

DGR Hosting Agreement
Between
Ontario Power Generation
And
Municipality of Kincardine

October 2004

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THIS AGREEMENT made this 13th day of October, 2004.

B E T W E E N:

ONTARIO POWER GENERATION INC.,
a corporation existing under the laws of Ontario

(hereinafter called "**OPG**")

AND

The Corporation of the Municipality of Kincardine,
a corporation existing under the laws of Ontario

(hereinafter called "**Kincardine**")

RECITALS:

- A. Whereas OPG has operated a facility within Kincardine at the Western Waste Management Facility ("**WWMF**") for interim centralized storage of Low and Intermediate Level Waste ("**L&ILW**") from the Pickering, Darlington and Bruce nuclear generating stations for over thirty years;
- B. Whereas nuclear generating stations and associated facilities will need to be Decommissioned, resulting in Decommissioning Waste;
- C. Whereas it is foreseeable that additional nuclear generating facilities may be established in Ontario, with associated production of L&ILW;
- D. Whereas on April 16, 2002 Kincardine and OPG signed a memorandum of understanding which set out the terms under which OPG, in consultation with Kincardine, would develop a plan for the long-term management of L&ILW at the WWMF. An independent assessment of long-term management of L&ILW options was conducted by Golder Associates and concluded in an Independent Assessment Report ("**IAR**") in early 2004 that all three of the options considered i.e. enhanced processing and storage, surface concrete vaults and a Deep Geologic Repository ("**DGR**") were technically feasible, safe and would ultimately have no significant adverse environmental, social or economic effects;
- E. Whereas the IAR concluded that DGR would have the largest safety margin of all the three options for long-term management of L&ILW which were considered. The IAR further stated that Kincardine and the Adjacent Municipalities would receive direct and indirect economic benefits from DGR such as additional employment and an increase in business and investment;

- F. Whereas the Council of Kincardine, by resolution dated April 21, 2004, endorsed advancing DGR for long-term management of L&ILW in Kincardine;
- G. Whereas the Council of Kincardine is responsible to act in the interest of the general health, safety and welfare of its inhabitants and the protection of the environment;
- H. Whereas the construction and operation of the DGR by OPG must meet legally imposed environmental, health, safety and security standards and Canada's international obligations, the interpretation and scope of which fall primarily under the jurisdiction of the Canadian Nuclear Safety Commission ("CNSC");
- I. Whereas Kincardine is recognized as the host municipality and the Corporation of the Town of Saugeen Shores, the Corporation of the Township of Huron-Kinloss, the Corporation of the Municipality of Arran-Elderslie and the Municipality of Brockton are adjacent municipalities;
- J. Whereas the Parties wish to ensure that Kincardine and adjacent municipalities receive compensation relating to construction and operation of the DGR;
- K. Whereas OPG acknowledges that local community support is desirable for the success of the long-term waste management of L&ILW;
- L. Whereas Kincardine acknowledges the potential benefits of the DGR project to its residents;
- M. Whereas OPG and its predecessors historically had a community agreement with Bruce Township;
- N. Whereas there have been ongoing discussions between OPG and Kincardine about the DGR leading to signing of a non-binding term sheet dated September 28, 2004; and
- O. Whereas OPG recognizes and acknowledges the value of having a permanent storage facility for L&ILW in Kincardine.

THEREFORE IN CONSIDERATION OF the covenants hereinafter contained and for value received, the parties agree as follows:

SECTION 1 INTENT AND INTERPRETATION

1.1 Definitions.

In this Agreement the following terms have the respective meanings set out below:

- (a) **"Adjacent Municipalities"** means collectively, the Corporation of the Town of Saugeen Shores, the Corporation of the Township of Huron-Kinloss, the Corporation of Arran-Elderslie and the Municipality of Brockton;
- (b) **"Agreement"** means this agreement, including any recitals and schedules thereto, as amended or restated from time to time by Amendment;

- (c) “**Arbitrator**” means a single arbitrator who must be a retired judge of the Supreme Court of Canada, the Superior Court of Justice (Ontario) or of any court of a Canadian province having jurisdiction comparable to, or higher than that, of such court or such person as the Parties mutually agree upon;
- (d) “**Amendment**” means a written amendment signed by the parties which makes any change to this Agreement or an amended or restated agreement. “Amend”, “Amends” and “Amended” shall have similar meanings;
- (e) “**Business Day**” means any day other than a Saturday, Sunday, New Year’s Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day or any other public holiday declared by the federal or provincial government. Each Business Day will end at 3 p.m. on that day;
- (f) “**CNSC**” means the Canadian Nuclear Safety Commission established under the *Nuclear Safety and Control Act (Canada)* and any successor agency, board, or commission;
- (g) “**Community Consultation**” means the public consultation relating to the construction and operation of DGR, conducted by Kincardine in consultation with OPG in accordance with SECTION 3 of this Agreement;
- (h) “**CPI (Ontario)**” means for a calendar year the historical consumer price index for the Province of Ontario (time base = 100), or the price index most nearly corresponding thereto should the said consumer price index not be published for any time during the period in question, as published by Statistics Canada or any successor or other body which may assume responsibility for the preparation and publishing of the said consumer price index or corresponding index, as the case may be;
- (i) “**Decommissioning Waste**” means L&ILW derived from removing a nuclear generating station, or nuclear waste facility, or any part thereof, from service and “Decommissioning” and “Decommissioned” shall have a similar meaning;
- (j) “**Deep Geologic Repository**” or “**DGR**” means deep rock vaults excavated at depths below ground surface, capable of permanently accommodating L&ILW including Decommissioning Waste exclusively derived from nuclear generating facilities and associated facilities located in the Province of Ontario and is synonymous with a facility for deep geological disposal of L&ILW;
- (k) “**IAR**” means the Final Report on Independent Assessment of Long-Term Management Options for Low and Intermediate Level Wastes at OPG’s Western Waste Management Facility, prepared by Golder Associates Ltd., Revision 3, February 2004;
- (l) “**Inflation Rate**” means the rate of change in CPI (Ontario) in one year compared to CPI (Ontario) for the previous year expressed as a percentage. For example, if the consumer price index was 105 for one year and 107 for the next year, the Inflation Rate for that next year would equal 1.90% $[(107-105)/105 \times 100]$;

