

**DISPOSAL OF PYRITIC SLATE OR
INERT CONSTRUCTION MATERIAL
AGREEMENT**

Between

- and -

HALIFAX PORT AUTHORITY

Version 1.0

July 7, 2020

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THIS AGREEMENT made this ____ day of _____ 20_____.

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. Generator wishes to dispose of Pyritic Slate ("PS") and/or Inert Construction Material ("ICM") in a manner that is consistent with the applicable environmental laws of Nova Scotia and Canada;
- B. The Authority is able to dispose of PS and ICM at the **Fairview Cove Sequestration Facility** 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 statutory holiday.

"**Contract Quantity**" means _____ metric tonnes of PS or _____ metric tonnes of ICM, and is the maximum tonnage of PS or ICM that will be accepted for delivery to the Facility. The Authority reserves the absolute discretion to approve or deny any proposed adjustment of the Contract Quantity as set out here.

"**Facility**" or "**Fairview Cove Sequestration Facility**" means the Authority's Lands which is authorized, equipped and specifically purposed for disposal of PS or ICM at 5985 Africville Road, Halifax, Nova Scotia.

"**Fines**" means particles passing the No. 200 (0.075mm) US standard sieve.

“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.

“Generator’s Contact” means:

name: _____

email: _____

cell phone: _____

“Haul Unit” means the trucks, trailers or other such acceptable conveyance employed by Generator for the purpose of transporting the PS or ICM to the Facility.

“ICM” means Inert Construction Material

“ICM Tipping Fee” means \$10.00 + HST per metric tonne of ICM accepted by the Authority for disposal.

“Originating Location” means the property identified in Section A of Schedule “B” and is the only site from which the PS or ICM may be delivered to the Fairview Cove Sequestration Facility under this Agreement.

“Party” means any one of Generator or the Authority as the case requires; and,

“Parties” means both of them;

“PS” means Pyritic Slate

“PS Tipping Fee” means \$16.50 + HST per metric tonne of PS accepted by the Authority for disposal.

“Scale Person” means the person authorized by the Authority to operate, manage and maintain the Authority’s weigh scales.

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

“Working Day” means 7:00 a.m. to 5:00 p.m. Monday to Thursday, 7:00 a.m. to 4:00 p.m. Friday, excluding statutory holidays, or other such time or times as may be established by the Authority and communicated to Generator in writing.

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" – Location Plan – Fairview Cove Sequestration Facility
- Schedule "B" – Acceptance Application for PS or ICM

ARTICLE 2 – PS OR ICM DISPOSAL

2.01 Right to Place PS or ICM on Authority Lands

The Authority hereby grants Generator the right to place the Contract Quantity of PS or his legally acquired Contract Quantity of ICM on Authority Lands in an area as indicated by the Site Manager. The Site Manager shall direct the placement subject to the conditions as set out in 2.02 through 2.11 inclusive herein.

2.02 Source and Quantity PS

The PS approved for placement under this Agreement shall come only from the Originating Location of PS as identified in Section A of Schedule "B".

Prior to the Authority agreeing to accept PS from the Originating Location, Generator must complete Schedule "B" to this Agreement and submit it to the Authority. Schedule "B" contains information concerning the Originating Location of the PS, including but not limited to the history of use of the property and surrounding properties, the estimated quantity of PS, as well as the information required in Article 2.04 (Sampling Schedule). This information will be reviewed by the Authority to determine whether other testing is appropriate, prior to acceptance of PS by the Authority from the Originating Location.

Further, Generator, by proposing to deliver PS to the Facility from such Originating Location, makes representation and asserts as fact to the Authority that he / she is legally entitled to remove the subject PS from that source location by virtue and authority of other such agreements as are beyond the Authority's knowledge.

2.03 Source and Quantity ICM

The ICM approved for placement under this Agreement shall come only from the Originating Location of ICM as identified in Section A of Schedule “B”.

Prior to the Authority agreeing to accept ICM from the Originating Location, Generator must complete Schedule “B” to this Agreement and submit it to the Authority. Schedule “B” contains information concerning the Originating Location of the ICM, including but not limited to the history of use of the property and surrounding properties, the estimated quantity of ICM as well as the information required in Article 2.04 (Sampling Schedule). This information will be reviewed by the Authority to determine whether other testing is appropriate, prior to acceptance of ICM by the Authority from the Originating Location.

Further, Generator, by proposing to deliver ICM to the Facility from such Originating Location, makes representation and asserts as fact to the Authority that he / she is legally entitled to remove the subject ICM from that source location by virtue and authority of other such agreements as are beyond the Authority’s knowledge.

