

## AMENDMENT AGREEMENT NUMBER 1

This Agreement is made as of March 15, 2006 between

**ONTARIO POWER GENERATION INC.**, a corporation  
existing under the laws of Ontario ("**OPG**"),

and

**STRABAG INC.**, a corporation existing under the laws of Ontario  
(the "**Inc.**").

### RECITALS

- A. OPG and Strabag AG ("**AG**") entered into a design/build agreement dated as of August 18, 2005 (the "**Original Agreement**").
- B. AG has assigned the Original Agreement to Inc., its wholly owned subsidiary.
- C. OPG and Inc. (the "**Parties**") have agreed to amend the Original Agreement to correct typographical errors, to provide that disputes arising out of or in connection with the Original Agreement shall be settled under the Rules of Arbitration of the International Chamber of Commerce and to make certain other consequential amendments.
- D. For value received, the Parties agree as follows.

### Interpretation

Any defined term used in this Agreement that is not defined in this Agreement has the meaning given to that term in the Original Agreement.

### Change to Page 1

The words, "This Agreement is made as of [■], 2005" on page 1 of the Original Agreement are deleted and replaced with, "This Agreement is made as of August 18, 2005".

### Change to Section 1.6 (Governing Law)

Section 1.6 of the Original Agreement is deleted in its entirety and replaced with the following:

This Agreement and each of the documents contemplated by this Agreement are governed by, and are to be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario. No Party will oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court arising out of or made in connection with any arbitration conducted pursuant to Section 11.5. A Party may effect service of summons or any other legal process that may be served in any action, suit or other proceeding by delivering any such process to another Party in accordance with Section 14.4. Nothing in this Section 1.6 will affect the rights of a Party to serve legal process in any other manner permitted by law.

### **Change to Section 2.14 (Labour and Subcontractors)**

The words, “[insert date]” in lines 12 and 13 of Section 2.14(d) of the Original Agreement are deleted and replaced with “August 18, 2005”.

### **Change to Section 11 (Dispute Resolution)**

Section 11 of the Original Agreement is deleted in its entirety and replaced with the following:

## **SECTION 11. DISPUTE RESOLUTION**

### **11.1 Dispute Review Board**

- (a) **Establishment.** Promptly following the Start Date within the time period set out in Section 11.2(d), the Parties will co-operate in the execution of the agreement attached as Appendix 11.1(a) (the “**Dispute Review Board Agreement**”) establishing the Niagara Tunnel Project Dispute Review Board (the “**Dispute Review Board**”). The purpose of the Dispute Review Board is to assist in the resolution of any and all disputes arising out of or in connection with this Agreement (individually, a “**Dispute**”) as contemplated below.
- (b) **Amicable Resolution of Disputes.** The Parties will endeavour to resolve all Disputes by good faith negotiation. The Dispute Review Board process is not intended to substitute for the Parties’ mutual ongoing commitment to resolve all Disputes in good faith as amongst themselves.
- (c) **Principles.** All matters of process, scheduling and conduct of the Dispute Review Board will be determined by the needs of the Project and exigencies of the Contract Schedule. All Disputes will be heard as expeditiously as possible, and in order to achieve this, the Dispute Review Board may make all inquiries necessary.
- (d) **Referral of Disputes to Dispute Review Board.** Except as expressly stated herein, if the Parties are unable between themselves by good faith negotiation to resolve a Dispute, the Dispute will be referred to the Dispute Review Board.
- (e) **Recommendations.** The Dispute Review Board will provide fully reasoned, written recommendations to the Parties to assist in the resolution of Disputes (“**Recommendations**”). The fully reasoned, written Recommendations (including individual Recommendations) of the Dispute Review Board are not binding on any Party, although it is expected that the Parties will place great weight on the Recommendations and use them as a basis for settling Disputes.
- (f) **Condition Precedent to any Further Proceedings.** If the Recommendations relating to a Dispute are not satisfactory to a Party (the “**Dissatisfied Party**”), the Dissatisfied Party, not later than 30 days after receipt of the written Recommendations, may deliver written Notice to the other Party of the Dissatisfied Party’s intention to commence an arbitration pursuant to Section 11.5. All unresolved Disputes (except for a Dispute as to whether a

default has occurred under Section 10.1 of the Agreement or a Dispute as to whether Substantial Completion has been achieved) will be held in abeyance until the earlier of (i) Substantial Completion; or (ii) termination of this Agreement, except to the extent that holding such Dispute in abeyance could prejudice, by operation of the provisions of the *Limitations Act, 2002* (Ontario), the right of the Dissatisfied Party to commence an arbitration regarding the unresolved Dispute. In such event, the Dissatisfied Party may commence an arbitration prior to the expiry of the applicable limitation period. To the extent permitted by the *Limitations Act, 2002* (Ontario), as amended at any time or from time to time during the term of this Agreement, the Parties waive the application of such *Act* to any unresolved Disputes. It is a condition precedent to any arbitration proceeding commenced pursuant to this Section 11.1(f) that any Recommendations of the Dispute Review Board be pleaded in, referred to and attached as a schedule to the originating process in respect of the arbitration. Either Party may plead or rely on this Agreement as evidence of the Parties' consent to an order staying any and all arbitration proceedings pending formal annexation of the applicable Recommendations. If neither Party delivers written Notice to the other Party within 30 days after receipt of written Recommendations from the Dispute Review Board of the Party's intention to commence an arbitration pursuant to Section 11.5 regarding the unresolved Dispute, the Parties will be deemed to have accepted the Recommendations of the Dispute Review Board, the Recommendations will be binding on the Parties, and the Parties will be estopped from commencing court or arbitration proceedings regarding such Recommendations. The foregoing sentence does not apply where the Dispute Review Board has failed to reach unanimity and one or more individual Recommendations are issued, in which case no Party will be deemed to have accepted any of the individual Recommendations, the individual Recommendations will not be binding on the Parties, and, unless the Parties can agree on which of the individual Recommendations to accept within 30 days after receipt of the written individual Recommendations (or otherwise agree not to commence arbitration), the Parties will commence arbitration of the unresolved Dispute in accordance with the provisions of this Section 11.1(f).

