AMENDMENT AGREEMENT NUMBER 4

This Amendment Agreement is made as of November 7, 2007 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 (hereinafter called the "DBA **Agreement**");

B. AG has assigned the DBA Agreement to Inc., its wholly owned subsidiary; and

C. The DBA Agreement has been amended by amendment agreements dated as of March 15, 2006, and July 5, 2006 and October 10, 2007 (the DBA Agreement as amended hereinafter called the "Original Agreement").

D. OPG and Inc. (the "**Parties**") have agreed to amend the Original Agreement to allow for certain changes to the Work described in Project Change Directives (hereinafter "PCDs") 001, 004, 006, 007, 009, 011, 012, 013, 014, 015, 017, 018, 020 and 021 and other changes 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 001, 004, 006, 007, 009, 011, 013, 014, 015, 017, 018 and 020 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 purposes of this Agreement and the Original Agreement, the Work or changes to Work agreed to be performed in PCDs 004, 006, 007, 009, 011, 012, 013, 014, 015, 017, 018, 020 and 021 are collectively called "Scope Changes."

2. Payment Provisions for Scope Changes

Appendix 7.2 – Measurement for Payment Schedule: New Item

2.1 In order to incorporate the changes in Contract Price resulting from the Scope Changes, a new Section 1.19, "Scope Changes," is added to Appendix 7.2 – Measurement for Payment Schedule as follows:

"1.19 Scope Changes

"Scope Changes will be paid according to the actual work performed each month based on the discrete value listed in the Schedule of Values corresponding to such work."

Appendix 1.1(j) – Contract Price: New Item

2.2 In the Breakdown of Contract Price table in Appendix 1.1(j) of the Original Agreement, new Item 1.19 is added as follows:

"1.19 Scope Changes	*$20,241.63*	*$459,217"*

2.3 The total amount of $459,217 reflects the changes in Contract Price resulting from PCDs 004, 006, 007, 009, 011, 012, 013, 014, 015, 017, 018, 020 and 021.

3. PCD-001 – Groundwater Monitoring

Change to Appendix 1.1(j) – Contract Price

3.1 In the Breakdown of Contract Price table set out in Appendix 1.1(j) of the Original Agreement, Item 1.1 – Mobilization/Demobilization is deleted in its entirety and replaced with the following, to reflect a reduction in the price of $36,800:

"1.1 Mobilization/Demobilization	*$871,824*	*$31,693,169"*

Change to Appendix 7.2 – Measurement for Payment Schedule

3.2 Appendix 7.2, Section 1.1(2) of the Original Agreement is amended by adding the following to the second to last sentence, after the phrase "including contract administration":

"but excluding the initial components of baseline groundwater monitoring, namely, Project start up and coordination, verification of water well records within the study area, water level measurements August and September 2006, and groundwater sampling and analyses (August/September 2006 event)."

4. PCD-004 – Relocation of Recreational Trail and PCD-009 – Revised Relocation of Recreational Trail

Change to Appendix 1.1(sss) – Summary of Work

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

"(lll) temporary recreational trail in the vicinity of the intake area"

4.2 Section 2(1)(c) in Appendix 1.1(sss) of the Original Agreement is eliminated in its entirety.

5. PCD-012 – Revised Entrance to INCW Control Building

With respect to Drawing NAW130-D0E-80000-0014-10, delete the requirements for a new entrance to the INCW Control Building, including

- Supply and construction of a new entrance with all associated services
- Relocation of the automatic gate from the existing location to, and back from, the new location entrance
- Supply and installation of a new lockable gate
- Supply and installation of a 2.5-m high chain link fence.

6. PCD-013 – Additional Groundwater Monitoring Wells

Change to Appendix 1.1(sss) – Summary of Work

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

> *"(mmm) finalise the separate quarterly groundwater monitoring reports and provide a stand-alone groundwater mapping report as required by the Ontario Ministry of Environment ("MOE"). Include attendance at all meetings required to execute this work. Develop and submit an action plan acceptable to MOE to address groundwater monitoring wells not reaching static conditions, and implement this plan, including well development, drilling, installation and retrofitting at five (5) monitoring locations"*

7. PCD-017 – Additional Drill, Install and Test Monitoring Wells

Change to Appendix 1.1(sss) – Summary of Work

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

> *"(nnn) drill two new groundwater monitoring boreholes, MW16-IR and MW 16-IIR, a minimum of 10 metres from existing holes. Boreholes to be HQ cored to the appropriate depth. Jagger Hims Limited staff to be on-site only during the start of drilling, during coring through the Grimsby and Whirlpool formations, and during well installation. Following installation, develop the wells and incorporate them into the groundwater monitoring program. Document the well installation program, including borehole logs and well construction details. Borehole construction will include*
>
> *i. core boreholes in HQ size to retirement;*
> *ii. retain core as requested;*
> *iii. remove rods and core barrel, install casing shoe on rods, lower rods to bottom of hole;*
> *iv. install one-inch diameter pipe and screen inside rods to bottom of hole;*
> *v. install sand pack and coated bentonite tablets;*
> *vi. use drill rod and tremie grout thirty percent (30%) bentonite solid grout to surface;*
> *vii. include pressure packing testing in the deep hole;*
> *viii. modify monitoring well size based on discussions with MOE; and*
> *ix. install Levellogger units in each well."*

