

AMENDMENT AGREEMENT NUMBER 5

This Amendment Agreement is made as of September 25, 2008, 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.**").

RECITALS

- A. OPG and Strabag AG ("**AG**") entered into a Design/Build Agreement dated as of August 18, 2005 (hereinafter called the "**DBA Agreement**");
- B. AG has assigned the DBA Agreement to Inc., its wholly owned subsidiary;
- C. The DBA Agreement has been amended by amendment agreements dated as of March 15, 2006, July 5, 2006, October 10, 2007 and November 7, 2007 (the DBA Agreement as amended is hereinafter called the "Original Agreement"), and
- D. OPG and Inc. (the "**Parties**") have agreed to amend the Original Agreement to modify the method of effecting amendments and to allow for certain changes to the Work described in Project Change Directives ("**PCDs**") 022, 024, 025, 026, 027 Rev 1, 028, 029, 030 and 032 as further described below.

For value received, the Parties agree as follows.

1. Interpretation

- 1.1 Any defined term used in this Amendment Agreement (hereinafter "this Agreement") that is not defined in this Agreement has the meaning given to that term in the Original Agreement.
- 1.2 This Agreement incorporates the changes to the Original Agreement specified in PCDs 022, 024, 025, 026, 027 Rev 1, 028, 029, 030 and 032 in their entirety. In the event of a conflict or inconsistency between any term of a PCD and this Agreement, this Agreement will govern.
- 1.3 For the purpose of this Agreement and the Original Agreement, the Work or changes of Work agreed to be performed under PCDs 022, 024, 025, 027 Rev 1, 028, 029 and 030 are deemed to be collectively "Scope Changes" under Section 1.19 of Appendix 7.2 – Measure of Payment Schedule and 1.19 of Appendix 1.1(j) – Breakdown of Contract Price.

2. Change to Section 1.1 - Definitions

- 2.1 Section 1.1(b) of the Original Agreement is deleted in its entirety and replaced with the following:

"Amendment means a written amendment agreement signed by the Parties, in the form of document attached as Appendix 1.1(b) or in the form of a Project Change Directive deemed

cc [signature]

to be an amendment pursuant to Section 5.1(d) and in the form of document attached as Appendix 1.1(hhh), which makes any change to this Agreement."

2.2 Section 1.1(f) of the Original Agreement is deleted in its entirety and replaced with the following:

"Business Day means any day other than a Saturday, Sunday, New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day. Each Business Day will end at 5:00 p.m. on that day."

3. Change to Section 5.1 - Changes Requested by OPG

3.1 Section 5.1(a) of the Original Agreement is deleted in its entirety and replaced with the following:

"Issue Project Change Directive. OPG may, without invalidating this Agreement, direct the Contractor to make changes in the Work by issuing a Project Change Directive. Subject to the provisions of Section 5.1(d), if OPG issues a Project Change Directive, the Parties will execute an Amendment made in accordance with this Section 5 covering the applicable changes to the Work and the changes, if any, to the Contract Price or Contract Schedule. OPG may include in any Project Change Directive, OPG's expectations as to the changes, if any, that the changes in the Work will cause to the Contract Price and Contract Schedule. OPG may amend the Owner's Mandatory Requirements by issuing a Project Change Directive."

3.2 The following section is added as a new Section 5.1(d) to the Original Agreement:

"Project Change Directives as Amendments. Any Project Change Directive that does not direct, or provide OPG's consent to, a material change to the Work, the Contract Price or the Contract Schedule, will be deemed to be an Amendment for purposes of Section 5.1 and Section 5.6, and no further or additional written agreement must be executed, provided that the terms of the Project Change Directive expressly state that the Parties have adopted the Project Change Directive as an Amendment to this Agreement and both Parties sign the Project Change Directive in accordance with Section 14.2."

For clarity, but without limitation, each of the following is considered a material change:

(i) any change in the Work, Contract Price or Contract Schedule as a result of a change in Applicable Laws pursuant to Section 5.3;

(ii) any change in the Contract Schedule; and

(iii) any change in the Contract Price greater than \$100,000.00."

4. Change to Section 5.6 - Execution of Amendments

4.1 Section 5.6 of the Original Agreement is deleted in its entirety and replaced with the following:

"Except in the case of Project Change Directives that are deemed to be Amendments in accordance with Section 5.1(d), OPG will not be deemed to have agreed to, or be

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required to pay for, any changes to the Work, Contract Price or the Contract Schedule, until the Parties have executed an Amendment evidencing the Project Change Directive."