## 11.2 Constitution of the Dispute Review Board

- (a) **Submission of Disclosure Statements.** Before the Parties approve any member of the Dispute Review Board, each Party will cause the proposed member to deliver to the Parties a comprehensive disclosure statement. The Parties will ensure that each disclosure statement includes a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships to the Tunnel Facility Project and with each of OPG, the Contractor and each Subcontractor. Disclosure of relationships must include all recent, professional or personal, relationships with all key individuals of OPG, the Contractor and each Subcontractor.
- (b) **Initial Selection of Members.** Nomination and approval of the first two members of the Dispute Review Board will occur as follows:

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- (1) OPG on the one hand and the Contractor on the other hand will each nominate a proposed board member and convey Notice of its nominee's name and disclosure statement to the other (being OPG or the Contractor, as the case may be) within thirty days after the Start Date.
  - (2) by providing written Notice, either side may reject the other side's nominee, without expressing a reason for the rejection, twice, and thereafter, if a side wishes to reject any further nominees, that side must provide reasonable written reasons or, alternatively, that side may accept a previously rejected nominee;
  - (3) any nominee who is not rejected in writing by the other side within seven days of receiving Notice of the nominee's name and disclosure statement will be deemed to have been approved by the other side;
  - (4) if a nominee is rejected, the nominating side will make another nomination within seven days of receipt of the written Notice of rejection and the process will be repeated until two mutually acceptable nominees are approved;
  - (5) upon approval of two members of the Dispute Review Board, such first two members will choose a third member (who will be the chairperson) according to the following:
    - (A) the two members of the Dispute Review Board will prepare a single list of five possible names of candidates not previously rejected and corresponding disclosure statements which the two members will submit in writing simultaneously to the Parties;
    - (B) each Party can reject up to two people on this list, and each must return its list with the names of these people struck out, within seven days of receipt of the list of five names and corresponding disclosure statements. Failure of a Party to provide strike-outs within this time shall constitute deemed acceptance of the entire list;
    - (C) the first two members will then compare the lists and select, in their sole and absolute discretion, any non-rejected person as the third member of the Dispute Review Board; and
    - (D) upon selection, the first two members will then promptly disclose their choice to the Parties.
- (c) **Members Qualifications.** Only individuals experienced with the type of construction involved in respect of the Tunnel Facility Project, and with the interpretation of agreements similar to this Agreement, may be nominated to the Dispute Review Board. In selecting nominees for the Dispute Review Board, the Parties will only nominate individuals with a demonstrated ability to provide

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leadership for the Dispute Review Board's activities. The other mandatory criteria for selecting members of the Dispute Review Board are set out below. These are enduring criteria that apply at all times to all members and nominees of the Dispute Review Board:

- (1) **No Current Financial Interests.** Neither Party will nominate any individual, or permit any member of the Dispute Review Board to remain a member, if that individual or member has a financial interest in OPG, the Contractor or any Subcontractor, or otherwise has any financial interest in the Tunnel Facility Project or this Agreement.
- (2) **No Prior Financial Interest.** Neither Party will nominate any individual, or permit any member of the Dispute Review Board to remain a member, who, except for fee-based consulting services on other projects unrelated to the Work and the Tunnel Facility Project, was previously employed by, or had financial ties to, OPG, the Contractor, or any Subcontractor.
- (3) **No Close Relationships.** Neither Party will nominate any individual, or permit any member of the Dispute Review Board to remain a member, who has a then current or recent, close, professional or personal, relationship with any key individual of OPG, the Contractor, or any Subcontractor.
- (4) **No Previous Involvement in Work.** Neither Party will nominate any individual, or permit any member of the Dispute Review Board to remain a member, who has had a substantial, relevant prior involvement in the Tunnel Facility Project of a nature which could reasonably be expected to compromise the individual's or the member's, as the case may be, ability to participate impartially in the activities of the Dispute Review Board.
- (5) **No Employment.** Neither Party will employ, or offer or commit to employ or otherwise engage, a Dispute Review Board member during the member's tenure.
- (d) **Agreement with Members.** Each of the Parties and all three members of the Dispute Review Board will execute the Dispute Review Board Agreement in the form set out in Appendix 11.1(a) within four weeks after the selection and approval of the third member of the Dispute Review Board.
- (e) **Replacement Members.** The Parties may agree to terminate the tenure of any member of the Dispute Review Board at any time in writing. Neither OPG nor the Contractor may unilaterally terminate the tenure of any Dispute Review Board member. The Dispute Review Board Agreement will survive the termination, resignation, death or incapacity of any member. If the tenure of any Dispute Review Board member is terminated or if any such member otherwise ceases to participate on the Dispute Review Board, the two remaining members of the Dispute Review Board will use the process set out in Section 11.2(b)(5) to select a

new third member, and the new third member will sign a new Dispute Review Board Agreement with the other two members and with the Parties. If two or three members are terminated, the procedure in Sections 11.2(b) and 11.2(c) will apply until those positions are filled.

### 11.3 Operation

- (a) **Beginning and Completion.** The Dispute Review Board will remain empanelled and active throughout the duration of the Tunnel Facility Project, irrespective of the fact its actual composition may change from time to time.
- (b) **Individual Communication.** No individual member of the Dispute Review Board will have any private communication with either Party.
- (c) **General Procedure.** Dispute Review Board operating procedures will be formulated by the Dispute Review Board as a task under the Dispute Review Board Agreement. It is anticipated that during its first meeting at the Site, the Dispute Review Board will establish procedures for the conduct of its routine meetings, Site visits, and hearings of Disputes. The Parties direct the Dispute Review Board to adapt such procedures as required, in its unfettered discretion, to best achieve the objects of the Dispute Review Board. The Parties acknowledge that the Dispute Review Board may initiate new procedures or modify existing procedures as it deems appropriate or necessary to best achieve the object of the Dispute Review Board. The Parties undertake and agree to comply with all such procedures.
- (d) **Agreement, Reports and Information.** The Parties will provide a conformed set of plans and specifications to each Dispute Review Board member. The members will thereafter remain informed of construction activity and other developments by means of timely transmittal of relevant information prepared by OPG and the Contractor in the normal course of construction, including through periodic progress reports and minutes of progress meetings.
- (e) **Progress Meetings.** In addition to its other duties, the Dispute Review Board will meet at regular intervals, no less frequently than quarterly, and at times of significant construction events. The frequency and scheduling of these meetings will be as agreed among the Parties and the Dispute Review Board, depending upon the progress of the Work. In the case of failure to agree, the Dispute Review Board will schedule the meetings. Each meeting will consist of an informal roundtable discussion followed by an optional field observation of the Tunnel Facility Project. The informal round table discussion will be attended by key personnel from OPG and the Contractor. The agenda for each meeting will include no fewer than the following items:
  - (1) approval of minutes of previous meeting (to be kept by OPG, and circulated for approval within seven days of each meeting, or less if necessary);

- (2) Work performed since the last meeting;
- (3) current status of the Contract Schedule and schedule for future Work;
- (4) anticipated or potential problems and proposed solutions;
- (5) perspectives on potential Disputes, claims and other controversies;
- (6) status of past Disputes, claims and other controversies;
- (7) new business; and
- (8) set date, time and place of next meeting and Site visit.