8. PCD-018 – Travel Restraint at New Accelerating Wall

Change to Appendix 1.1(sss) – Summary of Work

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

> *"(ooo) supply and install one (1) Latchways Unistrut Mansafe Travel Restraint System, approximately 512 metres long on the new accelerating wall, for the purpose of travel restraint only. Include stainless steel anchors anchored to the concrete deck using a chemical adhesive. Upon completion, hold a Training Session to train the primary operators on the use and care of the system. The system will be rated for two (2) workers simultaneously, and will allow Hand-Free movement along the entire length of the lifeline without having to disconnect and reconnect at intermediate supports .The horizontal travel restraint system will allow workers to cover the entire extent of the accelerating wall while continuously connected (no double lanyards) to the lifeline. Two (2) only Transfasteners and two (2) only 2.74 metre lanyards will be included with the system supplied, and the system will be made of stainless steel or other corrosion resistant materials to ensure a long service life."*

8.2 In Section 1.2(1)(dd) in Appendix 1.1(sss) of the Original Agreement, delete the words "*...and installation of fall arrest on new wall.*"

9. Dispute Review Board

Change to Original Agreement– Section 11

9.1 Delete Section 11.1(f) of the Original Agreement in its entirety and replace with the following:

> ***"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. If no Recommendation is provided within 90 days following the closing of the hearing, any Party may deliver written Notice to the other Party to commence an arbitration pursuant to Section 11.5, and the notifying Party shall be deemed to be the Dissatisfied Party and the matter an unresolved Dispute. 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 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, unless the arbitration proceeding has been commenced without the issuance of a Recommendation according to the second sentence of this Section 11.1(f). 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."

9.2 Delete Section 11.3(e)(1) of the Original Agreement in its entirety and replace it with the following:

"(1) discussion of notes from previous meetings."

9.3 Delete Section 11.3(e)(8) of the Original Agreement in its entirety and replace it with the following:

"(8) set date, time and place or next Site visit and next two meetings."

9.4 Add the following sentence at the end of Section 11.4(h) of the Original Agreement:

"If the Dispute Review Board determines that it will be unable to deliver its Recommendations within two weeks then it will advise the Parties immediately after the conclusion of the hearing when the Parties can expect to receive the Recommendations."

9.5 Add a new section 11.4(k) to the Original Agreement as follows:

"(k) Each DRB Member will sign the confidentiality protocol."

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

9.6 Delete Appendix 11.1(a) of the Original Agreement in its entirety and replace with the form of the Dispute Review Board Agreement attached to this Agreement as "Schedule A."

Change to Appendix 7.2 – Measurement for Payment Schedule

9.7 In Appendix 7.2 – Measurement for Payment Schedule of the Original Agreement add a new Section 1.17 – "OPG's 50% Portion of DRB Estimated Cost" as follows:

*"**1.17 OPG's 50% Portion of DRB Estimated Cost***

Payment for OPG's 50% Portion of DRB Estimated Cost will be made based on 50% of any invoices from the Dispute Review Board which have been previously approved by OPG, as they apply to OPG's 50% share of the Board's allowable fees and expenses."

10. Contract Price Changes

10.1 In the Breakdown of Contract Price table in Appendix 1.1(j) of the Original Agreement, Item 1.15 is deleted in its entirety and replaced with the following Item 1.15:

"1.15 Flow Verification Test	*$0*	*$126,948"*

10.2 In the Breakdown of Contract Price table, Appendix 1.1(j) of the Original Agreement, the unnumbered item, "Proponent's Estimate of its DRB Cost (50% of overall cost) $221,557", is deleted in its entirety and replaced with the following Item 1.17:

"1.17	*OPG's 50% Portion of DRB Estimated Cost*	*$0*	*$221,557"*

10.3 In the Breakdown of Contract Price table in Appendix 1.1(j) of the Original Agreement, add new Item 1.18 as follows:

"1.18	*Item not used*	*$0*	*$0"*

10.4 In the Breakdown of Contract Price table in Appendix 1.1(j) of the Original Agreement, add new Item 1.20 as follows:

"1.20	*Provisional Sum*	*$23,000*	*$400,000"*

10.5 In the Breakdown of Contract Price table in Appendix 1.1(j), the unnumbered item Total Contract Price is deleted in its entirety and replaced with the following:

"Total Contract Price	*$14,653,073.63*	*$630,989,854*

10.6 The Breakdown of Contract Price table is deleted in its entirety and replaced with the table shown below.

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
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

MEASUREMENT PAYMENT ITEM	DESCRIPTION OF WORK	ORST INCLUDED	TOTAL
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	221,557
1.18	Item not used	0	0
1.19	Scope Changes	20,242	459,217
1.20	Provisional Sum	23,000	400,000
	Total Contract Price	14,653,074	**630,989,854**

10.7 The Parties acknowledge that the breakdown of the sum of $459,217 added under Item 1.19 "Scope Changes" is as follows:

1.	PCDs 004 & 009	$120,000
2.	PCD 006	$0
3.	PCD 007	$0
4.	PCD 011	Credit ($100,000)
5.	PCD 012	Credit ($15,000)
6.	PCD 013	$76,681.50
7.	PCD014	$0
8.	PCD 015	Credit ($75,000)
9.	PCD 017	$117,131.70
10.	PCD 018	$69,398
11.	PCD 020	$100,045.50
11.	PCD 021	$165,970
	TOTAL (rounded):	$459,217

11. Other Changes

Change to Appendix 2.2(a) – Organizational Chart

11.1 Appendix 2.2(a) of the Original Agreement is deleted in its entirety and replaced with the Strabag Organization Chart, dated September 10, 2007, attached to this Agreement as "Schedule B."

