

AMENDMENT AGREEMENT NUMBER 1

This Amendment Agreement Number 1 is made as of June 29, 2012 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 ("**Strabag**").

RECITALS

- A. OPG and Strabag (the "Parties") entered into an Amended Design/Build Agreement with respect to the Niagara Tunnel Facility Project, made as of December 1, 2008 (hereinafter called the "**ADBA**"); and
- B. The Parties have agreed to amend the ADBA in accordance with the terms herein.

For value received, the Parties agree as follows.

1. Interpretation

- 1.1 Any defined term used in this Amendment Agreement Number 1 (hereinafter "this Agreement") that is not defined in this Agreement has the meaning given to that term in the ADBA.

2. Changes to ADBA

- 2.1 Section 7.3B(5) of the ADBA is deleted in its entirety and replaced with the following:
"(5) a sum of \$1,364,590.40 representing interest payable by OPG to the Contractor with respect to the amounts payable pursuant to this Section 7.3B."
- 2.2 Section 7.3B (2) of the ADBA is amended by deleting the reference to "April 25, 2009" and replacing it with "May 25, 2009".
- 2.3 Section 7.3(b) of the ADBA is amended by removing the reference to "Bank of Canada Prime Lending Rate" and replacing it with "Bank of Canada Bank Rate, (V121785/V122530), as published on the Bank of Canada website at www.bankofcanada.ca".
- 2.4 Appendix 7.14(b) Final Payment Form of the ADBA is amended by deleting "apmailroom@opg.com" and replacing it with "opg@octacom.ca".
- 2.5 Section 9.5 of the ADBA is amended by deleting "contract" from the second line of the last paragraph and replacing it with "Contractor".
- 2.6 Section 14.4 of the ADBA is amended by



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- a. deleting the Fax number for Rick Everdell "416-592-6552" and replacing it with "416-592-3489";
 - b. deleting the reference to "Harry Charalambu" as the Hatch Mott MacDonald contact and replacing it with "John Tait"; and
 - c. deleting the reference to "Gerald Zangl" and replacing it with "Marina Humitsch".
- 2.7 Appendix 1.1(sss) Subsection 1.2(1)(ff) of the ADBA is amended by deleting "intake" and replacing with "outlet".
- 2.8 Appendix 1.1(hhh) is deleted in its entirety and replaced with the revised form attached to this amendment as Attachment B.
- 2.9 Appendix 2.2(a) is deleted in its entirety and replaced with the revised Organizational Chart attached to this amendment as Attachment C.

3. Scope Changes

3.1 PCD037 Rev 1, Purchase of Spare Main Bearing

The following paragraph is added as a new Subsection 1.2(1) (yyy) in Appendix 1.1(sss) of the ADBA:

"(yyy) supply of a new main bearing for the tunnel boring machine, including freight, handling, insurance and secure storage, located at Crown Warehousing & Logistics Inc., 2160 West 106th St., Cleveland, Ohio, 44102-3559."

3.2 PCD042, Supply, Installation and Monitoring of Profile Monitoring Instrumentation at the Rankine Generation Station

The following paragraph is added as a new Subsection 1.2(1) (zzz) in Appendix 1.1(sss) of the ADBA:

"(zzz) Install three vertical boreholes, two between the new tunnel and the existing tunnels and one between the new tunnel and the Rankine station, with associated instrumentation (shape acceleration array complete with cabling, installation and data logger) in each hole and grout holes to surface. Install manhole at the top of each borehole with a data logger also installed for each borehole to remain in place for continued reading after project completion, should this be necessary. Monitor the horizontal movements of the rock during tunnel excavation."

3.3 PCD045, Drilling and Sampling in the Tunnel for Potential Swelling at Low Point Study by K. Y. Lo

The following paragraph is added as a new Subsection 1.2(1) (aaaa) in Appendix 1.1(sss) of the ADBA:

"(aaaa) supply of labour, material and equipment for core drilling and sampling in the tunnel for the Dr. K. Y. Lo study of the potential swelling at the low point."



3.4 PCD047, Engagement of Robbins in Design of TBM Main Beam Repair

The following paragraph is added as a new Subsection 1.2(1) (bbbb) in Appendix 1.1(sss) of the ADBA:

“(bbbb) engage The Robbins Company, the TBM designer, manufacturer and supplier, in the development and oversight of the design to repair the cracked TBM main beam.”