2.04 Sampling Schedule

Generator shall engage an independent environmental consultant to conduct representative sampling of the PS or ICM to determine concentrations per the following parameters:

Parameter	Units	Proposed Screening Criteria
Benzene	mg/kg	1.2
Toluene	mg/kg	1.4
Ethylbenzene	mg/kg	1.2
Xylenes	mg/kg	1.3
Modified TPH	mg/kg	15
1-Methylnaphthalene	mg/kg	0.201
2-Methylnaphthalene	mg/kg	0.201
Acenaphthene	mg/kg	0.0889
Acenaphthylene	mg/kg	0.128
Acridine	mg/kg	0.763
Anthracene	mg/kg	0.245
Benzo(a)anthracene	mg/kg	0.693
Benzo(a)pyrene	mg/kg	0.763
Benzo(b)fluoranthene	mg/kg	0.763
Benzo(b+j)fluoranthene	mg/kg	0.763
Benzo(e)pyrene	mg/kg	0.763
Benzo(g,h,i)perylene	mg/kg	3.2
Benzo(k)fluoranthene	mg/kg	0.763
Chrysene	mg/kg	0.846
Dibenzo(a,h)anthracene	mg/kg	0.135
Fluoranthracene	mg/kg	1.494
Fluorene	mg/kg	0.144
Indeno(1,2,3)pyrene	mg/kg	0.88
Naphthalene	mg/kg	0.391
Perylene	mg/kg	0.763

Phenanthrene	mg/kg	0.544
Pyrene	mg/kg	1.398
Quinoline	mg/kg	0.763
Benzo(b+j+k)fluoranthene	mg/kg	4.5
Cadmium	mg/kg	4.2
Chromium (total)	mg/kg	160
Copper	mg/kg	108
Lead	mg/kg	112
Mercury	mg/kg	0.7
Zinc	mg/kg	271

Pursuant to analysis, and prior to delivering PS or ICM to the Facility, Generator shall submit to FCSFcontracts@portofhalifax.ca copies of all historical environmental site assessment reports and a signed report issued by an accredited independent environmental consultant declaring that the subject material satisfies these thresholds. Generator shall provide to FCSFcontracts@portofhalifax.ca the environmental consultant's declaration based on a rate of 1 sample per 500 metric tonnes of PS or ICM. Further, Generator shall ensure that the independent environmental consultant submits sufficient declarations to cover current delivery quantities. Deliveries from any Originating Location of PS or ICM which is non-compliant with these conditions will be suspended.

Testing for other parameters may be required based on current or historical use of the property or adjacent properties. It is expected that all testing will be representative of materials to be transported to the Facility and consist of both Fines and larger particles. It is also required that the independent environmental consultant declares that material consists of less than 10% Fines as the operational requirements of the Facility to accept material that is free of excess Fines.

2.05 Weigh Scale

For each delivery, 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 PS or ICM by volumetric truckload capacity. The acceptable volumetric truckload capacity for each truck will be established by the Authority prior to trucks commencing dumping.

2.06 On-Site Inspection and Placement

The Site Manager shall have the responsibility to inspect the PS or ICM 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 shall have authority and responsibility to direct Generator's Haul Units while on Authority Lands to the appropriate location within the Facility.

2.07 Scheduling of Haul Plan

Generator shall propose to the Site Manager a detailed haul plan for delivery of PS or ICM from the Originating Location of PS or ICM to the Facility. The proposed haul plan shall provide details including date, number of Haul Units, haul duration and estimated quantity of PS or ICM to be delivered. The Site Manager will review the haul plan and, in the Site Manager's sole and absolute discretion, will approve the haul plan, or require changes in order to make the proposed haul plan acceptable.

The haul plan shall not be considered by the Site Manager when/if Generator has not provided the Authority

with a completed Schedule B to this Agreement from the Originating Location or if the current status of the Contract is non-compliant on either, or both, of the Deposit Schedule in Article 3.01 and/or the Sampling Schedule in Article 2.04.

Proposed haul plans must provide a 24 hour lead time prior to the proposed start of the haul. Once a haul plan is accepted by the Site Manager, Generator shall provide contact information for a responsible person who shall communicate to the Site Manager, on the day(s) of the approved haul plan, and prior to the arrival of that Haul Unit at the Facility, the Provincial license plate number for each Haul Unit to be used in the approved haul plan. Any Haul Unit for which a license plate number has not been communicated shall not be weighed and shall be set aside at the Facility until such identifying communication has been made.