Section 14.4 – Notice

11.2 Section 14.4 of the Original Agreement is deleted in its entirety and replaced with the following:

"Except as otherwise provided in this Agreement, such as in Section 10.2, 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 follows:

If to OPG, Ontario Power Generation Inc.
700 University Avenue, H18-D15
Toronto, Ontario, M5G 1X6

Attention: Rick Everdell
Fax: 416-592-6552

with a copy to:

Hatch Mott MacDonald
2520 Stanley Avenue
Niagara Falls, Ontario, L2E 6S4

Attention: Harry Charalambu
Fax: 905-353-5518

if to the Contractor, Strabag Inc.
2520 Stanley Avenue
Niagara Falls, Ontario, L2E 6S4

Attention: Ernst Gschnitzer
Fax: 905-353-0636

with a copy to:

STRABAG AG
Donau-City-Strasse 9
A – 1220 Vienna

Attention: Gerald Zangl
Fax: +43 1 22 4 22 1227

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."

Changes to Appendix 1.1(h) – Concept Drawings

11.3 In Appendix 1.1(h) of the Original Agreement, the following changes are made:

1. Delete Concept Drawing NAW130-D0E-29310-0007-09, "Intake Works – Intake Channel and Accelerating Wall Arrangement and Details," in its entirety and replace with Concept Drawing NAW130-D0E-29310-0007-10, "Intake Works – Intake Channel and Accelerating Wall Arrangement and Details."

2. Delete Concept Drawing NAW130-D0E-29310-0008-04, "Intake Works – Modifications to INCW Control Structure," in its entirety and replace with Concept Drawing NAW130-D0E-29310-0008-05, "Intake Works – Modifications to INCW Control Structure."

3. Delete Concept Drawing NAW130-D0E-80000-0012-06, "Construction Facilities – Outlet Area West Plan," in its entirety and replace with Concept Drawing NAW130-D0E-80000-0012-07, "Construction Facilities – Outlet Area West Plan."

4. Delete Concept Drawing NAW130-D0E-80000-0013-06, "Construction Facilities – Outlet Area East Plan," in its entirety and replace with Concept Drawing NAW130-D0E-80000-0013-07, "Construction Facilities – Outlet Area East Plan."

5. Delete Concept Drawing NAW130-D0E-80000-0014-09, "Construction Facilities – Intake Area Plan and Section," in its entirety and replace with Concept Drawing NAW130-D0E-80000-0014-10, "Construction Facilities – Intake Area Plan and Section."

Change to Appendix 7.2 – Measurement for Payment Schedule

11.4 In Appendix 7.2 – Measurement for Payment Schedule of the Original Agreement, add a new Section 1.20 – Provisional Sum as follows:

> *"**1.20 Provisional Sum***
>
> *All Work to be paid under Provisional Sum will be paid on invoices approved by OPG only for items previously approved in writing by OPG. Such items will include Owner's Representative's long distance phone charges, OPG's 50% share of agreed and reasonable team building costs (50% paid directly by Contractor), OPG's agreed share of Contractor's TBM launch ceremony, miscellaneous Owner's Representative's site office costs and any other agreed costs and mutually agreed share of costs. Discrete subtotals will be recorded in the Schedule of Values for each category of item included under Provisional Sum."*

12. 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. The Parties have duly executed this Agreement.

ONTARIO POWER GENERATION INC.

By: _____
Name: EMAD ELSAYED
Title: VP- Hydroelectric Development

STRABAG INC.

By: _____
Name:
Title: Ernst Gschnitzer Project Manager

Robert Radlinger
Finance & Admin. Manager

Strabag AG hereby accepts Amendment Agreement Number 4 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 and Amendment Agreement Number 4 above.

DATED this 06 day of November, 2007.

STRABAG AG

By: _____
Name:
Title: Ernst Gschnitzer Project Manager

SCHEDULE A

Dispute Review Board Agreement

DISPUTE REVIEW BOARD AGREEMENT

This Dispute Review Board Agreement is made this ■ day of ■, 2007, 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

Peter Douglass

and

P.E. Sperry

and

Dennis McCarry

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. If no Recommendation is provided within 90 days following the closing of the hearing, any Party may deliver written Notice to the other Party to commence an arbitration pursuant to Section 11.5, and the notifying Party shall be deemed to be the Dissatisfied Party and the matter an unresolved Dispute. 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, unless the arbitration has been commenced without the issuance of a Recommendation according to the second sentence of this Section 4(b). 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.

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 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 between the parties.

(e) **DRB 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:

(i) Discussion of notes from previous progress meeting;

(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 the next Site visit and next two meetings.

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.

(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 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 have counsel present 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 and the Dispute Review Board 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 inquires 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. If the Dispute Review Board determines that it will be unable to deliver its Recommendation within two weeks, then it will advise the Parties immediately after the conclusion of the hearing when the Parties can expect to receive the Recommendation.

(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.

(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.

8. **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 Contractor, who will pay these invoices in full (50% on its own behalf and 50% as paying agent for OPG) and recover portion of such invoices (including GST applicable thereto) as part of any Application for Payment submitted by the Contractor to OPG

9. **Termination.** Notwithstanding any term in this Dispute Review Board Agreement, OPG and the Contractor may, by mutual agreement, 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.

10. **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.

11. **Confidentially.** Each DRB Member will sign the confidentiality protocol attached to this Dispute Review Board Agreement as Appendix A.