3.5 PCD049 Rev 1, Return of Spare Main Bearing

The following paragraph is added as a new Subsection 1.2(1) (cccc) in Appendix 1.1(sss) of the ADBA:

“(cccc) upon completion of the TBM mining, return the spare main bearing for the tunnel boring machine to The Robbins Company in accordance with the terms established at the time of the original purchase of the spare main bearing.”

4. Change in Law

4.1 PCD046, Change in Law – Harmonized Sales Tax

Delete Subsection 7.5(b) (6) of the ADBA in its entirety and replace it with the following:

“(6) Commencing July 1, 2010, the Contractor shall identify in its financial system all items that previously would have incurred Ontario Retail Sales Tax (ORST) and the calculations of the amount of such tax. The Target Cost shall be adjusted annually and at the Final Completion Date by deducting the total amount of ORST recorded by this method. ”

5. Change to Owners Mandatory Requirements

5.1 PCD035, Change to Intake and Outlet Gate Material

The following paragraph is added as a new Subsection under Section 7.2.2. in Appendix 1.1(vv) of the ADBA:

“3. Main and Guide Roller Axles, Main and Side Rollers, Main and Side Roller Assemblies, Seal Retaining Bars, Seal Retaining Bar Bolts and Nuts shall be stainless steel.”

5.2 PCD051, Additional Scope for Outlet Gates

The following paragraphs are added as new Subsections under Section 7.2.6. in Appendix 1.1(vv) of the ADBA:

“9. Two (2) welding receptacles shall be provided in the hoist enclosure.”

“10. Four (4) electrical utility outlets shall be provided in the gate enclosure.”

“11. A secondary control panel with all the features of the main control panel shall be provided inside the stair tower at ground level.”

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6. Other Agreed Changes to Target Cost

6.1 PCD048, Crown Overbreak Adjustment

Adjustment to the Target Cost in accordance with Sections 5.3C and 5.3D of the ADBA due to crown overbreak as calculated in accordance with Table 1 of Appendix 5.3C and Table 4 of Appendix 1.1 (UUU).

6.2 PCD055, Dufferin Construction Company Global Claim Settlement

Adjustment to the Target Cost in accordance with Section 5.3D of the ADBA due to claims agreed between Strabag and Dufferin Construction Company relating to Intake Channel Walls and Outlet Structure as baselined in Appendix 1.1 (UUU) of the ADBA.

6.3 PCD056, DCC Stand-by and Double Shift Work Claim at PGS Dewatering Structure Removal

Adjustment to the Target Cost in accordance with Sections 5.1(a) and 2.14(c) of the ADBA due to claims agreed between Strabag and Dufferin Construction Company relating to stand-by and double shift work carried out as part of the PGS Dewatering Structure removal.

7. Change to Target Cost

Appendix 1.1(TTT) – Target Cost of the ADBA is deleted in its entirety and replaced with the Attachment A attached to this Agreement.

8. Summary of Target Cost Adjustments

8.1 The Parties acknowledge that the breakdown of change to the Target Cost resulting from the changes described in Sections 2 through 6 above are as follows:

PCD035	Item 10	Intake Gates	+\$23,392.00
	Item 12	Outlet Gate and Hoist	+\$110,594.00
PCD037 Rev1	Item 13	Diversion Tunnel	+\$1,736,952.00
PCD042	Item 19	Scope Changes	+\$185,000.00
PCD045	Item 19	Scope Changes	+\$185,000.00
PCD046	Item 13	Diversion Tunnel	-\$2,485,671.79 (for 2010 & 2011)
PCD047	Item 13	Diversion Tunnel	\$0.00
PCD048	Item 13	Diversion Tunnel	+\$10,454,848.58
PCD049 Rev1	Item 13	Diversion Tunnel	-\$1,527,120.00
PCD051	Item 12	Outlet Gate and Hoist	+\$19,115.00
PCD055	Item 06	Intake Channel & Walls	-\$10,000.00
	Item 11	Outlet Structure	+\$86,000.00
PCD056	Item 16	Dewatering Structure	+\$167,657.12.



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8.2 The Parties acknowledge the breakdown of change to the Target Cost resulting from the following PCD Deemed Amendments :

PCD036	Item 13	Diversion Tunnel	-\$92,843.38
PCD038	Item 19	Scope Changes	+\$92,843.38
PCD039	Item 13	Diversion Tunnel	\$0
PCD040	Item 13	Diversion Tunnel	\$0
PCD044	Item 13	Diversion Tunnel	\$0
PCD052	Item 16	Dewatering Structure	+\$57,800.00
PCD053	Item 16	Dewatering Structure	\$0
PCD054	Item 15	Flow Verification Test	\$0

The aggregate change to the Target Price resulting from 8.1 and 8.2 above is +\$9,003,566.91 .