#### 11.4 Review of Disputes

- (a) **General.** The Parties will cooperate to ensure that the Dispute Review Board is able to consider Disputes promptly.
- (b) **Prerequisites to Review.** Provided that it has not been expressly excluded from referral herein, a Dispute will be referred to the Dispute Review Board when:
  - (1) either Party believes that good faith bilateral negotiations have not and are not likely to succeed or have reached an impasse; or
  - (2) if this Agreement provides for a prior decision by OPG's Representative or a professional, such decision has been issued and is unacceptable to a Party.
- (c) **Disputes.** Provided that it has not been expressly excluded from referral herein, either Party may refer a Dispute to the Dispute Review Board. Requests for Dispute Review Board resolution must be submitted in writing to the chairperson of the Dispute Review Board and must state the Dispute, with particularity, arising in respect of this Agreement, including a sworn statement that negotiations have been attempted and exhausted or otherwise failed (the "**Dispute Request**"). The Party referring the Dispute to the Dispute Review Board will simultaneously submit a copy of the Dispute Request in compliance with this Section 11.4(c) to the other Party. After conferring with both Parties, the Dispute Review Board will establish a hearing procedure that is as summary, efficient, and inexpensive as possible in the circumstances and in accordance with the principles set out above.
- (d) **Substantial and Complex Disputes.** If and only if the Dispute cannot be resolved summarily by exercise of the Dispute Review Board's inquisitorial powers, and (i) the Dispute Review Board considers it to be necessary, or (ii) the Parties make a joint request, the Dispute will be heard as follows:

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- (1) concise written statements will be prepared by both Parties, together with a binder of relevant supporting documents, indexed, paginated in one continuous sequence throughout the binder, each document separated from each other document by sequentially numbered index tabs corresponding to the index;
  - (2) the Party initiating the Dispute (the “**Applicant**”) will serve its statement (the “**Applicant’s Statement**”) on the other Party and file three copies with the chairperson of the Dispute Review Board within the time set by the Dispute Review Board. The Applicant will set out a proposed method and schedule for the hearing in its Applicant’s Statement;
  - (3) the other Party’s (the “**Respondent**”) statement (the “**Respondent’s Statement**”), prepared in identical form, will be similarly served and filed within the time set by the Dispute Review Board. The Respondent will also set out a proposed method and schedule for the hearing in the Respondent’s Statement;
  - (4) the Dispute Review Board may, by written notice to the Parties, require either or both of the Parties to support their respective statements with documents, affidavits, declarations, tests, samples, photographs, videos, reports or other material, in the Dispute Review Board’s sole and absolute discretion, and at any time and from time to time; and
  - (5) the Dispute Review Board will acknowledge in writing to the Parties that the Dispute is perfected in accordance with this Section 11.4(d) when all of (1), (2), (3) and (4) above are complied with and shall, at the same time, advise the Parties as to the method and schedule for the hearing having regard to the Parties’ positions as recorded in their statements.
- (e) **Board to Visit Site.** In the case of a Dispute referred to the Dispute Review Board, either Party to the Dispute or the Dispute Review Board itself may request that a Site visit be undertaken before, or as part of, any hearing.
- (f) **Hearing.** The place of the hearing will be at the Site at a time and on a date stipulated by the Dispute Review Board in consultation with the Parties. If circumstances require, the Dispute Review Board may, with the prior consent of the Parties, adjourn all or a portion of the hearing of the Dispute to any other location or time.
- (1) **Proceedings in Confidence.** The proceedings of the Dispute Review Board hearing will be conducted and maintained as far as possible in absolute privacy, privilege and confidence.
  - (2) **Representation.** Each Party has the right, but not the obligation, to be represented by counsel at any hearing or any portion of any hearing, at its own expense.



- (3) **No Transcripts Required.** No transcript is required to be kept of any testimony before the Dispute Review Board, but, if such testimony is taken and transcribed by one Party, a copy must be provided to the other Party once received.
- (4) **Hearing Procedure.** The order of proof, the fact and extent of oral evidence (whether under oath or not), examinations and cross-examinations (whether under oath or not), the quality of proof, the burden of proof, argument both written and oral, and all matters of form, procedure, and process relating to the hearing before the Dispute Review Board are within the absolute discretion of the Dispute Review Board.
- (g) **Inquiry by Board.** The Dispute Review Board is expressly authorised by the Parties to take all accounts, make all inquiries, give all directions and do all things necessary to reach their Recommendations. The Parties agree to satisfy, in good faith, and as soon as practicably possible, any inquiries made by the Dispute Review Board, including, where appropriate, the production of any documents, affidavits, declarations, tests, samples, photographs, videos, reports or other material, which inquiries are made in its sole and absolute discretion, at any time and from time to time.
- (h) **Deliberations.** The chairperson of the Dispute Review Board will declare the hearing closed at the close of argument and thereafter the Dispute Review Board will have, in aggregate, no more than two weeks for deliberation and delivery of its Recommendations.
- (i) **Recommendations.** The Dispute Review Board's Recommendation for the resolution of the Dispute will be transmitted to both Parties simultaneously at the end of the period of deliberation. In a difficult or complex case, this time period may be extended at any time and from time to time by agreement of the Parties. The Dispute Review Board will use best efforts to reach a unanimous Recommendation on every Dispute; however, if unanimity is not reached, individual Recommendations are permissible.
- (j) **Clarification and Reconsideration.** If either Party feels that the Recommendations require clarification or reconsideration, that Party may so request, in writing, specifying with all possible particularity that Party's reasons, and the Dispute Review Board may or may not, in its sole and absolute discretion, elect to clarify, re-deliberate or re-open the hearing for the purpose set out in the Party's request, and if the hearing is re-opened, the requirements set out in this section apply once again.

