

EARLY WORKS AGREEMENT

THIS AGREEMENT is made as of the 13rd day of June, 2014.

BETWEEN:

CITY OF REGINA
(the "City")

AND:

GRAHAM-LOCKERBIE STANLEY JV, an unincorporated joint venture consisting of
GRAHAM INFRASTRUCTURE LP, by its general partner, **GRAHAM**
INFRASTRUCTURE LTD. ("Graham") and **LOCKERBIE STANLEY INC. ("Lockerbie")**
(the "Design and Construction Subcontractor")

WHEREAS:

- A. The City issued a request for proposals dated October 16, 2013 (the "RFP") and has selected the Preferred Proponent.
- B. The City and the Preferred Proponent will enter into the Project Agreement pursuant to which the Preferred Proponent will design, build, finance, operate and maintain a wastewater treatment plant upgrade in Regina, Saskatchewan.
- C. The Preferred Proponent will enter into a design and construction subcontract with the Design and Construction Subcontractor to perform the Works.
- D. In order for the Design and Construction Subcontractor to improve the likelihood that it will achieve Substantial Completion on or prior to the Substantial Completion Target Date, the parties agree that it is reasonable and prudent for some elements of the Works to commence prior to Financial Close.
- E. The parties wish to enter into this Early Works Agreement to set out the terms and conditions under which the Design and Construction Subcontractor will proceed with such elements of the Works in advance of Financial Close.
- F. The Design and Construction Subcontractor has agreed to proceed with the construction of that portion of the Works described in Appendix A hereto (the "Early Works"), subject to and upon the conditions set out in this Early Works Agreement.

NOW THEREFORE in consideration of the City permitting the Early Works to be carried out on the Lands, and in consideration of the City agreeing, subject to and in accordance with Section 9, to make payment to the Design and Construction Subcontractor in relation to the Early Works hereunder in the event that this Early Works Agreement is terminated, the Design and Construction Subcontractor agrees to proceed with the Early Works subject to and upon the conditions set out in this Early Works Agreement.

1. Definitions

In this Early Works Agreement, unless the context otherwise requires:

- (a) **“Applicable Law”** has the meaning given in the Draft Project Agreement;
- (b) **“Business Day”** has the meaning given in the Draft Project Agreement;
- (c) **“City”** means The City of Regina, a city continued pursuant to *The Cities Act* (Saskatchewan) and located in Saskatchewan, Canada;
- (d) **“City Representative”** has the meaning given in the Draft Project Agreement;
- (e) **“Conditions”** has the meaning given in Section 4(a)(i);
- (f) **“Design and Construction Subcontractor”** means Graham-Lockerbie Stanley JV, an unincorporated joint venture consisting of Graham and Lockerbie;
- (g) **“Design and Construction Subcontractor Claim”** has the meaning given in Section 10(b);
- (h) **“Design and Construction Subcontractor Parties”** means:
 - (i) the Design and Construction Subcontractor;
 - (ii) any person engaged by the Design and Construction Subcontractor from time to time as may be permitted by this Early Works Agreement to procure or manage the provision of the Early Works;
 - (iii) any supplier or consultant of the Design and Construction Subcontractor engaged by or through the Design and Construction Subcontractor to perform any of the Early Works;
 - (iv) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors; and
 - (v) those for whom the Design and Construction Subcontractor is legally responsible;
- (i) **“Direct Losses”** means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses;
- (j) **“Documents”** means all drawings (including as-built drawings), plans, specifications, manuals, records, calculations and all other documents and all revisions and additions to the same, and the designs contained in them, prepared or to be prepared by or on behalf of the Design and Construction Subcontractor in respect of the Early Works;
- (k) **“Draft Project Agreement”** means RFP Version 4.0 of the Project Agreement;

- (l) **“Early Works”** has the meaning given in Recital F;
- (m) **“Early Works Contract Price”** means \$1,950,000.00;
- (n) **“Early Works Schedule”** has the meaning given in Section 4(a)(ii);
- (o) **“Early Works Substantial Completion”** means that:
 - (i) the improvement to be made under this Early Works Agreement or a substantial part thereof is ready for use or is being used for the purposes intended; and
 - (ii) the improvement to be made under this Early Works Agreement is capable of completion or, where there is a known defect, correction, at a cost of not more than:
 - (A) 3 percent of the first \$500,000 of the Early Works Contract Price;
 - (B) 2 percent of the next \$500,000 of the Early Works Contract Price; and
 - (C) 1 percent of the balance of the Early Works Contract Price;
- (p) **“Element”** means one of the elements of the Early Works, as described in Appendix C to this Early Works Agreement;
- (q) **“Existing Facilities”** has the meaning given in the Draft Project Agreement;
- (r) **“Financial Close”** means the date on which the Project Agreement is executed by the City and the Preferred Proponent;
- (s) **“Financial Close Target Date”** means July 3, 2014;
- (t) **“Governmental Authority”** has the meaning given in the Draft Project Agreement;
- (u) **“Indirect Losses”** means a loss claimed that is:
 - (i) for punitive, exemplary or aggravated damages;
 - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity sustained by a party and not by third parties; or
 - (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by a party;
- (v) **“Infrastructure”** has the meaning given in the Draft Project Agreement;
- (w) **“Insolvency Event”** has the meaning given in Section 8(d);
- (x) **“Lands”** has the meaning given in the Draft Project Agreement;