- (m) “**Interest**” means 3.25% plus the Inflation Rate compounded annually;
- (n) “**Low and Intermediate Level Waste**” or “**L&ILW**” means material containing nuclides emitting alpha, beta or gamma radiation, in concentrations or quantities that exceed any federal or provincial laws, policies, guidelines, orders, directives, certifications, approvals and licences for unrestricted release to the environment, other than irradiated fuel and refers to L&ILW:
- derived from the operation or decommissioning of CNSC licensed facilities owned by OPG or its subsidiaries as of the execution of this Agreement on the Bruce, Darlington and Pickering nuclear sites;
 - produced by or stored at facilities in Ontario associated with the operation of the Bruce, Darlington or Pickering nuclear generating stations;
 - stored by OPG at the WWMF;
 - stored at the Radioactive Waste Operations Site #1 in Kincardine;
 - stored at the research laboratories located at 800 Kipling Avenue (Toronto);
 - derived from new nuclear generation facilities described in SECTION 5; and
 - any other L&ILW which the Parties agree by amendment to include in this Agreement;
- (o) “**Notice**” means any notice, required or permitted to be given under this Agreement and “**Notify**” has a similar meaning;
- (p) “**Parties**” means Kincardine and OPG and “**Party**” means either Kincardine or OPG, depending upon the context;
- (q) “**PVPP**” means the Property Value Protection Plan as set out in SECTION 7;
- (r) “**Section**” means a section including all subsections of this Agreement;
- (s) “**Schedule A**” to this Agreement lists the schedule of payments from OPG to the Municipalities from 2005 through 2034 inclusive with listed sharing by Kincardine and the Adjacent Municipalities;
- (t) “**WWMF**” means the facility located in Kincardine and currently licensed by the CNSC.

1.2 Method of Payment

Amounts to be paid under this Agreement are to be paid in Canadian Dollars or, for greater certainty, the lawful currency of Canada.

1.3 Including

The term “**including**” means including without limitation and the term “**include,**” “**includes,**” and “**included**” have similar meanings.

SECTION 2 TERM AND TERMINATION

2.1 Term.

This Agreement is effective as of the 13th day of October, 2004.

With respect to the provisions relating to Decommissioning Waste from the Bruce, Darlington and Pickering nuclear generating stations and CNSC licensed facilities associated with the operation of such stations, this Agreement shall continue until such time as the WWMF including the DGR is no longer needed for long-term management of such waste. With respect to L&ILW other than Decommissioning Waste, this Agreement shall continue up to and including the 31st day of December 2035, unless this Agreement terminates earlier as provided herein, or in the event that the DGR continues to receive such waste, the terms of this Agreement, including payment obligations, will be extended and continued in full force until the Parties negotiate an amended or alternative agreement.

2.2 Termination.

Notwithstanding anything to the contrary, herein,

- (a) Subject to the Notice required in this Section 2.2(a), this Agreement shall terminate immediately with no further obligation on either of the Parties if the Community Consultation is not completed by February 28, 2005 or such other date as is agreed to by the Parties, or if completed by then, the Community Consultation is not acceptable for any reason to either or both of the Parties. If either Party determines that the Community Consultation is not acceptable then it shall give the other Party Notice of that decision within forty-five (45) days of February 28, 2005.
- (b) This Agreement shall terminate immediately with no further obligation on either Party and any funds held by OPG, in trust in a separate bank account, to be applied in accordance with this Agreement, shall be immediately returned to OPG, including any accumulated Interest, if the DGR cannot be advanced, constructed, or there is no reasonable prospect thereof, because of events outside of the reasonable or actual control of the Parties. For example, such an event shall include denial by the CNSC or other competent authority of a required licence for such construction or the conditions associated with obtaining any such licence are unreasonable or unduly onerous as determined by OPG. The issues of whether the DGR can be advanced, constructed, or there is no reasonable prospect thereof, due to events outside the control of the Parties, may be submitted to arbitration in accordance with this Agreement.