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9. Budget Transfers

The Parties acknowledge and agree that in order to allow payments to be made against individual activities, the following transfers of funds between the items within the Target Cost as set forth in Appendix 1.1(TTT) have been effected, without change to the overall scope of Work or the Target Cost:

Item	Description	Summary of Budget Transfers
1	Mobilize/Demobilize	\$0.00
2	Maintenance Bond	\$0.00
3	Performance LC	\$1,050,000.00
4	Insurance Premium	(\$1,450,000.00)
5	Design	\$1,000,000.00
6	Intake Channel and Walls	(\$1,750,000.00)
7	Diversion Outlet Canal	\$110,000.00
8	Dewatering Shafts	\$140,693.10
9	Intake Structure	(\$2,700,000.00)
10	Intake Gates	\$500,000.00
11	Outlet Structure	(\$1,000,000.00)
12	Outlet Gate and Hoist	\$50,000.00
13	Diversion Tunnel	(\$21,500,693.10)
14	Tunnel Boring Machine	\$0.00
15	Flow Verification Test	(\$250,000.00)
16	Dewatering Structure	\$0.00
17	DRB Estimated Cost	\$0.00
18	Item not used	\$0.00
19	Scope Changes	(\$450,000.00)
20	Provisional Sum	\$0.00
21	Changes in Applicable Law	(\$100,000.00)
22	Warranty Administration Fee	\$0.00
23	Office and General Cost	\$26,350,000.00
	Target Price	\$0.00

The Parties further acknowledge and agree that Appendix 1.1(TTT) attached to this Agreement as Attachment A incorporates the above noted transfers.

10. Change to Substantial Completion Date

10.1 PCD048, Crown Overbreak Adjustment


Appendix 1.1(k) – Contract Schedule of the ADBA is amended by replacing the referenced Substantial Completion Date of "June 15, 2013" with "July 02, 2013".

11. Original Agreement Remains in Full Force

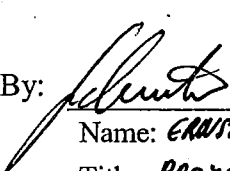
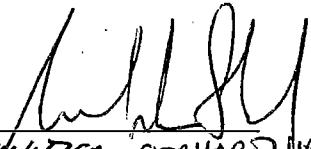
Except for the changes to the ADBA set forth in this Agreement, the ADBA remains in full force, unamended.

The Parties have duly executed this Agreement.

ONTARIO POWER GENERATION INC.

By: 
Name: Rob Boguski
Title: SVP - Business & Admin. Services

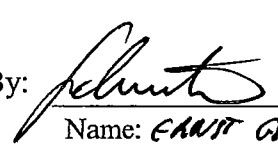
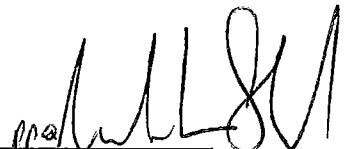
STRABAG INC.

By:  
Name: ERNST GSCHWITZER GERHARD URSCHITZ
Title: PROJECT MANAGER CEO

Strabag AG hereby agrees and acknowledges that it is bound by the terms of this Agreement and that it is obligated to perform the obligations under this Agreement as primary obligor and not as guarantor.

DATED July 25, 2012.

STRABAG AG

By:  
Name: ERNST GSCHWITZER GERHARD URSCHITZ
Title: AREA DIRECTOR DIRECTOR



Attachment A**Appendix 1.1(TTT) – Target Cost**

The Target Cost is \$994,003,566.91.

For the purposes of cost control, cost projection and cost performance indices only, the Target Cost will be allocated in the following Manner:

Item	Description	Revised Target Cost Data		
		Pre Effective Date	Post Effective Date	Total
1	Mobilize/Demobilize	\$25,037,603.51	\$5,940,000.00	\$30,977,603.51
2	Maintenance Bond	\$0.00	\$700,000.00	\$700,000.00
3	Performance LC	\$2,135,833.33	\$4,341,458.00	\$6,477,291.33
4	Insurance Premium	\$2,293,333.33	\$550,047.00	\$2,843,380.33
5	Design	\$5,425,340.78	\$5,277,000.00	\$10,702,340.78
6	Intake Channel and Walls	\$58,386,649.32	\$4,612,932.00	\$62,999,581.32
7	Diversion Outlet Canal	\$11,395,047.88	\$1,621,734.00	\$13,016,781.88
8	Dewatering Shafts	\$3,159,097.60	\$630,728.10	\$3,789,825.70
9	Intake Structure	\$304,440.00	\$5,631,354.00	\$5,935,794.00
10	Intake Gates	\$0.00	\$3,001,530.00	\$3,001,530.00
11	Outlet Structure	\$2,292,196.28	\$9,613,698.00	\$11,905,894.28
12	Outlet Gate and Hoist	\$0.00	\$3,782,821.00	\$3,782,821.00
13	Diversion Tunnel	\$112,171,914.06	\$563,430,137.24	\$675,602,051.30
14	Tunnel Boring Machine	\$78,242,470.00	\$0.00	\$78,242,470.00
15	Flow Verification Test	\$0.00	\$319,097.00	\$319,097.00
16	Dewatering Structure	\$0.00	\$1,677,491.12	\$1,677,491.12
17	DRB Estimated Cost	\$291,671.11	\$75,000.00	\$366,671.11
18	Item not used	\$0.00	\$0.00	\$0.00
19	Scope Changes	\$739,235.99	\$12,843.38	\$752,079.37
20	Provisional Sum	\$206,152.03	\$0.00	\$206,152.03
21	Changes in Applicable Law	\$117,500.00	\$17,500.00	\$135,000.00
22	Warranty Administration Fee	\$0.00	\$100,000.00	\$100,000.00
23	Office and General Cost	\$0.00	\$80,469,710.85	\$80,469,710.85
	Target Price	\$302,198,485.22	\$691,805,081.69	\$994,003,566.91

Attachment B

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: Amended Design/Build Agreement (the “Agreement”) dated [date], 2009 between the Contractor and Ontario Power Generation Inc. (“OPG”) Project Change Directive No.: _____ [brief description] Date: _____
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Defined terms used in this Notice have the same meanings given to those terms in the Agreement as amended.

Description of Change

In accordance with Section 5.1A([•]) of the Agreement OPG hereby [*CHOOSE AS APPLICABLE:*
[directs the Contractor to effect][consents to] [confirms]] the changes as described in Appendix No.1
attached hereto.

As a general description only, the change(s) provided for in Appendix No.1 relate to [brief description].

Expected Change to Target Cost.

OPG expects that the changes set out in this Notice will have the following effect on the Target Cost:

Total expected change to the Target Cost under this PCD \$ _____

Expected Change to Contract Schedule

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

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, Target Cost or Contract Schedule as a result of a change in Applicable Laws; or

2. to the Contract Schedule; or

3. to the Target Cost 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 5.8 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(TTT) – Target Cost

Item 1.19 – Scope Changes **OR** Item [insert alternative applicable item # and title] in Appendix 1.1(TTT) is increased [or decreased] by exactly \$_____ in accordance with the agreed Target Cost adjustment for this Project Change Directive excluding GST.

Item [1.19 **OR** alternative item #] of Appendix 1.1(TTT) 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(TTT) – Table

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

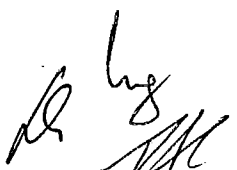
Accepted and Agreed:

ONTARIO POWER GENERATION INC.

Name:
Title:

STRABAG INC.

Name:
Title:

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Appendix No.1 to PCD [#]