{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:

_____ _____

Peter Douglass

_____ _____

P. E Sperry

_____ _____

Dennis McCarry

Appendix A

Confidentiality Protocol

Ontario Power Generation and Strabag Inc. ("**Strabag**") are party to a design/build agreement dated August 18, 2005 (the "**Agreement**") to design and build the Niagara tunnel (the "**Project**"). It is a requirement of the Agreement that the parties establish a dispute review board ("**DRB**") that is composed of three members ("**DRB Members**"). The purpose of the DRB is to consider all disputes referred to it by the parties in relation to the Project and to issue written recommendations. As part of the DRB process, the DRB members will be given access to information that is commercially sensitive and confidential ("**Confidential Information**"). Accordingly, this document establishes the process and procedures for ensuring the confidentiality of the information.

(a) DRB members shall not use the Confidential Information except for the purpose of resolving disputes in relation to the Project.

(b) All Confidential Information must remain in confidence and kept in a secure location. DRB members shall not discuss nor disclose the Confidential Information (nor information that is reasonably derived from it) except to other DRB members or to employees or representatives of OPG or Strabag who reasonably require the Confidential Information for the purpose of participating in the DRB process and who are bound in writing by this or a similar confidentiality protocol.

(c) Copies of the Confidential Information can only be made with the consent of Mr. Ed Over (OPG Procurement Manager).

Confidentiality Agreement

I, _____, have read and understand the procedures set out in the Confidentiality Protocol and agree to abide by them.

Per: _____ _____

Name

_____ _____

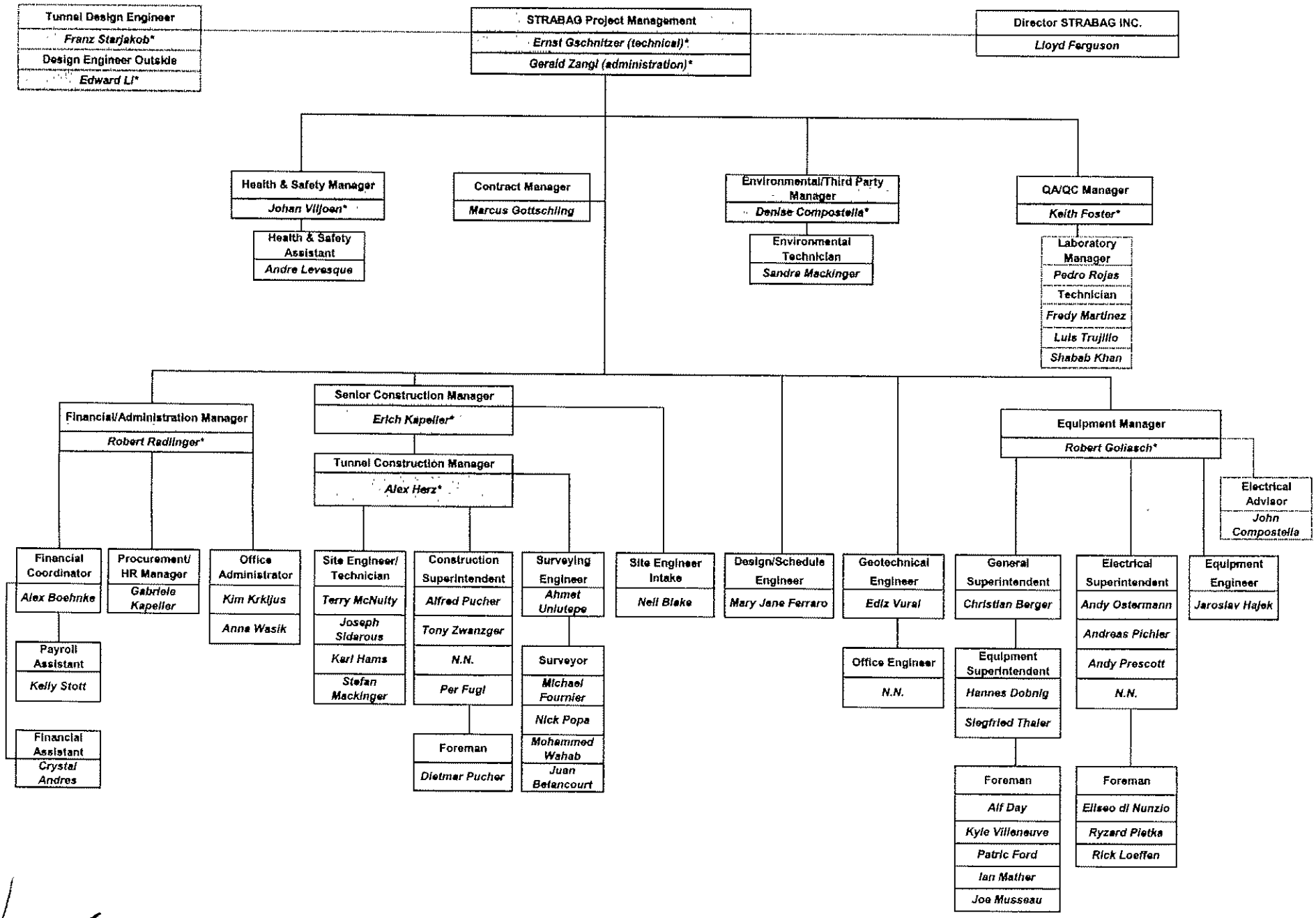
(Insert Company Name)