## 11.5 ICC Arbitration

Subject to the Dispute Review Board process set out in Sections 11.1 to 11.4, all unresolved Disputes arising out of or in connection with this Agreement shall be finally settled

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under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules.

The arbitrators will apply the laws of the Province of Ontario and the federal laws of Canada to decide any Dispute. The place of arbitration will be Toronto, Ontario, Canada and arbitrations will be conducted in the English language.

All matters relating to an arbitration will be kept confidential to the fullest extent permitted by the Rules of Arbitration of the International Chamber of Commerce.

**Change to Appendix 4.1(e) (Indemnity Agreement)**

Appendix 4.1(e) to the Original Agreement is deleted in its entirety and replaced with the following:

**INDEMNITY AGREEMENT**

This Agreement is made this ■ day of ■, 2006 between

**ONTARIO POWER GENERATION INC.**, a corporation  
existing under the laws of Ontario ("**OPG**"),

and

**STRABAG INC.**, a corporation existing under the laws of Ontario  
("**Inc.**"),

and

■, a corporation existing under the laws of Austria ("**Parent**").

**RECITALS**

- (A) Strabag AG ("**AG**"), a corporation existing under the laws of Austria, and OPG have entered into a design/build agreement dated August 18, 2005 in connection with the Niagara Tunnel Facility Project (the "**Original Agreement**").
- (B) AG has assigned the Original Agreement to its wholly-owned subsidiary, Inc., on and subject to the condition that, notwithstanding the assignment, AG is not released from its obligations thereunder, and AG provided prior notice of the assignment to OPG.
- (C) OPG and Inc. have entered into Amendment Agreement Number 1 dated ■, 2006 (together with the Original Agreement, the "**Underlying Agreement**").
- (D) It is a requirement of the Underlying Agreement that Parent and the Contractor (as defined in the Underlying Agreement) execute this Agreement.

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- (E) Parent wished to assist AG and Inc. to obtain the Underlying Agreement. Accordingly, Parent has agreed to provide OPG with the indemnifications and other rights contained in this Agreement.

For value received, the parties agree as follows.

**Obligation to Perform.** If neither Inc. nor AG performs in a timely manner any obligation under the Underlying Agreement or any other document delivered in respect of the Underlying Agreement (collectively, the “**Subsidiary Obligations**”), Parent will itself perform such Subsidiary Obligations, or cause the same to be performed, in each case as if Parent were itself Inc. or AG with respect to such Subsidiary Obligations. Parent will perform such Subsidiary Obligations immediately following receipt of a notice from OPG indicating the Subsidiary Obligation(s) that both Inc. and AG have failed to satisfy in a timely manner, regardless of whether or not OPG has attempted to enforce any of the Subsidiary Obligations against Inc. or AG. Any failure by Parent to perform in a timely manner any Subsidiary Obligations that Parent is obliged to perform will immediately entitle OPG to pursue all rights and remedies available to it in law, in equity or otherwise against each of Parent, Inc. and AG.

**Other Obligations.** Parent irrevocably and unconditionally agrees to indemnify and save harmless OPG from and against all costs, damages, expenses, losses, liabilities, demands, claims, suits, actions, proceedings, judgments and obligations (including, without limitation, legal fees and expenses) arising in respect of any breach by Inc. or AG of any Subsidiary Obligations (the “**Indemnity Obligations**” and collectively the Subsidiary Obligations and the Indemnity Obligations are the “**Obligations**”). This indemnity does not extend, however, to impose any obligation on Parent that would not have been an obligation of Inc. or AG under the Underlying Agreement, except that Parent will not be relieved of any of its obligations under this Agreement due to any relief of Inc. or AG from any of the Subsidiary Obligations arising in respect of any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, liquidation, winding-up or dissolution proceedings or legislation.

**Obligations Absolute.** The obligations of Parent under this Agreement are absolute and unconditional and continue regardless of any change or other modification to the Subsidiary Obligations from time to time and regardless of any other circumstance which might otherwise constitute, in whole or in part, a defence available to, or a discharge of Parent, Inc., AG or any other entity in respect of the Subsidiary Obligations or any of the obligations of Parent.

**Acknowledgement of Assignment.** The parties acknowledge the assignment of the Underlying Agreement from AG to Inc. and confirm that, notwithstanding the assignment, AG is not released from the Subsidiary Obligations. Parent acknowledges and confirms that the assignment does not affect its obligations and agreements contained in this Agreement, including, without limitation, those set forth under “Obligation to Perform” and “Other Obligations” above.

**No Obligation for OPG.** OPG will have no obligation to Parent whatsoever for any act, omission, matter, thing or circumstance whatsoever and OPG’s obligations to Inc. and AG are governed solely by the Underlying Agreement.

**Parent's Representation.** Parent represents and warrants to OPG that Parent has taken all necessary corporate action to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement and that this Agreement constitutes a valid and binding agreement of Parent enforceable against it in accordance with its terms.

**Financial Information of Parent.** Parent authorizes OPG to make credit enquiries about Parent or any of its affiliates from time to time and to receive and exchange credit information from credit reporting agencies or other persons with which Parent or any of its affiliates has or may expect to have financial dealings. Parent has provided OPG with Parent's consolidated audited financial statements for the last three financial years. Such financial statements have been prepared in accordance with the International Financial Reporting Standards issued by the International Accounting Standards Board (and including the interpretations of the International Financial Reporting Interpretations Committee), consistently applied. Such financial statements fairly reflect the consolidated financial position and results of operations of Parent as at the dates and for the periods set out in such statements. Parent will provide OPG with its audited consolidated financial statements and unaudited quarterly consolidated financial statements promptly after each such statement becomes available. Parent will also provide OPG with any other financial information respecting Parent that OPG may reasonably request to assist OPG in its ongoing evaluation of the value of the indemnifications and other rights provided to OPG by Parent under this Agreement.