The Authority reserves the right to require Generator to produce and maintain a paper manifest system to identify, specify and record details of Generator's delivery.

2.08 Haul Units

Generator will direct the identified Haul Units to the Facility entrance at 5985 Africville Road. Haul Units shall proceed to the Weigh Scale observing and obeying all signage. The Haul Unit operators shall use the personal protective equipment required by NS Department of Labour for similar sites. The Haul Unit operators shall take direction from the Site Manager and/or Scale Person. Haul Units used in the delivery of PS or ICM to the Authority Lands are, in every respect, the responsibility of Generator. 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 efficient transportation of the PS or ICM to the Authority Lands. In addition, Generator is responsible for ensuring that the loads in the Haul Units do not exceed provincial weight restrictions.

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 the Site Manager's absolute discretion and shall advise Generator of any Haul Unit behaving in a way that is not conducive to the safe and efficient operation of the Facility. Such Haul Unit will be denied reception at the Fairview Cove Sequestration Facility for a duration of time as established by the Site Manager in consultation with Generator.

2.09 Construction Safety Measures

Generator shall ensure that any Haul Unit operator bringing Haul Units to the Facility on Generator's behalf will observe and enforce construction safety measures required by the applicable Federal, Provincial and Municipal Statutes or Regulations and, without limiting the generality of the foregoing, the *Canada Labour Code*, the *Workers' Compensation Act*, the *Occupational Health and Safety Act* and any other applicable legislation, as amended.

For greater certainty, the Site Manager will ensure that any Haul Unit operators attending the Facility and associated supervisors and other visitors will be provided with a site orientation identifying hazards in the Facility.

Generator will provide to the Authority confirmation of Workers' Compensation coverage of all Haul Unit operators attending the Facility on Generator's behalf.

2.10 Quality of Material

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

The Site Manager will inspect ICM on delivery. The Site Manager's inspection and subsequent acceptance shall not in any way free Generator from responsibility to ensure that the material delivered to the Facility meets the terms and conditions for eligibility for disposal at the Facility.

By accepting the terms and conditions of this Agreement, Generator declares and affirms that the ICM which is the subject of this Agreement is free of contaminants which would: a) disqualify the material from being considered 'Inert' or, b) make it ineligible for marine disposal.

Examples of acceptable types of ICM are: broken concrete, clean gravel, concrete block, concrete brick, clay brick, and clean rock, homogenous common materials such as clay and till. Generator may propose any type of material for disposal at the Facility with the understanding that the Site Manager may reject any material which, in the Site Manager's sole discretion, does not meet the Facility's needs at any time. Broken asphalt shall not be accepted for disposal at the Fairview Cove Sequestration Facility.

It is Generator's responsibility to ensure that the accredited independent environmental consultant, who conducts representative sampling and provides the declaration pursuant to Article 2.04, attends at the Originating Location of PS or ICM to ensure that all material delivered to the Facility is representative of the test results and does not contain contaminated material or material which contravenes any condition in Article 2 of this Agreement.

The Site Manager reserves the absolute authority, from time to time, to conduct environmental investigation on any material delivered to the Facility to confirm the material's eligibility for disposal at the Facility. In the event that material from the Originating Location is found to be in contravention of the conditions for acceptance:

- (a) the Site Manager shall act in the Authority's best interest in the non-compliant material's investigation, excavation, removal, transportation to, and disposal at an appropriate disposal facility. The complete cost for such remediation works by the Authority shall be borne by Generator whose malfeasance results in the illegal delivery of ineligible material to the Facility; and,
- (b) the Authority retains the right, at the Authority's sole discretion, to require Generator to retain an accredited independent environmental consultant to conduct an analysis of each load of PS or ICM from the same Originating Location of PS or ICM. The accredited independent environmental consultant must provide to the Authority a signed report confirming that each load of PS or ICM satisfies the thresholds in the Sampling Schedule in Article 2.04 before the PS or ICM can be delivered to the Facility. The accredited independent consultant and Generator must ensure that each load of PS or ICM which is contaminated or exceeds the threshold(s) set out in the Sampling Schedule is directed to an alternate appropriate disposal facility.

## **2.11 Capping**

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

## **ARTICLE 3 – PAYMENT**

### **3.01 Payment for PS or ICM**

Generator agrees to deliver PS or ICM to the Authority Lands and to compensate the Authority at the rate of the PS Tipping Fee or ICM Tipping Fee.