SECTION 3 COMMUNITY CONSULTATION

3.1 Community Consultation.

- (a) Kincardine shall conduct and complete a Community Consultation agreeable to the Parties no later than February 28, 2005 or such other date as is agreed to by the Parties.
- (b) The question asked in the Community Consultation shall be clear, concise, neutral and capable of being answered affirmatively or negatively by a yes or no.

SECTION 4 PAYMENTS

4.1 OPG Fees Payable to Kincardine and Adjacent Municipalities.

OPG shall pay fees by way of lump sums, and annual payments to Kincardine and the Adjacent Municipalities in accordance with the following terms and conditions and in the amounts set out in Schedule A:

- (1) Lump sum payments:
 - (A) By June 30th, 2005 and provided that OPG is satisfied that the Community Consultation represents a clear mandate from the population of Kincardine to Kincardine Council in favour of the DGR, OPG shall pay to Kincardine and the Adjacent Municipalities the sum of 2.1 million dollars for future undetermined community projects. The sum shall be paid by OPG to Kincardine and the Adjacent Municipalities in accordance with Schedule A to this Agreement in the amounts stipulated in the "one-time payment" column assigned to each of the municipalities for the year 2005. Further, OPG shall make a separate one-time lump sum payment to only Kincardine in the sum of 1.6 million dollars.
 - (B) The amounts paid to Kincardine and the Adjacent Municipalities shall be adjusted for the Inflation Rate from the date the Agreement is executed to the date the payment is made.
 - (C) A further 2.1 million dollars shall be paid by OPG to Kincardine and the Adjacent Municipalities within ninety (90) days of the CNSC granting DGR construction licence approval to OPG, determined to be acceptable to OPG acting reasonably and provided OPG is satisfied there are no other approvals required to construct the DGR and that there is no legal challenge to the issuance of such construction licence for which OPG has received notice in writing, which could prevent OPG from proceeding with construction or operation of the DGR, all of which issues may be submitted to arbitration. Subject to the foregoing, OPG shall provide written notice to Kincardine of its determination within ninety (90) days of receipt from the CNSC of such licence. The said 2.1 million dollars

shall be paid by OPG to Kincardine and the Adjacent Municipalities in amounts set out in accordance with Schedule A to this Agreement in the amounts stipulated under the "one-time payment" column assigned to each of Kincardine or the Adjacent Municipalities for the year 2013 which is the general time frame anticipated for receipt of such licence and which is not intended to be a commitment of the time for payment. OPG may, in its sole discretion, acting reasonably, decline to make such lump sum payment to any or all of the municipalities, should any of such municipalities have failed to exercise best efforts to support the construction of DGR in which case the affected municipality will not have any right to receive or recover that payment. Kincardine has the right to submit the issues of whether it has exercised best efforts to support DGR construction and is thereby entitled to its one-time lump sum payment to arbitration in accordance with this Agreement. OPG shall pay half of any lump sum payment not paid to an Adjacent Municipality under this Section to local community projects and/or local charities agreeable to both OPG and Kincardine.

- (D) The amounts paid to Kincardine and the Adjacent Municipalities shall be adjusted for the Inflation Rate from the date the Agreement is executed to the date the payment is made.

(2) Annual Payments:

- (A) Subject to the terms hereof, commencing in 2005, OPG shall pay to Kincardine and the Adjacent Municipalities on or before December 31st of each year, the sum of 1.05 million dollars. This annual sum shall be paid by OPG to Kincardine and the Adjacent Municipalities in accordance with Schedule A to this Agreement in the amounts set out in Schedule A stipulated under the column headed "annual" payment which are assigned for each year to each of Kincardine and the Adjacent Municipalities.

- (B) The amounts paid to Kincardine and the Adjacent Municipalities shall be adjusted for the Inflation Rate from the date the Agreement is executed to the date the payment is made.

(3) Milestones and their Impact on Payments:

- (A) The Parties acknowledge that a reasonable time-frame for the achievement of the following milestones is:

- (i) **2007** – Issuance of the necessary terms of reference or guidelines for the preparation of the environmental assessment undertaken under the *Canadian Environmental Assessment Act* as amended, consolidated, supplemented, or replaced from time to time.