**Subrogation.** Until Inc. and AG have satisfied all of their liabilities, obligations and covenants under the Underlying Agreement and until repayment in full of the Obligations, all dividends, compositions, proceeds of security, security valued or payments received by OPG from Inc., AG or others in respect of the Obligations shall be regarded for all purposes as payments in gross without any right on the part of the Parent to claim the benefit thereof in reduction of the liability under this Agreement and the Parent shall not claim any set-off or counterclaim against Inc. or AG in respect of any liability of Inc. or AG to the Parent, claim or prove in the bankruptcy or insolvency of Inc. or AG in competition with OPG or have any right to be subrogated to OPG. The Parent shall have no right of subrogation in respect of payments made to OPG hereunder until such time as Inc. and AG have satisfied all of its liabilities, obligations and covenants under the Underlying Agreement and the Obligations have been fully satisfied. In the case of the liquidation, dissolution, winding-up or bankruptcy of Inc. or AG (whether voluntary or involuntary) or in the event that Inc. or AG make an arrangement or composition with their creditors, OPG shall have the right to rank for its full claims and to receive all dividends or other payments in respect thereof until its claims have been paid in full. If any amount shall be paid to the Parent on account of any subrogation rights arising hereunder at any time before all of the Obligations have been fully paid and satisfied, such amount shall be held in trust for the benefit of OPG and shall forthwith be paid to OPG to be credited and applied against the Obligations, whether matured or unmatured.

**Assignment and Postponement of Claim.** All present and future indebtedness and liability of Inc. and AG to the Parent is hereby assigned by the Parent to OPG and postponed to the Obligations, and all monies received by the Parent in respect thereof after the occurrence of an event of default (as defined in the Underlying Agreement) which is continuing shall be received in trust for OPG and forthwith upon receipt shall be paid over to OPG all without in any way lessening or limiting the liability of the Parent under this Agreement. Until the occurrence of an

event of default (as defined in the Underlying Agreement) which is continuing, OPG consents to the Parent retaining all monies received by the Parent from Inc. and AG. This assignment and postponement is independent of the guarantee and indemnity contained in this Agreement. Any claim of the Parent against Inc. or AG arising from payments made by the Parent pursuant to the provisions of this Agreement shall be in all respects subordinate to the full and complete payment, performance and discharge of the Obligations, and no payment hereunder by the Parent shall give rise to any claim of the Parent against OPG.

**Notice.** Every notice or other communication required or permitted under this Agreement must be in writing and may be delivered in person, by courier or by fax to the applicable party, as follows:

if to OPG,	if to Inc. or AG,	if to Parent,
Ontario Power Generation Inc. 700 University Avenue, Toronto, Ontario, M5G 1X6  Attention: Director, Credit Fax: (416) 592-8335	Strabag AG Donau-City-Str. 9 1220 Wien (Vienna) Austria  Attention: Ernst Gschnitzer Fax: +43 1 22422 1227	■  Attention: ■ Fax: ■

or to any other address, fax number or individual that a party designates. Any notice or other communication under this Agreement, if delivered personally or by courier will be deemed to have been given when actually received, if delivered by fax before 3:00 p.m. (Toronto time) on a business day in Toronto will be deemed to have been delivered on that business day and if delivered by fax after 3:00 p.m. (Toronto time) on a business day in Toronto or on a day which is not a business day in Toronto will be deemed to be delivered on the next business day in Toronto.

**Service.** For the purpose of all legal proceedings, this Agreement will be deemed to have been performed in Ontario. No party will oppose the enforcement against it in any other jurisdiction of any judgment or order obtained from an Ontario court arising out of or made in connection with any arbitration conducted pursuant to the provisions under "ICC Arbitration" below. Any party may effect service of summons or any other legal process that may be served in any action, suit or other proceeding by delivering any such process to such other party in accordance with the previous Section. Parent hereby nominates, constitutes and appoints Inc. its true and lawful agent to accept service of process and to receive all legal process in respect of any action arising in respect of this Agreement. Until lawful notice of the appointment of another and subsequent agent in Ontario has been given by Parent and accepted by OPG, service of any legal process upon Inc. or AG will be accepted by Parent. Nothing in this Section will affect the rights of OPG to serve legal process in any other manner permitted by law.

**ICC Arbitration.** All unresolved disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules. The arbitrators will apply the laws

of the Province of Ontario and the federal laws of Canada to decide any dispute. The place of arbitration will be Toronto, Ontario, Canada and arbitrations will be conducted in the English language. All matters relating to an arbitration will be kept confidential to the fullest extent permitted by the Rules of Arbitration of the International Chamber of Commerce.

**General.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement. Unless otherwise specified, words importing the singular include the plural and vice versa. This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario. If there is a conflict between any term of this Agreement and any term of the Underlying Agreement, the relevant term of this Agreement is to prevail. If any term of this Agreement is or becomes illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of that term will not affect the legality, validity or enforceability of the remaining terms of this Agreement. For every term of this Agreement, time is of the essence. This Agreement and the Underlying Agreement constitute the entire agreement between the parties with respect to the subject matter and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal. Neither Parent nor Inc. may assign this Agreement in whole or in part without the prior written consent of OPG. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns. No waiver of any term of this Agreement is binding unless it is in writing and signed by the party entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy, under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term. Inc. and Parent will from time to time promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the terms and intent of this Agreement and to satisfy all of the Subsidiary Obligations. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled. This Agreement and any amendment, restatement or termination of this Agreement in whole or in part may be signed and delivered in any number of counterparts, each of which when signed and delivered is an original but all of which taken together constitute one and the same instrument. This Agreement and any amendment, restatement or termination of this Agreement in whole or in part may be delivered by fax. Except as expressly provided in this Agreement, no amendment, restatement or termination of this Agreement in whole or in part is binding unless it is in writing and signed by each party.

**Effective Date.** Notwithstanding the date on which the parties seal and execute this Agreement, it shall be, and be deemed to be, effective for all purposes on and as of August 18, 2005. The Indemnity Agreement dated August 18, 2005 between OPG, AG and Parent is hereby terminated and shall be of no further force and effect.

Parent and Inc. have duly sealed and the parties have duly executed this Agreement.