- (y) **“Preferred Proponent”** means 101237364 Saskatchewan Ltd.;
- (z) **“Prime”** means the rate of interest from time to time declared by Canadian Imperial Bank of Commerce (or its successor, in the event of a merger or amalgamation) as its prime rate for Canadian dollar commercial loans in Canada;
- (aa) **“Project”** has the meaning given in the Draft Project Agreement;
- (bb) **“Project Agreement”** means the final form of that certain project agreement that will be entered into between the City and the Preferred Proponent with respect to the design, build, finance, operations and maintenance of a wastewater treatment plant upgrade in Regina, Saskatchewan;
- (cc) **“Project Co”** has the meaning given in the Draft Project Agreement; and
- (dd) **“Works”** has the meaning given in the Draft Project Agreement.

2. Appendices

The following Appendices are for every purpose to be considered as part of this Early Works Agreement (and provisions of the Appendices are to be considered as provisions of this Early Works Agreement):

- Appendix A - Description of Early Works
- Appendix B - Early Works Schedule
- Appendix C - Design and Construction Subcontractor’s Early Works Contract Price

3. Interpretation

This Early Works Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) the headings, marginal notes and references to them in this Early Works Agreement are for convenience of reference only, shall not constitute a part of this Early Works Agreement and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Early Works Agreement;
- (b) unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Early Works Agreement and the terms “Section” and “Section” are used interchangeably and are synonymous;
- (c) words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority,

unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity;

- (d) unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders;
- (e) unless otherwise provided in this Early Works Agreement, all accounting and financial terms used in this Early Works Agreement shall be interpreted and applied in accordance with GAAP;
- (f) references to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Early Works Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned;
- (g) references to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same;
- (h) references to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute;
- (i) references to persons shall include their successors and assigns and references to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization;
- (j) a reference in this Early Works Agreement to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Law, has such right, power, obligation or responsibility at the relevant time;
- (k) the words in this Early Works Agreement shall bear their natural meaning;
- (l) references containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Early Works Agreement taken as a whole; and

- (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”;
- (m) in construing this Early Works Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach apply to the construction of this Early Works Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (n) where this Early Works Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (o) where this Early Works Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (p) where this Early Works Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day;
- (q) any reference to time of day or date means the local time or date in Regina, Saskatchewan;
- (r) unless otherwise indicated, time periods will be strictly construed; and
- (s) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Early Works Agreement.

4. Performance of the Early Works

- (a) Unless and until Financial Close is achieved, the performance of the Early Works is terminated in accordance with Section 8 or the Early Works are completed in accordance with Section 12, the Design and Construction Subcontractor shall perform the Early Works in accordance with:
 - (i) all applicable provisions of the Draft Project Agreement, including Sections 5, 6, 9, 13, 16.2 to 16.6, 18, 22 to 26, and Schedules 1 to 7, 11, 12, 16 and 18 (the “**Conditions**”); and

- (ii) the early works schedule set out in Appendix B to this Early Works Agreement, as the same may be varied from time to time with the agreement of the City, acting reasonably (the “**Early Works Schedule**”).

5. Financial Close

- (a) If and when Financial Close is achieved, the Project Agreement shall supersede and replace this Early Works Agreement in its entirety. Without prejudice to the generality of the foregoing, any part of the Early Works performed by the Design and Construction Subcontractor under and in accordance with this Early Works Agreement shall be treated as having been performed by Project Co under and in accordance with the Project Agreement, and the City’s payment obligations related to that part of the Early Works will be those under the Project Agreement and not under this Early Works Agreement.

6. No Liability to the City

- (a) Save as to any payments which may become due pursuant to and in accordance with Section 9 or Section 12, the City shall have no liability to the Design and Construction Subcontractor whatsoever, whensoever and howsoever arising out of or in connection with the Early Works and/or the conditions of this Early Works Agreement.
- (b) No approval, instruction or comment by the City or by the City Representative in connection with the Early Works shall discharge, release or diminish any obligation and/or liability of the Design and Construction Subcontractor under this Early Works Agreement or give rise to any liability to the Design and Construction Subcontractor on the part of the City.