- (ii) **2010** – Approval of the environmental assessment undertaken under the *Canadian Environmental Assessment Act* as amended, consolidated, supplemented, or replaced from time to time.
 - (iii) **2013** – Approval of the licence to construct the DGR under the *Canadian Nuclear Safety & Control Act* as amended, consolidated, supplemented, or replaced from time to time.
 - (iv) **2017** – Approval of the licence to operate the DGR under the *Canadian Nuclear Safety & Control Act* as amended, consolidated, supplemented, or replaced from time to time.
- (B) The Parties shall, in good faith, exercise their best efforts to achieve these milestones. Without limiting the generality of the foregoing and in accordance with any legal responsibilities either Party may have, the Parties shall provide their cooperation in support of the environmental approvals and licensing applications sought as well as any other approvals or licences required to construct or operate the DGR. Further, Kincardine shall give due consideration to providing OPG with all approvals within its jurisdiction to grant in order to permit the construction and operation of the DGR and will expeditiously process applications in this regard. Kincardine shall also respond in a timely fashion to all requests by the CNSC, or other competent authority, for information and make appearances at all CNSC hearings relating to DGR. OPG shall process its applications for the requisite regulatory approvals with due diligence.
- (C) Notwithstanding anything to the contrary in this SECTION 4 if at any time OPG determines that the Adjacent Municipalities are not, in good faith, exercising best efforts to achieve any of these milestones, OPG may, in its sole discretion, acting reasonably, decline to make further annual payments or any further one-time lump sum payments set out in Schedule A for any or all of the aforementioned municipalities, as the case may be, which OPG has determined is failing to exercise best efforts, in which case the affected municipality will not have any right to receive or recover that payment. OPG shall pay half of any annual or one-time lump sum payment not paid to the affected municipality to local community projects and/or local charities agreeable to both OPG and Kincardine.
- (D) Notwithstanding anything to the contrary in this SECTION 4, if, at any time, OPG determines in its sole discretion, acting reasonably, that Kincardine is not, in good faith, exercising best efforts to achieve any of these milestones, OPG may in its sole discretion, acting reasonably, make further one-time lump sum payments or any further annual payments set out in Schedule A for Kincardine, in which case Kincardine will not have any right to receive or recover such payment, subject to Kincardine's right to demand that the issue

of whether Kincardine is exercising best efforts to support any such milestones be submitted to an Arbitrator in accordance with the arbitration SECTION 10 of this Agreement. OPG shall Notify Kincardine of its decision not to make such payments. If the Parties are not able to resolve the dispute within thirty (30) days of such Notice or such longer period as agreed to, the dispute shall be submitted to arbitration in accordance with SECTION 10.

- (E) Should any of the milestones cited above not be achieved by the end of the year following the year in which they are anticipated to occur and Sections 4.1(1)(C), 4.1(3)(C) or (D) do not apply, the annual payment for each of Kincardine and the Adjacent Municipalities due for that year and any year thereafter until the milestone is met, as provided for in Schedule A, shall be held by OPG in trust in a separate bank account to be applied in accordance with this Agreement. OPG shall not use such funds for any purpose other than those stipulated in this Agreement.
- (F) Upon the reaching of the missed milestone the money then held in trust under this Section shall be paid to Kincardine and the Adjacent Municipalities in accordance with Schedule A.
- (G) Aside from the failure of Kincardine and/or the Adjacent Municipalities to exercise best efforts, which shall be governed by Section 4.1(1)(C), 4.1(3)(C) or (D) if, for any other reason, the milestone for licence approval of DGR operation is not reached in 2017, the Parties shall endeavour to Amend this Agreement to account for this missed milestone and any others outstanding and, in particular, the Parties shall address in the Amended Agreement the manner in which the money held in trust in accordance with this Section, is to be distributed, whether the annual payments to Kincardine and the Adjacent Municipalities as provided for in Schedule A should continue to be required, or whether some reduced sum should be substituted for that amount. If an Amendment satisfactory to the Parties is not reached by June 30th 2018, and the 2017 milestone and any others, as the case may be, has (have) still yet to be achieved, the Parties shall thereupon immediately submit the issue of a suitable Amendment of the Agreement to accommodate the missed milestone(s) to binding arbitration in accordance with the arbitration SECTION 10 of this Agreement.
- (H) In determining a suitable Amendment to the Agreement, including whether money held in trust in accordance with this Section should be returned to OPG and whether OPG should be required to make any further annual payments to Kincardine or the Adjacent Municipalities following the missed milestone(s), the Parties or the Arbitrator, as the case may be, shall consider the following:

- (i) *The reason for the failure to reach the milestone.* For greater certainty, if, for example, the reason for failing to reach the milestone has, in whole or in part, been caused by the conduct of Kincardine or the Adjacent Municipalities, that conduct and any other facts or circumstances attributed to Kincardine and/or the Adjacent Municipalities should weigh in favour of irrevocably returning some or all of the money held in trust to OPG and eliminating or reducing any obligation to make further annual payments, depending upon the extent to which the conduct or other attributed facts or circumstances contributed to the missed milestone. Conversely, if the reason for the missed milestone involves, in whole or in part, OPG's failure to exercise best efforts to meet the requisite approval requirements, depending upon the extent to which OPG's failure contributed to the missed milestone, such failure should weigh in favour of releasing all or part of the money held in trust to Kincardine and the Adjacent Municipalities and retaining all or part of the obligation to make the remaining annual payments under the Agreement.
- (I) Notwithstanding CNSC licence approval to operate the DGR in 2017, should the DGR not be in service by 2018, or should OPG for any reason be prevented from operating the DGR at any time after 2018, annual payments to be made for the calendar year following 2018, or the year in which OPG was prevented from operating the DGR, as the case may be, shall be held by OPG in trust in a separate bank account to be applied in accordance with this Agreement. OPG shall not use the said money for any purpose other than those stipulated in this Agreement. The Parties shall endeavour to amend the Agreement to provide for the manner in which the money held in trust will be distributed, whether the annual payments to Kincardine and the Adjacent Municipalities as provided for in Schedule A should continue to be required, or whether some reduced sum should be substituted for that amount. If an Amendment cannot be reached within a year of the failure of the DGR to commence to operate, or cease to operate as the case may be, the Parties shall immediately thereafter submit the Amendment of the Agreement to binding arbitration in accordance with SECTION 10 of this Agreement. In determining how the Agreement should be Amended, the Parties or the Arbitrator, as the case may be, shall consider:
- (i) The reason for the failure to commence or continue the operation of the DGR. For greater certainty, the extent to which any of these results from either Party, not supporting DGR shall be the determinative factor in releasing OPG from any further financial obligations in the case of Kincardine withdrawing support for the facility, or in continuing such obligations in the case of OPG's abandonment of DGR.