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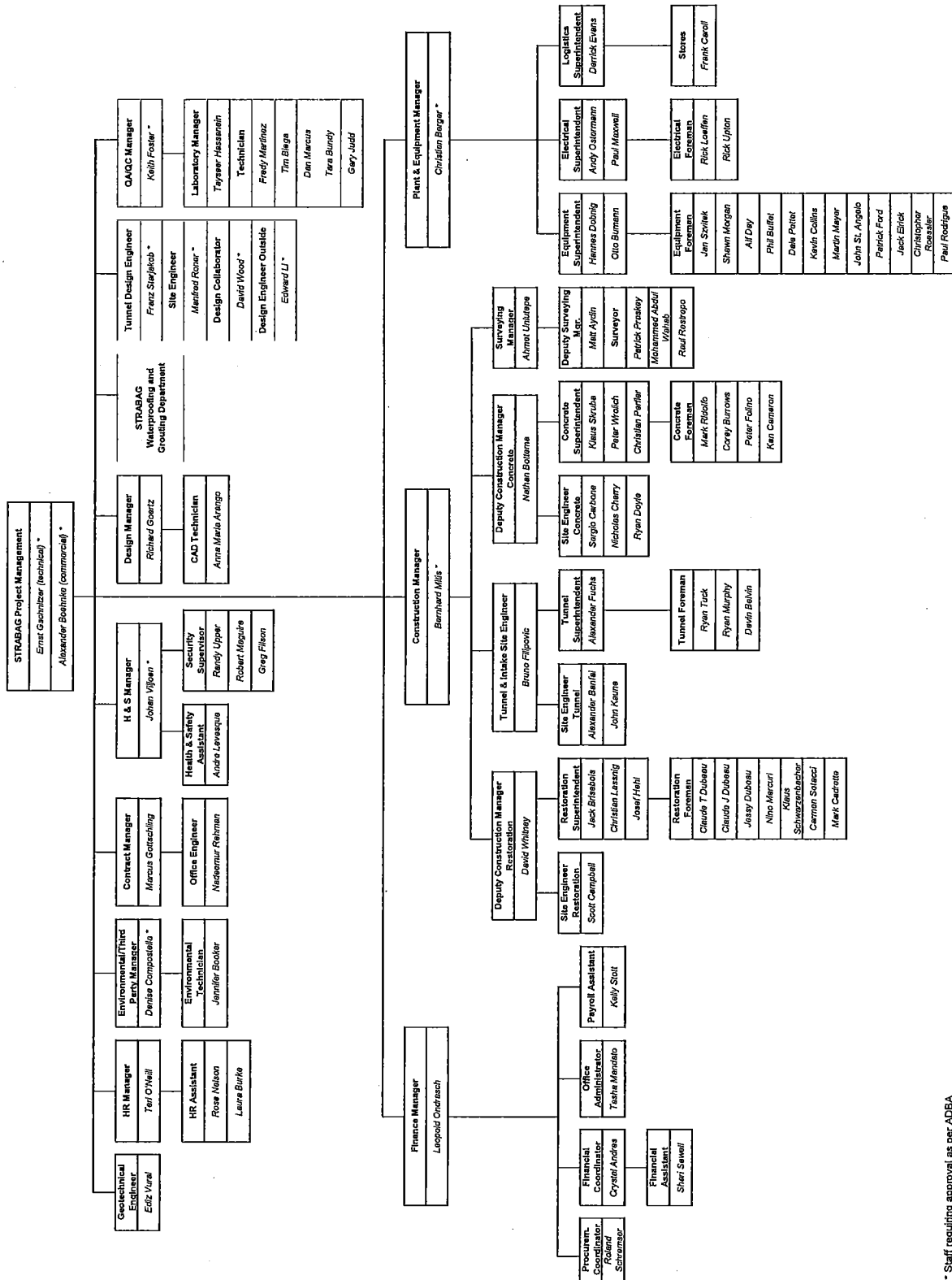
ANNEX 1 to PCD _____

ITEM	DESCRIPTION	Pre Effective Date	Post Effective Date	TOTAL
1.1	Mobilization/Demobilization	25,037,603.51		
1.2	Maintenance Bond in the form of Appendix 4.1(f)	0.00		
1.3	Performance LC	2,135,833.33		
1.4	Insurance Premium	2,293,333.33		
1.5	Design	5,425,340.78		
1.6	Accelerating Wall, Intake Channel and Approach Wall	58,386,649.32		
1.7	Diversion Outlet Canal	11,395,047.88		
1.8	Dewatering System Shafts	3,159,097.60		
1.9	Intake Structure	304,440.00		
1.10	Intake Gates	0.00		
1.11	Outlet Structure	2,292,196.28		
1.12	Outlet Structure Gate and Hoist	0.00		
1.13	Diversion Tunnel	112,171,914.06		
1.14	Tunnel Boring Machine	78,242,470.00		
1.15	Flow Verification Test	0.00		
1.16	Demolition and Disposal of Dewatering Structure	0.00		
1.17	OPG's 50% portion of DRB Estimated Cost	291,671.11		
1.18	Item not used			
1.19	Scope Changes	739,235.99	[###]	[###]
1.20	Provisional Sum	206,152.03		
1.21	Changes in Applicable Laws	117,500.00		
1.22	Warranty Administration Fee	0.00		
1.23	Office and General Cost	0.00		
	Target Price	302,198,485.22	[###]	[###]

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Attachment C

APPENDIX 2.2(a) - ORGANIZATIONAL CHART



* Staff requiring approval as per ADBA

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