Weigh scale tickets for individual transactions will not be produced at the Facility. The Site Manager will prepare and distribute to the Authority’s Finance department a Daily Report of PS or ICM delivered to the Facility providing details of load counts, time and weights delivered by each Haul Unit from Generator’s Originating Location. A separate sheet will be distributed to Generators by 10:00 am the following day for each day and for each Originating Location of PS or ICM. 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 contested Report.

The Authority accepts responsibility for all costs related to the Authority’s engineering and on-site inspection personnel, and the costs to receive, weigh, record, dump and place the PS or ICM.

Payment for PS or ICM is on the following terms:

- A. For Agreements up to and including 2,000 metric tonnes of PS or ICM**  
On signing of this Agreement, 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 Generator within 30 days of notification from Generator that the shipment has been completed. Any balance owed by Generator shall be paid within 30 days of the Authority’s final invoice.
  
- B. For Agreements of 2,000 to 8,000 metric tonnes of PS or ICM**  
On signing of this Agreement, 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, 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 Generator within 30 days of notification from Generator that the shipment has been completed. Any balance owed by Generator shall be paid within 30 days of the Authority’s final invoice.
  
- C. For Agreements greater than 8,000 metric tonnes of PS or ICM**  
On signing of this Agreement, Generator shall make to the Authority a payment of sixty six thousand dollars (\$66,000) for PS or forty thousand dollars (\$40,000) for ICM. Within 5 days prior to shipping additional 4,000 tonnes or the balance of the Contract Quantity, Generator shall make a sixty six thousand dollars (\$66,000) payment(s) for PS or forty thousand dollars (\$40,000) payment(s) for ICM 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 Generator within 30 days of notification from Generator that the shipment has been completed. Any balance owed by Generator shall be paid within 30 days of the Authority’s final invoice.

### **3.02 Direct Deposit Information**

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.

**ARTICLE 4 – ENVIRONMENTAL**

**4.01 Environmental Regulations**

Generator shall 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.

**4.02 Permit**

The Authority has completed an environmental assessment and has a Fisheries Act authorization from DFO to place PS and/or ICM as infill material at the Fairview Cove site. Other approvals or permits as may be required for the removal or delivery of the PS, if any, are the responsibility of 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**

Generator shall carry general liability insurance coverage which includes emission, release, discharge, dispersal or escape that is caused by accident insofar as Generator is concerned. Prior to acceptance of PS and/or ICM by the Authority, Generator, by submittal, shall provide the Authority with proof of this insurance in the amount of two million dollars (\$2,000,000). Generator shall accept liability for, or ensure the independent insurability of the actions of his Haul Units within the Facility.

**5.02 Indemnity**

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 Generator of any covenant, condition or term set forth in this Agreement or any misrepresentation made by 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 PS or ICM by Generator or its employees, subcontractors or any other individual or entity engaged on their behalf;
- 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 PS or ICM by Generator or its employees, subcontractors or any other individual or entity engaged on their behalf;
- iv. any act or omission of Generator or its employees, subcontractors or any other individual or entity engaged on their behalf;

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 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, Generator shall pay the Authority, in accordance with this Agreement, all amounts owing to the effective date of the termination notice.

The Authority may terminate this Agreement immediately, without notice and without further liability to Generator for cause if Generator otherwise commits any material breach of any obligations under this Agreement.

**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 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 not 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).