- (J) If OPG determines that the Adjacent Municipalities are not, in good faith, exercising best efforts to support the operation of the DGR and the failure of one or more of them has contributed to the failure of the DGR to commence operation despite CNSC licence approval or the failure of the DGR to continue operation thereafter, OPG may, in its discretion, decline to make the annual payment set out in Schedule A for any or all of the said municipalities, as the case may be, which OPG has determined is failing to exercise best efforts in which case the affected municipality will not have any right to receive or recover that payment. OPG shall pay half of any annual payment not paid to the affected municipality to local community projects and/or local charities agreeable to both OPG and Kincardine.
- (K) When monies held in trust in accordance with this Agreement are released to Kincardine and the Adjacent Municipalities pursuant to this Agreement, the Interest shall accrue on any such monies from the time that the money was placed in trust and such accrued interest shall be payable to the municipalities at the time the money in trust is released to the municipalities.

4.2 Continuing Waste Management Rights

Nothing in this Agreement shall be construed as limiting, in any manner, OPG's right, and that of any relevant subsidiary, to continue to store L&ILW, including Decommissioning Waste, at the WWMF and the Radioactive Waste Operations Site #1 in Kincardine and to further bring onto the WWMF L&ILW, including Decommissioning Waste derived from the Bruce, Darlington or Pickering nuclear generation stations and any CNSC licensed facilities associated with the operation of those stations, owned or operated by OPG as of the time of the execution of this Agreement, whether or not such facilities or any of the reactors in such stations are in service as of such date. Nevertheless, if the Agreement is terminated or DGR does not advance, the Parties agree to negotiate a new agreement to address the storage of such L&ILW.

SECTION 5 L&ILW DERIVED FROM NEW NUCLEAR GENERATION FACILITIES

5.1 Waste from New Facilities.

OPG is entitled to use the DGR for L&ILW including Decommissioning Waste, derived from nuclear generating stations located in the Province of Ontario, in addition to the 20 nuclear reactors units and associated facilities which are, as of the date of the execution of this Agreement, at the Darlington, Bruce and Pickering nuclear generation stations. Kincardine and the Adjacent Municipalities are collectively entitled to a fee for waste from any such additional reactors. The Parties shall amend the Agreement in the event that such L&ILW derived from new nuclear generation is to be accommodated in the DGR to provide a Community fee payable by OPG to Kincardine and the Adjacent Municipalities, calculated in accordance with Section 5.2.

5.2 Calculation of The Community Fee.

Kincardine and the Adjacent Municipalities are entitled, in such an Amended Agreement, to one-time lump sum and annual payments made during the in-service life of the new nuclear generation

facilities. The calculation of the payments and the manner of payment shall be as follows:

- (1) For each new nuclear generation unit, a lump sum payment equal to one twentieth of the payments stipulated in the "One-Time Payment" column assigned to each of Kincardine and the Adjacent Municipality shall be made to each municipality on the in-service date of each new generation unit. Such payment shall be adjusted for the Inflation Rate as of the year this Agreement is executed.
- (2) For each new nuclear generation unit the annual payment to each of Kincardine and the Adjacent Municipalities shall be one twentieth of the amount assigned to each under the column "Annual" in Schedule A. The full annual payment shall be adjusted for the Inflation Rate as of the year that this Agreement is executed and shall continue to be paid for the in-service life of the unit.
- (3) OPG may, in its sole discretion, acting reasonably, decline to make the increased payments provided for in this Section 5.2(1) and (2) to any of the Adjacent Municipalities should OPG determine that any or all of the said municipalities, as the case may be, is not, in good faith, exercising best efforts to support the receipt of the L&ILW including Decommissioning Waste derived from new nuclear generation stations and associated facilities. OPG shall pay half of any one-time lump sum payment or annual payment not paid to an Adjacent Municipality under this Section to local community projects and/or charities agreeable to both OPG and Kincardine;
- (4) With respect to Kincardine's share of the increased payments provided for in this Section 5.2(1) and (2), OPG may in its discretion, withhold those payments, should OPG determine that Kincardine is not in good faith, exercising best efforts to support the receipt of the L&ILW including Decommissioning Waste derived from new nuclear generation stations and associated facilities, subject to Kincardine's right to demand that the issue of whether Kincardine is exercising best efforts to support such receipt, be submitted to an Arbitrator in accordance with the arbitration SECTION 10 of this Agreement.