SCHEDULE B

Strabag Organization Chart

NIAGARA TUNNEL FACILITY PROJECT

STRABAG ORGANISATION CHART - September 2007



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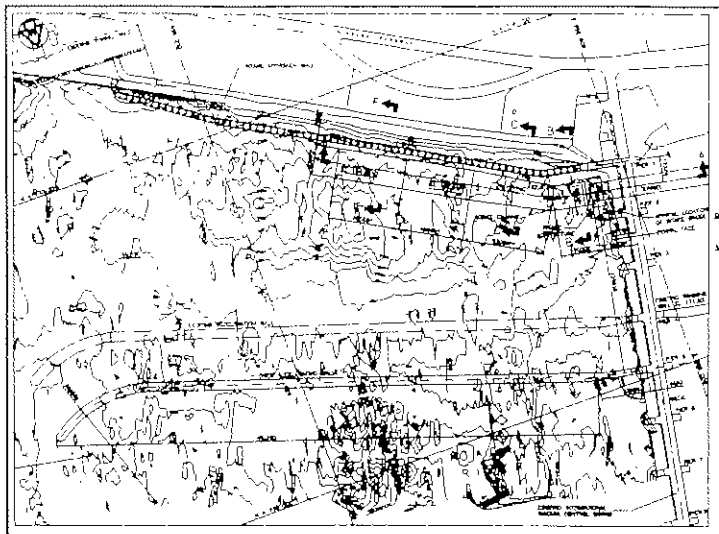
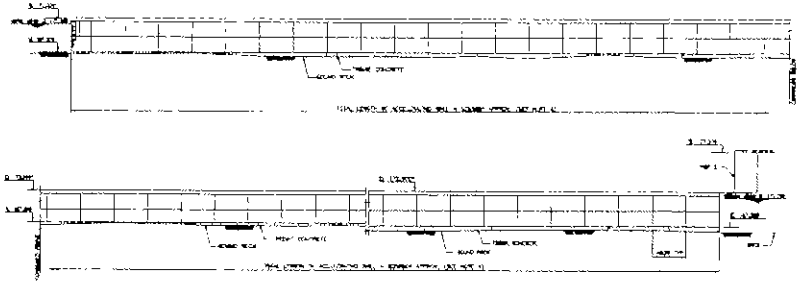
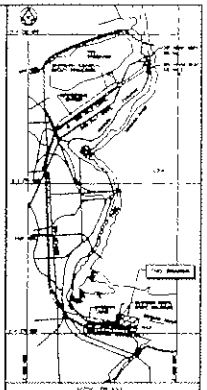


PLAN



ELEVATION OF ACCELERATING WALL



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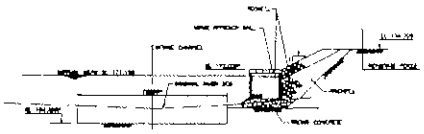

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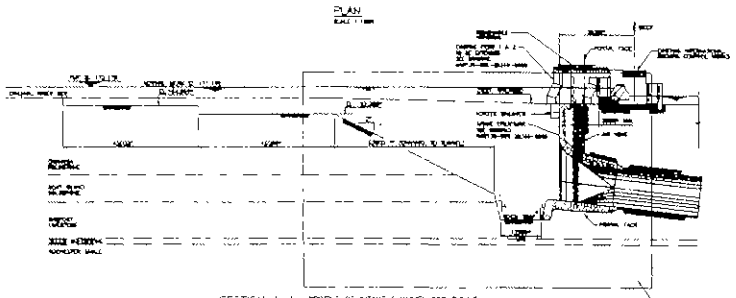
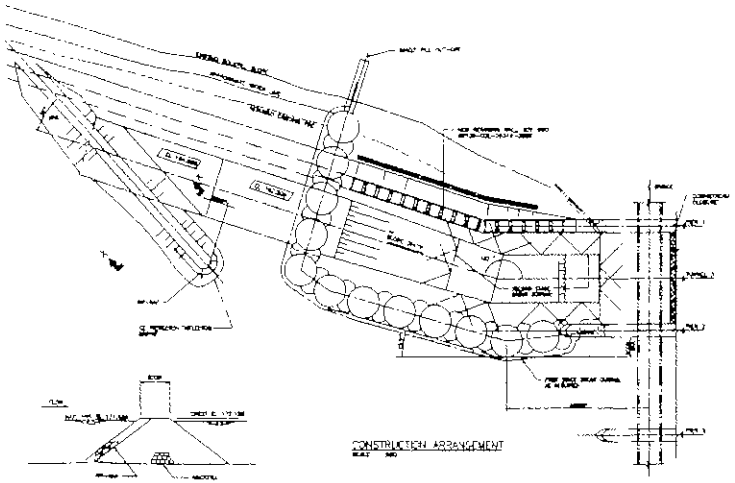


SECTION A-A PROFILE OF INTAKE CHANNEL FOR TUNNEL



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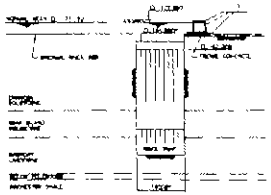

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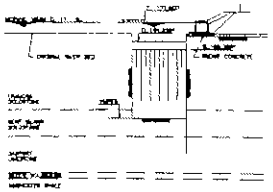

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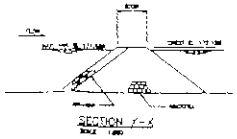

SECTION X-X

NOTES

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3. [illegible]
4. [illegible]

CONCEPT DRAWING

[illegible]	[illegible]	[illegible]

NIAGARA TUNNEL FACILITY PROJECT
INTAKE WORKS
INTAKE CHANNEL AND
ACCELERATING WALL
ARRANGEMENT AND DETAILS

Hatch with SkorDonald-Acres

DATE 94/11/02	DRAWN [illegible]	DATE [illegible]
AS SHOWN	DWG	

NAW130-00E-29310-0007 | 10

AD (841 x 1189)