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**ONTARIO POWER GENERATION  
INC.**

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**STRABAG INC.** (SEAL)

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Authorized Signatory

■ (SEAL)

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Authorized Signatory

**Change to Appendix 11.1(a) (Dispute Review Board Agreement)**

Appendix 11.1(a) to the Original Agreement is deleted in its entirety and replaced with the following:

**DISPUTE REVIEW BOARD AGREEMENT**

This Dispute Review Board Agreement is made this ■ day of ■, 2006, between

**ONTARIO POWER GENERATION INC.**, a corporation  
existing under the laws of Ontario (“OPG”),

and

**STRABAG INC.**, a corporation existing under the laws of  
Ontario (the “Contractor”),

and

[NTD: Insert Dispute Review Board Member #1],

and

[NTD: Insert Dispute Review Board Member #2],

and

[NTD: Insert Dispute Review Board Member #3].

## RECITALS

- (A) Strabag AG (“AG”), a corporation existing under the laws of Austria, and OPG have entered into a design/build agreement dated August 18, 2005 in connection with the Niagara Tunnel Facility Project (the “**Agreement**”).
- (B) AG has assigned the Agreement to its wholly-owned subsidiary, the Contractor, on and subject to the condition that, notwithstanding the assignment, AG is not released from its obligations thereunder, and AG provided prior notice of the assignment to OPG.
- (C) It is a requirement of the Agreement that a Dispute Review Board be established and that OPG and the Contractor co-operate in the execution of this Dispute Review Board Agreement (the “**Dispute Review Board Agreement**”).

For value received, the parties agree as follows:

1. **Defined Terms.** All capitalized terms which are used but not defined in this Dispute Review Board Agreement have the meanings given to them in the Agreement.
2. **Object.** The object and purpose of the Dispute Review Board is to consider, fairly and impartially, all disputes referred to it (individually, a “**Dispute**”), and to provide written recommendations to OPG and the Contractor (individually, a “**Recommendation**”), which will either form the basis for settlement of the Dispute between the Parties or form part of the formal record in any subsequent dispute resolution procedure.
3. **Termination of Dispute Review Board Agreement.** This Dispute Review Board Agreement shall terminate upon the final payment of OPG to the Contractor pursuant to the procedure set out in Section 7.12 of the Agreement.
4. **Proceedings of the Dispute Review Board.** The proceedings of the Dispute Review Board will be conducted impartially, objectively and independently from the interests of any Party.
  - (a) **Recommendations.** The Dispute Review Board will provide fully reasoned, written Recommendations to the Parties to assist the resolution of Disputes. The fully reasoned, written Recommendations of the Dispute Review Board are not binding on any Party, although it is expected that Parties will place great weight on the Recommendations and use them as a basis for settling Disputes.
  - (b) **Condition Precedent to Any Further Proceedings.** If the Recommendations relating to a Dispute are not satisfactory to a Party (the “**Dissatisfied Party**”), the Dissatisfied Party, not later than 30 days after receipt of the written Recommendations, may deliver written Notice to the



other Party of the Dissatisfied Party's intention to commence an arbitration pursuant to Section 11.5 of the Agreement. All unresolved Disputes (except for a Dispute as to whether a default has occurred under Section 10.1 of the Agreement or a Dispute as to whether Substantial Completion has been achieved) will be held in abeyance until the earlier of (i) Substantial Completion; or (ii) termination of the Agreement, except to the extent that holding such Dispute in abeyance could prejudice, by operation of the provisions of the *Limitations Act, 2002* (Ontario), the right of the Dissatisfied Party to commence an arbitration regarding the unresolved Dispute. In such event, the Dissatisfied Party may commence an arbitration prior to the expiry of the applicable limitation period. To the extent permitted by the *Limitations Act, 2002* (Ontario), as amended at any time or from time to time during the term of this Dispute Review Board Agreement, the Parties waive the application of such *Act* to any unresolved Disputes. It is a condition precedent to any arbitration proceeding commenced pursuant to this Section 4(b) that any Recommendations of the Dispute Review Board be pleaded in, referred to and attached as a schedule to the originating process in respect of the arbitration. Either Party may plead or rely on the Agreement as evidence of the Parties' consent to an order staying any and all arbitration proceedings pending formal annexation of the applicable Recommendations. If neither Party delivers written Notice to the other Party within 30 days after receipt of written Recommendations from the Dispute Review Board of the Party's intention to commence an arbitration pursuant to Section 11.5 of the Agreement regarding the unresolved Dispute, the Parties will be deemed to have accepted the Recommendations of the Dispute Review Board, the Recommendations will be binding on the Parties, and the Parties will be estopped from commencing court or arbitration proceedings regarding such Recommendations. The foregoing sentence does not apply where the Dispute Review Board has failed to reach unanimity and one or more individual Recommendations are issued, in which case no Party will be deemed to have accepted any of the individual Recommendations, the individual Recommendations will not be binding on the Parties, and, unless the Parties can agree on which of the individual Recommendations to accept within 30 days after receipt of the written individual Recommendations (or otherwise agree not to commence arbitration), the Parties will commence arbitration of the unresolved Dispute in accordance with the provisions of Section 11.5 of the Agreement.

5. **Constitution of the Dispute Review Board.** The Dispute Review Board will consist of three individuals:

- (a) **Members Qualifications.** Only individuals experienced with the type of construction involved in respect of the Project, and with the interpretation of agreements similar to the Agreement, may be nominated to the Dispute Review Board. In selecting nominees for the Dispute Review Board, the

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Parties will only nominate individuals with a demonstrated ability to provide leadership for the Dispute Review Board's activities. The other mandatory criteria for selecting members of the Dispute Review Board are set out below. These are enduring criteria that apply at all times to all members and nominees of the Dispute Review Board.