5. PCD-026 - Change in Law – Family Day (the third Monday in February, beginning in 2008)

- 5.1 The following Section is added as a new Section 1.21 Changes in Applicable Laws in Appendix 7.2 – Measurement for Payment Schedule:

"Changes in Applicable Laws. A lump sum of \$235,000.00 for additional costs to the Contractor, if any, for each Family Day statutory holiday, and representing salaries, wages and any related expenses, for the calendar years 2008 and 2009, will be payable to the Contractor after each applicable Family Day statutory holiday under Measurement Payment Item 1.21 – Change in Laws of the Breakdown of Contract Price in Appendix 1.1(j). Such lump sum will be invoiced by the Contractor promptly after the occurrence of the applicable Family Day statutory holiday and will be payable in two equal payments."

6. Change to Appendix 1.1 (hhh) - Project Change Directive Form

- 6.1 Appendix 1.1(hhh) is deleted in its entirety and replaced with the Project Change Directive form attached hereto as Schedule A.

7. Scope Changes

Changes to Appendix 1.1(sss) – Summary of Work

7.1 PCD-022 – Power Feed to NPG's Crossover Gauge House

The following Section is added as a new Section 1.2(1) (ppp) in Appendix 1.1(sss) of the Original Agreement:

"(ppp) provide a power feed from Strabag's 12M1 (13.8-kV) feeder to the Niagara Plants Group's (NPG) crossover gauge house to provide power to this facility as requested by NPG to accommodate disconnection by Hydro One of the existing power feed to this facility."

7.2 PCD-024 - Additional Costs for Strobe Lights on New Accelerating Wall

The following Section is added as a new Section 1.2(1) (qqq) in Appendix 1.1(sss) of the Original Agreement:

"(qqq) provide for the supply and installation of an additional embedded conduit and an additional 3C#12 cable to the new accelerating wall strobe light."

7.3 PCD-025 – Location of Existing Sir Adam Beck Generating Station Watermain

The following Section is added as a new Section 1.2(1) (rrr) in Appendix 1.1(sss) of the Original Agreement:

"(rrr) locate the existing Sir Adam Beck Generating Station watermain, in the vicinity of the tunnel dewatering shaft work area."

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7.4 **PCD-027 Rev. 1 – Grout Investigative Boreholes NF-39 and SD-8**

The following Section is added as a new Section 1.2(1) (sss) in Appendix 1.1(sss) of the Original Agreement:

“(sss) grout investigative boreholes NF-39 and SD-8.”

7.5 **PCD-028 – Clean-up of Dust at Butterfly Conservatory**

The following Section is added as a new Section 1.2(1) (ttt) in Appendix 1.1(sss) of the Original Agreement:

“(ttt) perform remedial and maintenance work for the cleaning of the Butterfly Conservatory after the 2007 dust events.”

7.6 **PCD-029 – Provide Radio Communication System for Owner’s Representative**

The following Section is added as a new Section 1.2(1) (uuu) in Appendix 1.1(sss) of the Original Agreement:

“(uuu) supply, install, and maintain a tunnel radio communications system for use by the Owner’s Representative while travelling and working within the tunnel.”

7.7 **PCD-030 – Remove Concrete Structure and Contaminated Soil Interfering with Installation of the Dewatering System Outfall Pipe**

The following Section is added as a new Section 1.2(1) (vvv) in Appendix 1.1(sss) of the Original Agreement:

“(vvv) demolish a portion of an existing buried concrete structure that conflicted with the dewatering system pipeline alignment, and excavate, contain stockpiling and dispose off- site hydrocarbon contaminated soil from beneath the concrete structure.”