SECTION 6 MUNICIPAL TAXES AND ADDITIONAL FEES

6.1 Municipal Taxes.

For tax purposes, Kincardine and OPG will support the assessment of the value of the DGR on a basis equivalent to that on which Municipal Property Assessment Corporation assesses the value of the commercial waste storage facilities at the WWMF as of the date of this Agreement and will collect taxes on the basis of that assessment. Both parties agree to undertake a joint review of the assessment methodologies and assumptions to be utilized in this undertaking. If the method of assessment of the DGR requires any change to the *Assessment Act (Ontario)*, the *Municipal Act (Ontario)* or any other legislation, Kincardine and OPG will seek to have the legislation changed to fix the assessed value of the DGR using this method of assessment, and Kincardine will cooperate with OPG to effect the necessary changes. Kincardine constitutes OPG as trustee for OPG Waste

Inc. and any other legal entities which own the lands upon which the DGR is to be constructed, of the benefits of this section and acknowledges that OPG may enforce such benefits on behalf of OPG Waste Inc., or any such other legal entity.

6.2 Building Permits.

OPG will continue to make payments to Kincardine in lieu of the cost of building permits for both the WWMF and the DGR, such payments not to exceed the building permit fee that would otherwise apply for the applicable facility as provided for in the applicable general fee schedule.

SECTION 7 PROPERTY VALUE PROTECTION PLAN

7.1 The Plan.

The IAR concluded in early 2004 that DGR is technically feasible, safe and would ultimately have no significant adverse environmental effects. Nevertheless, OPG shall have a PVPP to compensate property owners for the actual economic losses suffered, or that would be suffered, as a result of the diminution of property values.

Upon OPG receiving approval from the CNSC to operate the DGR, OPG shall have in place a PVPP ready to provide compensation to property owners for any such actual economic losses suffered when the following conditions have been met:

- (1) Proof of Causation
 - (A) The diminution of property value is occasioned by contamination resulting from radioactivity at the DGR site or beyond the site's boundaries, caused by the operation of DGR.
- (2) The Minimum Qualification Requirements – Time and Place
 - (A) The diminution of property values occurs at any time during the period from the day that licensing approval to operate the DGR is granted up to and including the first anniversary following the day upon which information disclosing contamination for which a claim may be brought by a property owner would have first come to the attention of such property owner and the claim is brought within twelve (12) months of such date and in no event shall any such claim be brought after a licence to abandon the DGR is obtained from the CNSC.
 - (B) Diminution of property value, demonstrated in accordance with this SECTION 7 for property located within an eight (8) kilometre radius from the centre of the DGR is a prerequisite to a valid claim under PVPP. Once this prerequisite is met other property owners within Kincardine and the Adjacent Municipalities who can demonstrate actual loss occasioned by diminution of property value in accordance with this SECTION 7 are qualified to apply under PVPP.

(3) The Minimum Application Requirements

- (A) *Proof of causation* All compensation claims must contain sufficient detail to allow OPG and any independent assessor it may retain to verify whether the diminution in value claimed has been caused by the operation of the DGR during the period of time and within the relevant location required under this SECTION 7.
- (B) *Proof of the Amount of Diminution in Value* All compensation claims must contain sufficient detail to allow OPG and any independent assessor it may retain to verify the alleged diminution in value. The claim must include sufficient information on how the claimant arrived at the fair market value of the property and the basis upon which the claimant contends that the value has been diminished by the amount claimed. Claims of less than \$5,000 adjusted for Inflation, as of the execution of this Agreement, are ineligible under PVPP. In no event shall the amounts paid out on any claim exceed the market value price of the property but for the diminution in value meeting the conditions under this Section.
- (C) *Confirmation by Qualified Assessor* All compensation claims must be confirmed in writing by a qualified local realtor or appraiser.
- (D) *Proof of Title* All compensation claims, must be accompanied by supporting documentation establishing the claimant's legal ownership of property within Kincardine and the Adjacent Municipalities and within the period of time stipulated in this provision.

(4) The Claimants Remedies.

- (A) OPG, at its discretion, may choose to pay the compensation claimed, a lesser amount which it believes is the true diminution in value, deny the claim, or offer to purchase the property for either the amount claimed or the lesser amount which reflects the value of the property.
- (B) If the claimant and OPG do not agree on the appropriate remedy, the matter shall proceed to arbitration in accordance with the arbitration procedure in this Agreement with such modifications as are necessary to have such procedure apply to the claimants.
- (C) OPG shall have received a signed, full and final release from the property owner as a condition precedent to a payment under the PVPP.

SECTION 8 NUCLEAR WASTE MANAGEMENT JOBS

8.1 Staffing.

- (a) Staffing of the DGR shall be conducted in accordance with an OPG human resources plan.
- (b) Full time OPG employees at the DGR shall be governed by the collective bargaining agreements to which OPG is a party, where applicable.
- (c) Beyond the day-to-day DGR construction and operation jobs which, by their nature are located at the WWMF in Kincardine, new full time OPG employees hired exclusively for DGR shall be located at the WWMF.
- (d) For greater certainty, jobs existing as of the time of execution of this Agreement are not subject to relocation to WWMF.

SECTION 9 SUPPORTING A CENTRE OF ENERGY EXCELLENCE: TOURS, VOCATIONAL SCHOOLS

9.1 Educational Tours.

Subject to compliance with all regulatory requirements and in particular and without limiting the foregoing, regulations, guidelines, standards and licensing conditions relating to security and radiation protection, the Parties shall accommodate local and international tours of the DGR facility in support of education.