- (i) **No Current Financial Interests.** No member may have a financial interest in either of the Parties or any Subcontractor, or otherwise have any financial interest in this Project or the Agreement.
  - (ii) **No Prior Financial Interest.** No member may remain a member, if, except for fee-based consulting services on other projects unrelated to the Work and the Project, such member was previously employed by, or had financial ties to either of the Parties or a Subcontractor.
  - (iii) **No Close Relationships.** No member may remain a member, who has a then current or recent, close, professional or personal, relationship with any key individual of the Parties or any Subcontractor.
  - (iv) **No Previous Involvement in Services.** No member may remain a member, who has had a substantial, relevant prior involvement in the Project of a nature which could reasonably be expected to compromise the individual's or the member's, as the case may be, ability to participate impartially in the activities of the Dispute Review Board.
  - (v) **No Employment.** Neither Party will employ, or offer or commit to employ or otherwise engage, a Dispute Review Board member during the member's tenure. Similarly, no member of the Dispute Review Board may take employment, or offer any service to either of the Parties or a subcontractor to the Contractor.
- (b) **Replacement Members.** The Parties may agree to terminate the tenure of any member of the Dispute Review Board at any time in writing. Neither OPG nor the Contractor may unilaterally terminate the tenure of any Dispute Review Board member. This Dispute Review Board Agreement survives the termination, resignation, death or incapacity of any member. If the tenure of any Dispute Review Board member is terminated or if any such member otherwise ceases to participate on the Dispute Review Board, the two remaining members of the Dispute Review Board will use the process set out in Section 11.2(b)(5) of the Agreement to select a new third member, and the new third member will be bound to enter into a new Dispute Review Board Agreement with the other two members and the Parties. If two or three members are terminated, the procedure in Sections

11.2(b) and 11.2(c) of the Agreement will apply until those positions are filled.

6. **Operation.**

- (a) **Beginning and Completion:** The Dispute Review Board will remain empanelled and active throughout the duration of the Project, irrespective of the fact its actual composition may change from time to time. The Dispute Review Board, however, shall not participate in any dispute between OPG and the Contractor which may arise subsequent to the termination of this Dispute Review Board Agreement.
- (b) **Individual Communication:** No individual member of the Dispute Review Board will have any private communication with either Party.
- (c) **General Procedure:** Dispute Review Board operating procedures will be formulated by the Dispute Review Board as a task under this Dispute Review Board Agreement. It is anticipated that during its first meeting at the Site, the Dispute Review Board will establish procedures for the conduct of its routine meetings, Site visits, and hearings of Disputes. The Parties direct the Dispute Review Board to adapt such procedures as required, in its unfettered discretion, to best achieve the objects of the Dispute Review Board. The Parties acknowledge that the Dispute Review Board may initiate new procedures or modify existing procedures as it deems appropriate or necessary to best achieve the object of the Dispute Review Board. The Parties undertake and agree to comply with such procedures.
- (d) **Agreement, Reports and Information:** The Parties will provide a conformed set of plans and specifications to each Dispute Review Board member. The members will thereafter remain informed of construction activity and other developments by means of timely transmittal of relevant information prepared by OPG and the Contractor in the normal course of construction, including through periodic progress reports and minutes of progress meetings.
- (e) **Progress Meetings:** In addition to its other duties, the Dispute Review Board will meet at regular intervals, no less frequently than quarterly, and at times of significant construction events. The frequency and scheduling of these meetings will be as agreed among the Parties and the Dispute Review Board, depending upon the progress of the Work. In the case of failure to agree, the Dispute Review Board will schedule the meetings. Each meeting will consist of an informal roundtable discussion followed by an optional field observation of the Project. The informal roundtable discussion will be attended by key personnel from OPG and the Contractor. The agenda for each meeting will include no fewer than the following items:

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- (i) approval of minutes of previous meeting (to be kept by OPG, and circulated for approval within seven days of each meeting, or less if necessary);
- (ii) Work performed since the last meeting;
- (iii) current status of the Contract Schedule and schedule for future Work;
- (iv) anticipated or potential problems and proposed solutions;
- (v) perspectives on potential Disputes, claims and other controversies;
- (vi) status of past Disputes, claims and other controversies;
- (vii) new business; and
- (viii) set date, time and place of next meeting and Site visit.

7. **Review of Disputes.**

- (a) **General.** The Parties will cooperate to ensure that the Dispute Review Board is able to consider Disputes promptly.
- (b) **Prerequisites to Review.** Provided that it has not been expressly excluded from referral in the Agreement, a Dispute will be referred to the Dispute Review Board when:
  - (i) either Party believes that good faith bilateral negotiations have not and are not likely to succeed or have reached an impasse; or
  - (ii) if the Agreement provides for a prior decision by OPG's Representative or a Professional, such decision has been issued and is unacceptable to a Party.
- (c) **Disputes.** Provided that it has not been expressly excluded from referral in the Agreement, either Party may refer a Dispute to the Dispute Review Board. Requests for Dispute Review Board resolution must be submitted in writing to the chairperson of the Dispute Review Board and must state the Dispute, with particularity, arising in respect of the Agreement, including a sworn statement that negotiations have been attempted and exhausted or otherwise failed (the "**Dispute Request**"). The Party referring the Dispute to the Dispute Review Board will simultaneously submit a copy of the Dispute Request in compliance with this Section 7(c) to the other Party. After conferring with both Parties, the Dispute Review Board will establish a hearing procedure that is as summary, efficient, and inexpensive as possible in the circumstances and in accordance with the principles set out above.

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- (d) **Substantial and Complex Disputes.** If and only if the Dispute cannot be resolved summarily by exercise of the Dispute Review Board's inquisitorial powers, and (i) the Dispute Review Board considers it to be necessary, or (ii) the Parties make a joint request, the Dispute will be heard as follows:
- (i) concise written statements will be prepared by both Parties, together with a binder of relevant supporting documents, indexed, paginated in one continuous sequence throughout the binder, each document separated from each other document by sequentially numbered index tabs corresponding to the index;
  - (ii) the Party initiating the Dispute (the "**Applicant**") will serve its statement (the "**Applicant's Statement**") on the other Party and file three copies with the chairperson of the Dispute Review Board within the time set by the Dispute Review Board. The Applicant will set out a proposed method and schedule for the hearing in its Applicant's Statement;
  - (iii) the other Party's (the "**Respondent**") statement (the "**Respondent's Statement**") , prepared in identical form, will be similarly served and filed within the time set by the Dispute Review Board. The Respondent will also set out a proposed method and schedule for the hearing in the Respondent's Statement;
  - (iv) the Dispute Review Board may, by written notice to the Parties, require either or both of the Parties to support their respective statements with documents, affidavits, declarations, tests, samples, photographs, videos, reports or other material, in the Dispute Review Board's sole and absolute discretion, and at any time and from time to time; and
  - (v) the Dispute Review Board will acknowledge in writing to the Parties that the Dispute is perfected in accordance with this Section 7(d) when all of (i), (ii), (iii), and (iv) above are complied with and shall, at the same time, advise the Parties as to the method and schedule for the hearing having regard to the Parties' positions as recorded in their statements.
- (e) **Board to Visit Site.** In the case of a Dispute referred to the Dispute Review Board, either Party to the Dispute or the Dispute Review Board itself may request that a Site visit be undertaken before, or as part of, any hearing.
- (f) **Hearing.** The place of the hearing will be at the Site at a time and on a date stipulated by the Dispute Review Board in consultation with the

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Parties. If circumstances require, the Dispute Review Board may, with the prior consent of the Parties, adjourn all or a portion of the hearing of the Dispute to any other location or time.