8. Change to Appendix 1.1 (j) – Breakdown of Contract Price

8.1 The following Measurement Payment Item is added as new Measurement Payment Item 1.21 in the Breakdown of Contract Price of Appendix 1.1(j) of the Original Agreement:

<i>“1.21 Changes in Applicable Laws</i>	<i>\$0</i>	<i>\$235,000.00”</i>
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8.2 Measurement Payment Item 1.19 in the Breakdown of Contract Price is deleted in its entirety and replaced with the following:

<i>“1.19 Scope Changes</i>	<i>\$26,763</i>	<i>\$678,116.88”</i>
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MEASUREMENT PAYMENT ITEM	DESCRIPTION OF WORK	ORST INCLUDED	TOTAL
	Insurance Premium	170,000	2,724,181
1.1	Mobilization/Demobilization	871,824	31,693,169
1.2	Maintenance Bond in the form of Appendix 4.1(f)	0	610,749
1.3	Performance LC	0	2,544,789
1.5	Design	0	5,870,313
1.6	Accelerating Wall, Intake Channel and Approach Wall	1,007,528	62,362,211
1.7	Diversion Outlet Canal	33,520	12,730,052
1.8	Dewatering System Shafts	145,367	3,787,251
1.9	Intake Structure	56,789	5,334,935
1.10	Intake Gates	8,389	2,325,461
1.11	Outlet Structure	60,149	7,222,558
1.12	Outlet Structure Gate and Hoist	16,729	5,957,260
1.13	Diversion Tunnel	7,489,430	406,881,138
1.14	Tunnel Boring Machine	4,738,617	78,242,470
1.15	Flow Verification Test	0	126,948
1.16	Demolition and Disposal of Dewatering Structure (optional)	11,490	1,495,595
1.17	OPG's 50% portion of DRB Estimated Cost	0	450,000
1.18	Item not used	0	0
1.19	Scope Changes	26,763	678,117
1.20	Provisional Sum	23,000	400,000
1.21	Changes in Applicable Laws	0	235,000
	Total Contract Price	14,659,595	631,672,197

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8.5 The Parties acknowledge that the breakdown of the sum of \$218,899.88 added by this Amendment to Item 1.19 "Scope Changes" is as follows:

PCD 022	\$17,750.00
PCD 024	\$19,330.00
PCD 025	\$3,226.88
PCD 027	\$ 60,075.50
PCD 028	\$10,710.00
PCD 029	\$80,252.00
PCD 030	\$27,555.50
TOTAL:	\$218,899.88

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9. Original Agreement Remains in Full Force

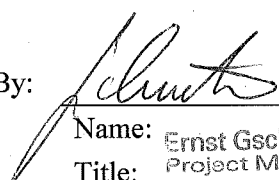
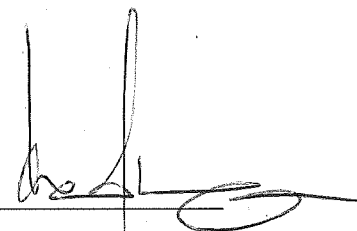
Except as set forth in Recital C and as amended by this Agreement, the Original Agreement remains in full force, unamended including the provisions relating to Contract Price and Contract Schedule.

The Parties have duly executed this Agreement.

ONTARIO POWER GENERATION INC.

By: 
Name: Carlo Crozzoli
Title: Vice President Hydroelectric Development

STRABAG INC.

By:  
Name: Ernst Gschnitzer
Title: Project Manager
Robert Radlinger
Finance & Admin. Manager

Strabag AG hereby accepts Amendment Agreement Number 5 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 as of August 18, 2005, as amended by Amendment Agreement Number 1 dated March 15, 2006, Amendment Agreement Number 2 dated as of July 5, 2006, Amendment Agreement Number 3 dated as of October 10, 2007, Amendment Agreement Number 4 dated as of November 7, 2007 and Amendment Number 5 above.

DATED this 25 day of September, 2008.

STRABAG AG

By: 
Name: Ernst Gschnitzer
Title: Project Manager



SCHEDULE A

Appendix 1.1(hhh) – Project Change Directive Form

PROJECT CHANGE DIRECTIVE

To: Strabag Inc 2520 Stanley Avenue, Niagara Falls, ON L2E 6S4 (the “Contractor”)	Contract: Design/Build Agreement (the “Agreement”) dated August 18, 2005 between the Contractor and Ontario Power Generation Inc. (“OPG”) Project Change Directive No.: _____ Date: _____
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Defined terms used in this Notice have the same meanings given to those terms in the Agreement as amended.

Change to Work

In accordance with Section 5.1(a) of the Agreement OPG hereby directs the Contractor to make the following changes in the Work:

Expected Change to Contract Price.