9.2 Vocational Schools.

The Parties recognize that trades vocational schools within the municipalities are a means of further increasing Kincardine and the Adjacent Municipalities' educational opportunities and presence as a centre of energy excellence and support this concept.

9.3 Centre of Energy Excellence

OPG and Kincardine agree to each use commercially reasonable efforts to support the concept of a centre of energy excellence.

SECTION 10 ARBITRATION

10.1 Disputes Referred to Arbitration.

Any matter referred to arbitration under this Agreement shall be governed by the *Arbitration Act, 1991 (Ontario)*.

10.2 Notice of Arbitration and Appointment of Arbitrator.

Should either of the Parties submit an issue to arbitration, the Party shall give fifteen (15) Business Days Notice to the other Party. If the Parties fail to appoint an Arbitrator within fifteen (15) Business Days of the expiry of the Notice of arbitration, a Party may apply to a judge of the Superior Court of Justice of Ontario, on Notice to the other Party, for the appointment of the Arbitrator.

10.3 Powers of Arbitrator.

The Arbitrator may determine all questions of law, fact and jurisdiction regarding the arbitration (including questions as to whether the matter at issue is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration) and award Interest. Without limiting the generality of the foregoing or the Arbitrator's jurisdiction at law, the Arbitrator may:

- (1) determine any question of good faith, dishonesty or fraud arising in the matter at issue
- (2) order either Party to furnish further details of that Party's case, in fact or in law;
- (3) proceed in the arbitration notwithstanding the failure or refusal of either Party to comply with this Section 10.3(3) or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party Notice that the Arbitrator intends to do so;
- (4) receive and take into account written or oral evidence tendered by the Parties that the Arbitrator determines is relevant, whether or not strictly admissible in law;
- (5) make interlocutory determinations or interim orders or awards;
- (6) hold meetings and hearings and make a decision (including a final decision) in Kincardine (or elsewhere with the concurrence of the Parties); and
- (7) order the Party to provide to the Arbitrator, and to the opposing Party for inspection, and to supply copies of, any documents or classes of documents in its possession or control that the Arbitrator determines to be relevant;

10.4 Arbitration Procedure.

The arbitration will take place in Kincardine at such place and time as the Arbitrator may fix. The arbitration will be conducted in English. Within 10 Business Days of the appointment of the Arbitrator, the Parties will either agree on the procedure to be followed for the arbitration or the Arbitrator will determine the appropriate procedure, in accordance with the principles of natural justice, to be followed. The Parties will keep confidential and not disclose to any other person, the arbitration and all matters arising directly or indirectly from the matter(s) at issue (including all documents exchanged, the evidence and the award), except as set out in this Section 10.4. A Party may disclose any such information to the extent required:

- (1) to obtain assistance from persons to conduct the matters under arbitration;
- (2) by law or securities exchange rules; or
- (3) by a disclosure requirement with a shareholder, lender or potential lender (including any advisor to any such recipient person), so long as such person is

informed of the confidential nature of such information and such person agrees to be bound, subject to law, by such confidentiality obligation.

10.5 Arbitrator's Decision.

No later than 20 Business Days after hearing the representations and evidence of the Parties, the Arbitrator will make the Arbitrator's determination in writing, with reasons, and deliver one copy to each of the Parties. The Arbitrator may only interpret and apply the terms of this Agreement and, except as expressly permitted, may not change this Agreement in any manner. The decision of the Arbitrator will be final and binding upon the Parties regarding all matters relating to the arbitration, the conduct of the Parties during the proceedings and the final determination of the matter at issue.

10.6 No Appeal and Enforcement.

Subject to section 44 of the *Arbitration Act, 1991 (Ontario)*, the Parties may not appeal from the determination of the Arbitrator to any court. The Parties may enter any judgment upon any award rendered by the Arbitrator in any court having jurisdiction.

10.7 Costs of Arbitration.

Subject to the terms of this Agreement, the Parties will bear the costs of any arbitration in the manner specified by the Arbitrator. Subject to the terms of this Agreement, if the Arbitrator does not specify the costs, each Party will bear its own costs and will share the costs of the Arbitrator equally.

SECTION 11 COMPENSATION FOR COMMUNITY CONSULTATION & LEGAL SERVICES

11.1 OPG to Compensate Kincardine.

OPG will compensate Kincardine for all reasonable expenses agreed in advance that are incurred in holding the Community Consultation in SECTION 3 engaging consultants or peer reviewers and with respect to legal services, such services as are required in connection with this Agreement up to and including December 31st, 2005. Additional financial support thereafter shall be mutually agreed to by both Parties.

SECTION 12 GENERAL TERMS AND CONDITIONS

12.1 Entire Agreement.

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement, constitute[s] the entire agreement between the Parties with respect to the subject matter and supersede[s] all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral.

12.2 Schedules:

The following Schedules are attached to and form part of this Agreement:

- (1) Schedule A Municipal Sharing Schedule of one-time and annual payments to be made by OPG to Kincardine and the Adjacent Municipalities from 2005 to 2035 inclusive.