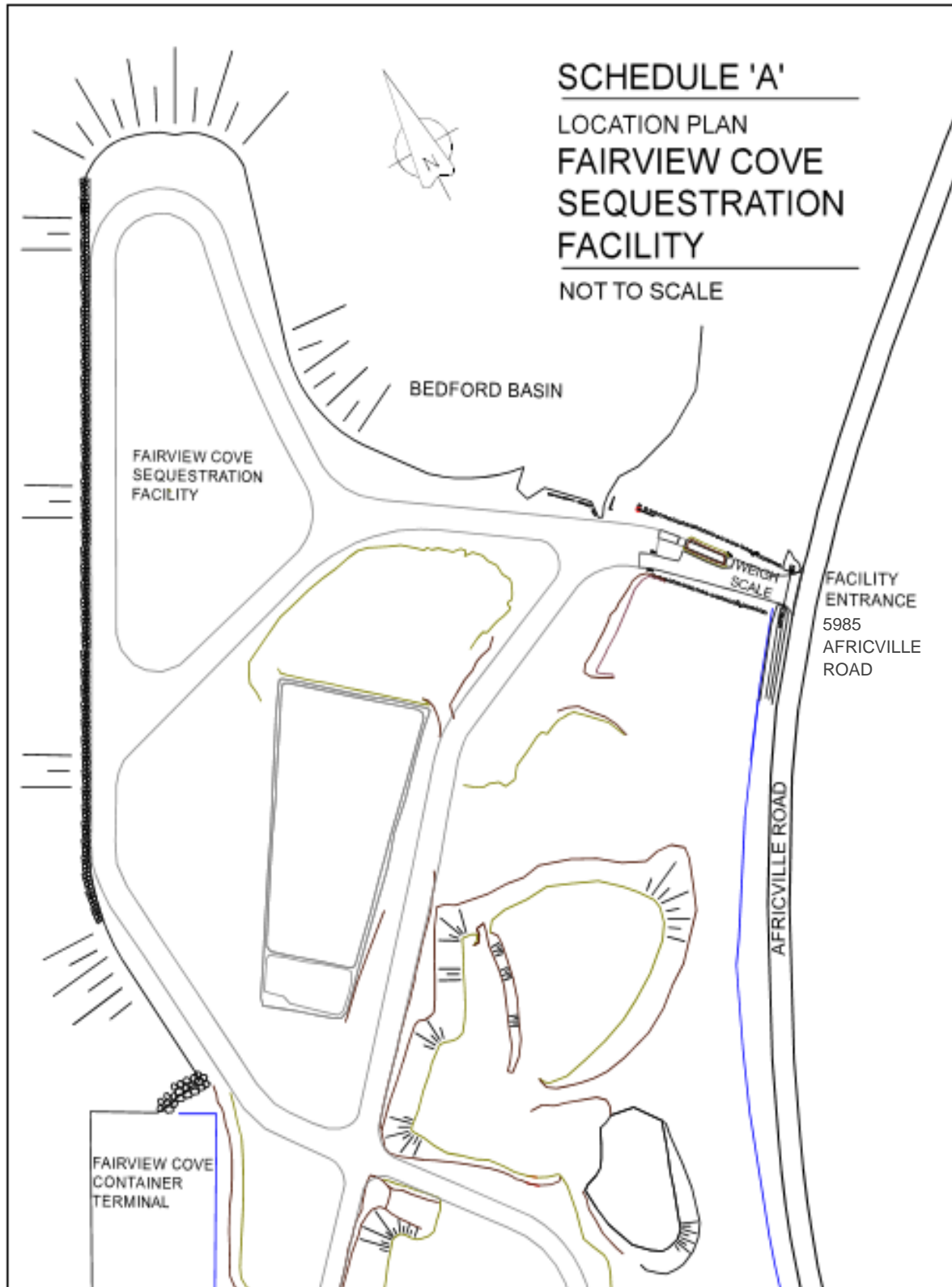
**SIGNATURES**

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement as of the dates set out above.

|               |   |                                                                                                                           |
|---------------|---|---------------------------------------------------------------------------------------------------------------------------|
| Witness _____ | } | <p style="text-align: center;"><b>HALIFAX PORT AUTHORITY</b></p> <p>Per: _____</p> <p>Name: _____</p> <p>Title: _____</p> |
|               | } | <p style="text-align: center;"><b>GENERATOR</b></p> <p>Per: _____</p> <p>Name: _____</p> <p>Title: _____</p>              |



**SCHEDULE "A"**



**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: \_\_\_\_\_  
 \_\_\_\_\_

Generator will provide proof of general liability insurance coverage YES / NO (Circle One)  
 Generator will provide proof of workers compensation coverage for each Haul Unit operator YES / NO (Circle One)

**Section B Consultant Information**

Consultant: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ Email Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Contact Name: \_\_\_\_\_ Contact Title: \_\_\_\_\_

**Section C Characterization of Material**

Current Zoning: Commercial/Industrial/Residential (circle one)  
 Prior Uses of Site: \_\_\_\_\_  
 Current/Planned Use of Site: \_\_\_\_\_  
 Estimated Quantity (metric tonnes): \_\_\_\_\_  
 Pyritic Slate or Inert Construction Material (circle one)  
 If pyritic slate, will all material to be transported to Facility have been excavated within fifteen calendar days prior to delivery?: YES / NO (Circle One)  
 Do historical environmental site assessment reports exist? YES / NO (Circle One)  
 If yes, list title and date of all and provide copies to HPA for review.  
 Written confirmation material has been tested for Total Petroleum Hydrocarbons (BTEX/TPH), Polyaromatic Hydrocarbons (PAHs) and applicable metals: \_\_\_\_\_

**Section D Certification (Completed by Generator)**

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