contact Phone: _____
Email Address: _____	
Billing Address: _____	

Section B	Consultant Information
Consultant: _____	Phone: _____
Address: _____	Email Address: _____

Contact Name: _____	Contact Title: _____

Section C	Characterization of Material
Current Zoning: <u>Commercial/Industrial/Residential (circle one)</u>	_____
Prior Uses of Site: _____	
Current/Planned Use of Site: _____	
Estimated Quantity (metric tonnes): _____	
Will all material transported to Facility be excavated within fifteen calendar days prior to delivery?: _____	
Written confirmation material has been tested for Total Petroleum Hydrocarbons (BTEX/TPH) and Polyaromatic Hydrocarbons (PAHs); Title and Date of applicable environmental consultants reports (attach): _____	

Section D	Certification (Completed by Generator or Consultant)	
I hereby certify that the above and attached description is complete and accurate to the best of my knowledge. No deliberate or willfull omissions of composition or properties exist, and all known information has been disclosed.		
_____	_____	_____
Name & Title	Signature	Date

Section E	Approval (Completed by Halifax Port Authority)	
FCSF # : _____	Material: _____	
_____	_____	_____
Name	Signature	Date