12.3 Notice:

Every Notice 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 follow:

<p>if to OPG,</p> <p>Ontario Power Generation Inc. 700 University Avenue, H16 Toronto, Ontario M5G 1X6</p> <p>Attention: Vice-President, Nuclear Waste Management Division</p> <p>Fax: 416-592-7051</p> <p>Copy To: Vice-President Law and General Counsel</p> <p>Fax: 416-592-1466</p>	<p>if to Kincardine,</p> <p>Municipality of Kincardine Municipal Administration Centre 1475 Concession 5, R.R.#5 Kincardine, Ontario N2Z 2X6</p> <p>Attention: Chief Administrative Officer of Municipality</p> <p>Fax: 519-396-8288</p>
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or to any other address, fax number or individual that a party designates by Notice. Any Notice 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. on a Business Day will be deemed to have been delivered on that Business Day and if delivered by fax after 3:00 p.m. on a Business Day or on a day which is not a Business Day will be deemed to be delivered on the next Business Day.

12.4 Amendments:

Except as expressly provided in this Agreement, no amendment, supplement, restatement or termination of this Agreement in whole or in part is binding unless it is in writing and signed by each Party.

12.5 Waivers:

No waiver of any term of this Agreement is binding unless it is in writing and signed by all the Parties 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.

12.6 Further Assurances:

Each of the Parties will, from time to time and promptly upon request, sign and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the terms

of this Agreement and to complete the transactions contemplated by this Agreement.

12.7 Jurisdiction and Governing Law:

Except as otherwise expressly provided in this Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of Ontario. This Agreement and any arbitration conducted under 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.

12.8 Liability:

The Parties acknowledge that the precise amount of actual damages, loss, expense, or claims, would be extremely difficult to calculate and that the compensation provisions in this Agreement coupled with the adjustment mechanism of Amendment and if necessary, binding arbitration, represent a reasonable, genuine and comprehensive pre-estimate of the actual damages which may be reasonably incurred and are not a penalty. The Parties therefore release each other, their council members, directors, officers, shareholders, employees, agents and representatives, as the case may be, from all claims, damages, losses, liabilities and expenses of any nature whatsoever arising in respect of this Agreement, aside from such claims as are brought for compensation under the specific terms of this Agreement.

12.9 Survival:

The obligations set out under the Property Value Protection Plan (PVPP) will survive the termination or expiration of this Agreement up until such time as the licence to abandon the DGR is obtained from the CNSC.

12.10 Assignment and Benefit:

This Agreement enures to the benefit of and binds the Parties and their respective successors and assigns. Each Party shall be entitled to thirty (30) Business Days Notice of an assignment by the other Party. Upon an assignment, no amount shall be required to be paid nor any other term imposed. On the agreement of the assignee to assume the obligations of the assignor under this Agreement, the assignor will, without the necessity of any other documentation, be released from all its obligations under this Agreement.


IN WITNESS WHEREOF the parties have affixed their signatures as of the year and date first above written.

ONTARIO POWER GENERATION INC.



Name: Richard Dicerni
Title: President and Chief Executive Officer
(Acting)

I have authority to bind the corporation



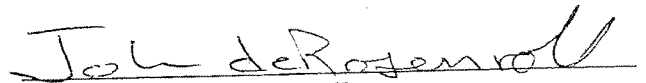
Name: Ken Nash
Title: Vice President
Nuclear Waste Management Division

**THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**



Name: Glenn Sutton
Title: Mayor

I have authority to bind the corporation



Name: John deRosenroll
Title: Chief Administrative Officer

SCHEDULE "A"
DATED October 13, 2004
- BETWEEN -

**ONTARIO POWER GENERATION INC. AND THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**
MUNICIPAL SHARING SCHEDULE

Expressed in thousands of dollars. Sharing below is in constant dollars but actual payments will be indexed to Inflation Rate.

Year	Kincardine		Saugeen Shores		Huron Kinloss		Arran-Elderslie		Brockton	
	One Time Payment	Annual Payment	One Time Payment	Annual Payment	One Time Payment	Annual Payment	One Time Payment	Annual Payment	One Time Payment	Annual Payment
2005	1,300	650	500	250	140	70	80	40	80	40
2006		650		250		70		40		40
2007		650		250		70		40		40
2008		650		250		70		40		40
2009		650		250		70		40		40
2010		650		250		70		40		40
2011		650		250		70		40		40
2012		650		250		70		40		40
2013	1,300	650	500	250	140	70	80	40	80	40
2014		650		250		70		40		40
2015		650		250		70		40		40
2016		650		250		70		40		40
2017		650		250		70		40		40
2018		650		250		70		40		40
2019		650		250		70		40		40
2020		650		250		70		40		40
2021		650		250		70		40		40
2022		650		250		70		40		40
2023		650		250		70		40		40
2024		650		250		70		40		40
2025		650		250		70		40		40
2026		650		250		70		40		40
2027		650		250		70		40		40
2028		650		250		70		40		40
2029		650		250		70		40		40
2030		650		250		70		40		40
2031		650		250		70		40		40
2032		650		250		70		40		40
2033		650		250		70		40		40
2034		650		250		70		40		40

Share Units	25	25	7	4	4
	Host Community -40				
	Total-105				