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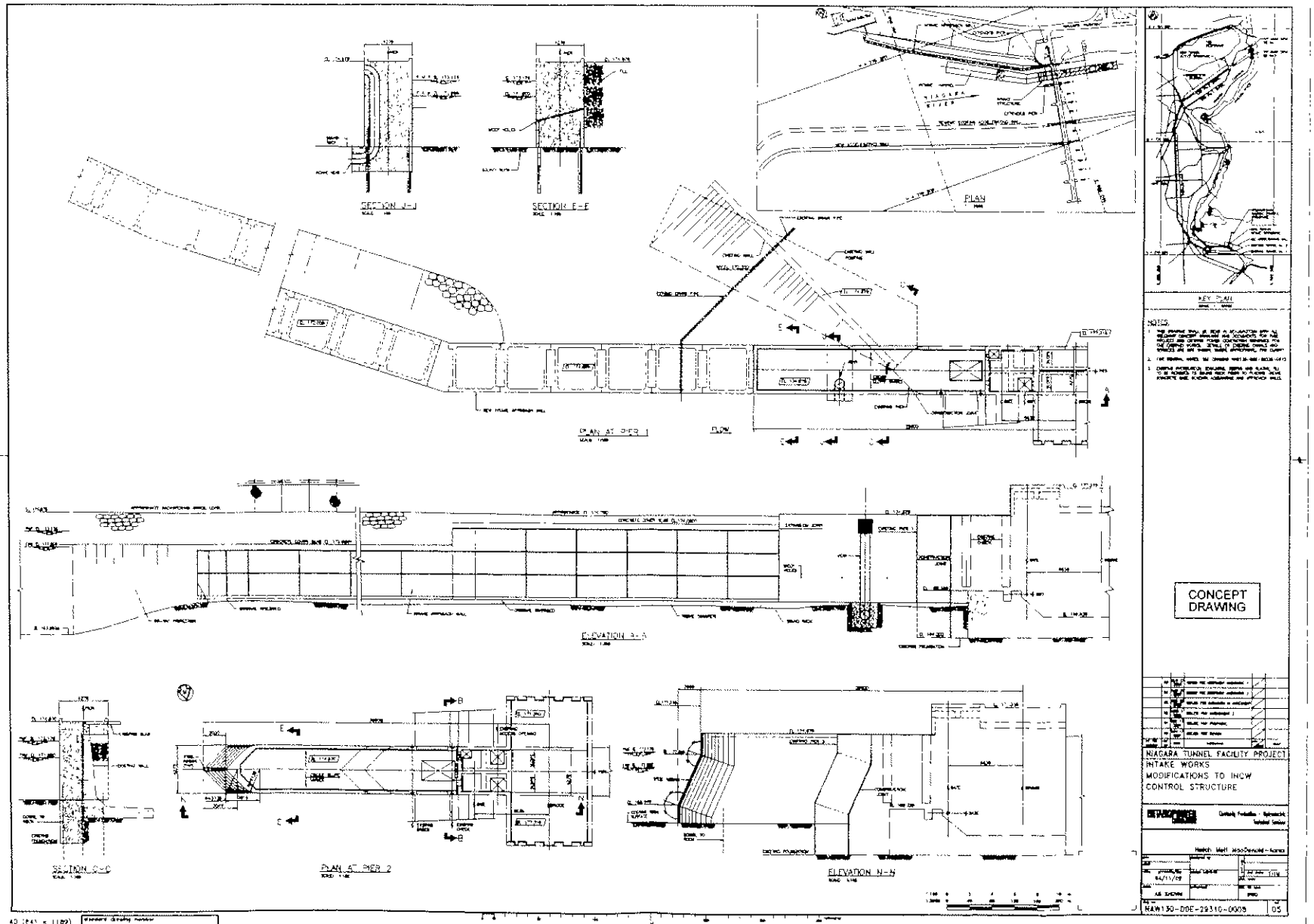
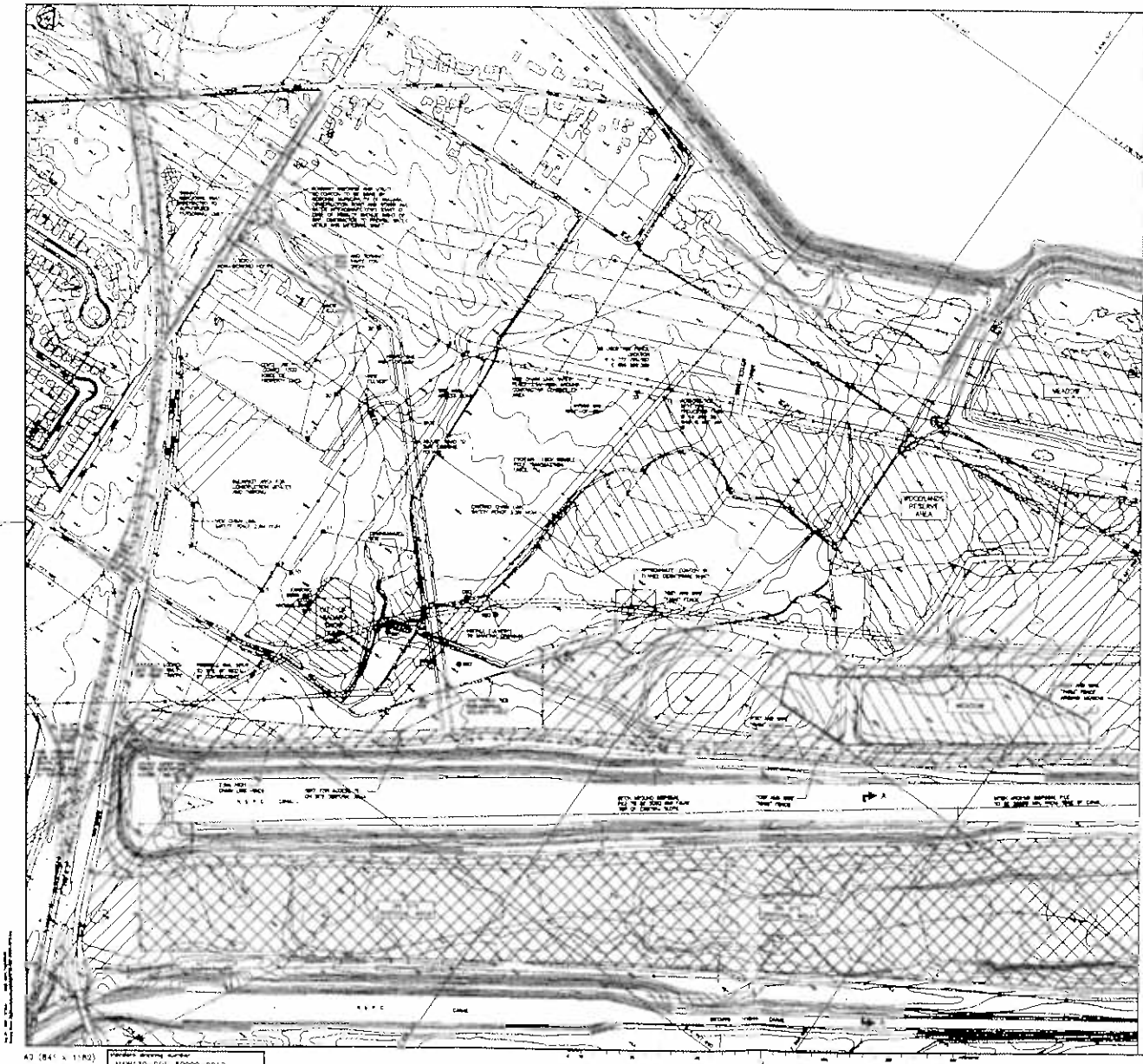