- (i) **Proceedings in Confidence.** The proceedings of the Dispute Review Board hearing will be conducted and maintained as far as possible in absolute privacy, privilege and confidence.
- (ii) **Representation.** Each Party has the right, but not the obligation, to be represented by counsel at any hearing or any portion of any hearing, at its own expense.
- (iii) **No Transcripts Required.** No transcript is required to be kept of any testimony before the Dispute Review Board, but, if such testimony is taken and transcribed by one Party, a copy must be provided to the other Party once received.
- (iv) **Hearing Procedure.** The order of proof, the fact and extent of oral evidence (whether under oath or not), examinations and cross-examinations (whether under oath or not), the quality of proof, the burden of proof, argument both written and oral, and all matters of form, procedure, and process relating to the hearing before the Dispute Review Board are within the absolute discretion of the Dispute Review Board.
- (g) **Inquiry by Board.** The Dispute Review Board is expressly authorised by the Parties to take all accounts, make all inquiries, give all directions and do all things necessary to reach their Recommendations. The Parties agree to satisfy, in good faith, and as soon as practicably possible, any inquiries made by the Dispute Review Board, including where appropriate, the production of any documents, affidavits, declarations, tests, samples, photographs, videos, reports or other material, which inquiries are made in its sole and absolute discretion, at any time and from time to time.
- (h) **Deliberations.** The chairperson of the Dispute Review Board will declare the hearing closed at the close of argument and thereafter the Dispute Review Board will have, in aggregate, no more than two weeks for deliberation and delivery of its Recommendations.
- (i) **Recommendations.** The Dispute Review Board's Recommendations for the resolution of the Dispute will be transmitted to both Parties simultaneously at the end of the period of deliberation. In a difficult or complex case, this time period may be extended at any time and from time to time by agreement of the Parties. The Dispute Review Board will use best efforts to reach a unanimous Recommendation on every Dispute; however, if unanimity is not reached, individual Recommendations are permissible.

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- (j) **Clarification and Reconsideration.** If either Party feels that the Recommendations require clarification or reconsideration, that Party may so request, in writing, specifying with all possible particularity that Party's reasons, and the Dispute Review Board may or may not, in its sole and absolute discretion, elect to clarify, re-deliberate or re-open the hearing for the purpose set out in the Party's request, and if the hearing is re-opened, the requirements set out in this section apply once again.
- (k) **Funding.** All expenses of the Dispute Review Board shall be shared equally, and billed monthly, in arrears, with OPG paying 50% and the Contractor paying 50%. The Dispute Review Board will render its invoices to the Contractor, who will pay these invoices in full (50% on its own behalf and 50% as paying agent for OPG) and recover OPG's portion of such invoices (including GST applicable thereto) as part of any Application for Payment submitted by the Contractor to OPG.
- (l) **Termination.** Notwithstanding any term in this Dispute Review Board Agreement, OPG and the Contractor may terminate this Dispute Review Board Agreement at any time by a document in writing. Upon termination, the Dispute Review Board will promptly render any outstanding Recommendations and a final account for its services.
- (m) **Legal Relations.** Each Party and each member of the Dispute Review Board expressly acknowledge that each member of the Dispute Review Board is acting as an individual and not in his/her professional capacity, if any, nor in the capacity of employee or agent of any of the Parties or any other person, including any employer of any such individual. The Parties each expressly acknowledge that each member of the Dispute Review Board is acting in a capacity intended to facilitate resolution of the Disputes and accordingly it is agreed and acknowledged that to the fullest extent permitted by the law, each member of the Dispute Review Board will be accorded quasi-judicial immunity for any good faith decisions or actions taken by such member in any way associated with the performance of such member's services as a member of the Dispute Review Board. Each member of the Dispute Review Board will be indemnified and held harmless, by OPG and the Contractor, of and from any claim of any nature or kind whatsoever that may be brought arising out of or related in any way whatsoever to such member's conduct (save for failure to act in good faith or willful misconduct) as a member of the Dispute Review Board.

*{Signature page to follow}*

The Parties and the Dispute Review Board have duly sealed and have duly executed this Dispute Review Board Agreement as of the day and year first above written.

**ONTARIO POWER GENERATION  
INC.** (SEAL)

\_\_\_\_\_  
Name:  
Title:

**STRABAG INC.** (SEAL)

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[NTD: Insert DRB Member #1]

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[NTD: Insert DRB Member #2]

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[NTD: Insert DRB Member #3]

Agreed and acknowledged this \_\_\_\_\_ day of ■, 2006

**STRABAG AG** (SEAL)

\_\_\_\_\_  
Name:  
Title:

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### Original Agreement Remains in Full Force

Except for changes to the Original Agreement set out in this Agreement and any previous Amendment, the Original Agreement remains in full force, unamended, including the provisions relating to Contract Price and Contract Schedule.

The Parties have duly executed this Agreement.

### ONTARIO POWER GENERATION INC.

By: Emad Elsayed  
Name: Emad Elsayed  
Title: Vice President - Hydroelectric  
Development

### STRABAG INC.

By: Ernst Oschuitzer  
Name: Ernst Oschuitzer  
Title: Project Manager NTFP

Strabag AG hereby accepts Amendment Agreement Number 1 as agreed to above by Ontario Power Generation Inc. and Strabag Inc. and acknowledges that it continues to be bound by the Design/Build Agreement between Ontario Power Generation Inc. and Strabag AG dated August 18, 2005, as amended by Amendment Agreement Number 1 above.

DATED this 15th day of March, 2006.

### STRABAG AG

By: Ernst Oschuitzer  
Name: Ernst Oschuitzer  
Title: Project Manager NTFP

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