OPG expects that the changes to the Work set out in this Notice will have the following effect on the Contract Price:

Contract Price, as set out in the Agreement as of the date of the Agreement	\$ _____
Total Contract Price, as set out in the Agreement as of the date of the Agreement, as adjusted by all changes in the Contract Price made under all Amendments	\$ _____
Total expected change to the Contract Price under this PCD	\$ _____

Expected Change to Contract Schedule

OPG expects that the changes to the Work set out in this Notice will have the following effect on the Contract Schedule: _____

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ONTARIO POWER GENERATION INC.

Name:

Title:

NOTE: *The optional language that follows is to be included only if the PCD does not effect changes:*

- 1. to the Work, Contract Price or Contract Schedule as a result of a change in Applicable Laws; or*
- 2. to the Contract Schedule; or*
- 3. to the Contract Price greater than \$100,000*
and only in accordance with Section 5.1(d):

DEEMED AMENDMENT TO AGREEMENT in accordance with Section 5.1(d)

The Parties agree to adopt the changes evidenced by this Project Change Directive as an Amendment for purposes of Section 5.1 and Section 5.6 of the Agreement and in accordance with Section 14.2 of the Agreement, without further written agreement. The Agreement is hereby deemed to be amended in accordance with the changes described above and as may be further reflected by the wording changes to the following Sections of the Agreement:

Change to Appendix 1.1(sss) – Summary of Work

[insert any specific language changes to Appendix 1.1(sss) required as a result of the agreed changes to Work prefaced by one of the following]

Section 1.2(1) [•] in Appendix 1.1(sss) of the Agreement is deleted in its entirety and replaced with the following: **OR** Section 1.2(1) [•] in Appendix 1.1(sss) of the Agreement is deleted in its entirety: **OR** The following Section is added as a new Section 1.2(1) [•] in Appendix 1.1(sss) of the Agreement:

Change to Appendix 1.1(j) – Contract Price

Measurement Payment Item 1.19 – Scope Changes **OR** Measurement Payment Item [insert alternative applicable item # and title] of Breakdown of Contract Price in Appendix 1.1(j) is increased [or decreased] by exactly \$ _____ in accordance with the agreed price adjustment for this Project Change Directive, including \$ _____ for ORST and excluding GST.

Item [1.19 **OR** alternative item #] of Appendix 1.1(j) is therefore deleted in its entirety and replaced by the following:

[1.19 OR alternative item #]	[Scope Changes OR alternative title]	[]	[]
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Change to Appendix 1.1(j) – Breakdown of Contract Price

The Breakdown of Contract Price table in Appendix 1.1(j) of the Agreement is deleted in its entirety and replaced with the table attached as Annex 1 hereto.

NOTE: in cases where the change to the Work requires the addition of a new Measurement for Payment Item rather than a change to an existing item the following language is to be included to amend Appendix 7.2:

Change to Appendix 7.2 – Measure for Payment Schedule

The following Section is added as a new Section [] [title] in Appendix 7.2 – Measurement for Payment Schedule: [insert applicable language]

Accepted and Agreed:

ONTARIO POWER GENERATION INC.

Name:

Title:

STRABAG INC.

Name:

Title:

A handwritten signature in black ink, appearing to be "L. J. [unclear] ce", is located in the bottom left corner of the page.

ANNEX 1 to PCD _____

Breakdown of Contract Price

MEASUREMENT PAYMENT ITEM	DESCRIPTION OF WORK	ORST INCLUDED	TOTAL
	Insurance Premium	170,000	2,724,181
1.1	Mobilization/Demobilization	871,824	31,693,169
1.2	Maintenance Bond in the form of Appendix 4.1(f)	0	610,749
1.3	Performance LC	0	2,544,789
1.5	Design	0	5,870,313
1.6	Accelerating Wall, Intake Channel and Approach Wall	1,007,528	62,362,211
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1.13	Diversion Tunnel	7,489,430	406,881,138
1.14	Tunnel Boring Machine	4,738,617	78,242,470
1.15	Flow Verification Test	0	126,948
1.16	Demolition and Disposal of Dewatering Structure (optional)	11,490	1,495,595
1.17	OPG's 50% portion of DRB Estimated Cost	0	450,000
1.18	Item not used	0	0
1.19	Scope Changes	[]	[]
1.20	Provisional Sum	23,000	400,000
1.21	Changes in Applicable Laws	0	235,000
	Total Contract Price	[TBD on signing]	[TBD on signing]

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