SECTION J-J
SECTION E-F
PLAN
KEY PLAN
PLAN AT PIER 1
FLOW
ELEVATION A-A
SECTION C-C
PLAN AT PIER 2
ELEVATION N-N
CONCEPT DRAWING
NIAGARA TUNNEL FACILITY PROJECT
INTAKE WORKS
MODIFICATIONS TO INCW
CONTROL STRUCTURE
NAW130-00E-29310-0009
05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MEADOW
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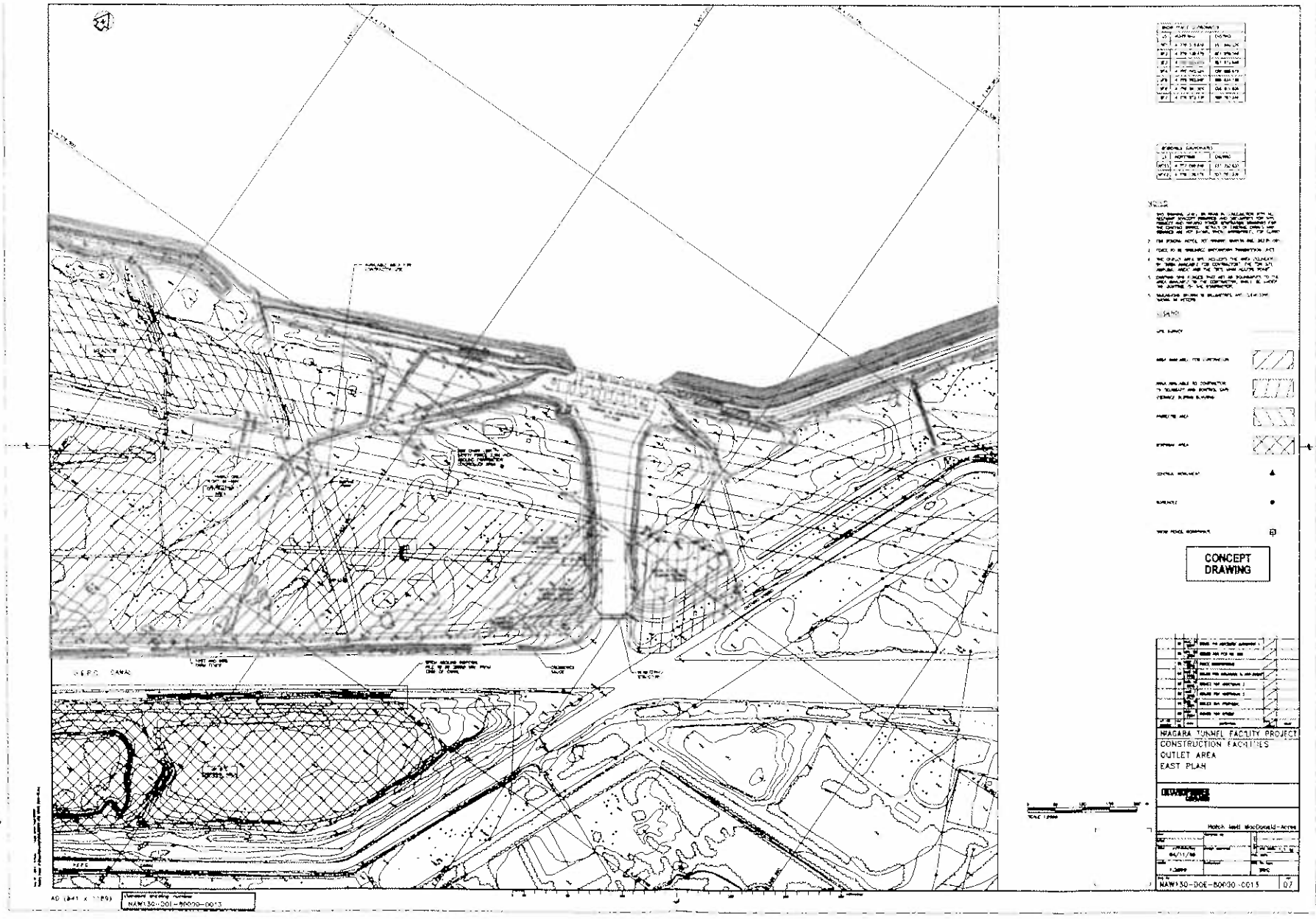
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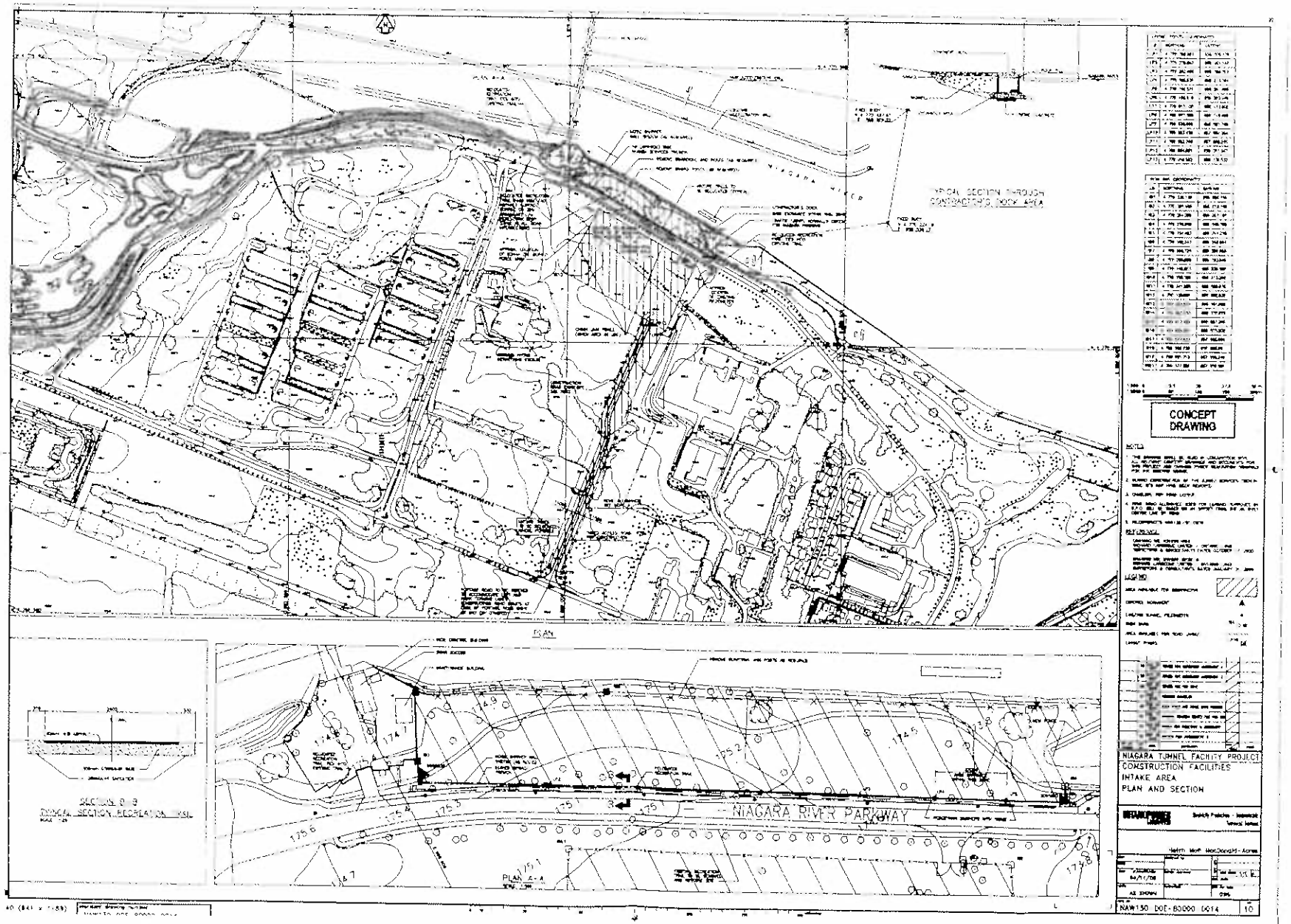
PLAN
VERTICAL SECTION THROUGH CONTRACTOR'S DOCK AREA
CONCEPT DRAWING
NOTES
KEY DETAILS
LEGEND
SECTION B-B
NIAGARA SECTION RECREATION TRAIL
NIAGARA RIVER PARKWAY
PLAN A-A
NIAGARA TUNNEL FACILITY PROJECT
CONSTRUCTION FACILITIES
INTAKE AREA
PLAN AND SECTION
AS SHOWN
NAW150 DOE-B0000 D014
10