7. Design and Construction Subcontractor to Perform at Own Cost

- (a) Without prejudice to the generality of Section 6, the Design and Construction Subcontractor shall perform the Early Works entirely at its own cost (save as to any payments which may become due pursuant to and in accordance with Section 9 or Section 12) and risk, and any consequences of such performance (or any failure in or of such performance) for the manner and timing of the performance of the Early Works shall be entirely at the cost and risk of the Design and Construction Subcontractor.
- (b) For the avoidance of doubt, the Design and Construction Subcontractor shall be responsible for any and all costs it incurs as a result of funding the Early Works.

8. Termination of Early Works Agreement

- (a) The City reserves the right, at any time and for any reason, to terminate this Early Works Agreement by written notice to the Design and Construction Subcontractor having immediate effect.
- (b) In the event that Financial Close has not been achieved by the Financial Close Target Date, the City may, at any time, terminate this Early Works Agreement by written notice to the Design and Construction Subcontractor having immediate effect.

- (c) In the event that the Design and Construction Subcontractor:
- (i) is in material breach of its obligations, duties or responsibilities under this Early Works Agreement; or
 - (ii) wholly abandons the Early Works for a period which exceeds 2 Business Days from receipt by the Design and Construction Subcontractor of a written request to return to the Lands,

the City shall give to the Design and Construction Subcontractor a written notice specifying the breach. If the Design and Construction Subcontractor does not rectify the specified breach within 30 days of receipt of such notice then the City may terminate this Early Works Agreement by written notice to the Design and Construction Subcontractor having immediate effect.

- (d) In the event that:
- (i) any of Graham, Lockerbie or the Design and Construction Subcontractor is declared or adjudged a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any legislation in force for protection against creditors, orderly payment of debts, winding up or liquidation;
 - (ii) if a receiver or receiver-manager is appointed for the business of any of Graham, Lockerbie or the Design and Construction Subcontractor;
 - (iii) if any material part of the property of any of Graham, Lockerbie or the Design and Construction Subcontractor is seized or attached; or
 - (iv) if any of Graham, Lockerbie or the Design and Construction Subcontractor ceases active business operations,

(each, an “**Insolvency Event**”) the City may, at any time, terminate this Early Works Agreement by written notice to the Design and Construction Subcontractor having immediate effect.

9. Compensation on Termination

- (a) In the event that this Early Works Agreement is terminated under Section 8(a) or 8(b), the City shall, subject to Section 9(c), pay to the Design and Construction Subcontractor the aggregate of:
- (i) in respect of the Elements which have been completed as at the date of termination of this Early Works Agreement, the value of such Elements, less the reasonably estimated cost of rectifying any deficiencies identified in respect of such Elements which have not been completed as at the date of termination of this Early Works Agreement;

- (ii) in respect of the Elements which have not been completed as at the date of termination of this Early Works Agreement, the value of work undertaken as at the date of termination in respect of such Elements;
- (iii) any sub-contractor or order cancellation charges as have been incurred by the Design and Construction Subcontractor as a result of such termination;
- (iv) the cost of materials and goods reasonably and properly ordered for the Early Works for which the Design and Construction Subcontractor has paid or for which the Design and Construction Subcontractor is legally bound to pay (provided that on such payment in full by the City such goods and materials shall become the property of the City);
- (v) any demobilization costs reasonably and properly incurred by the Design and Construction Subcontractor, up to a maximum of \$25,000;
- (vi) any Direct Losses incurred by the Design and Construction Subcontractor as a result of the termination; and
- (vii) any loss of profit, up to a maximum of \$50,000,

provided that there shall be no double counting between Sections 9(a)(i) to (vii).

- (b) In the event that this Early Works Agreement is terminated under Section 8(c) or 8(d), the City shall, subject to Section 9(c), pay to the Design and Construction Subcontractor the aggregate of the amounts referred to in Section 9(a) less the aggregate of:
 - (i) any costs reasonably and properly incurred (or to be incurred) by the City in completing the Early Works (less the amount the City would have paid to the Design and Construction Subcontractor to complete the Early Works had there been no termination); and
 - (ii) any Direct Losses incurred by the City as a result of the termination,

provided that, in the event that such calculation results in a negative amount, the Design and Construction Subcontractor shall pay such amount to the City.

- (c) The City's maximum financial commitment under this Early Works Agreement and its total aggregate liability to make payment under Section 9(a) or 9(b), as the case may be, shall be limited in all circumstances to the Early Works Contract Price, and the City shall have no liability to make any payment to the Design and Construction Subcontractor in excess of the Early Works Contract Price, regardless of how any further sums are calculated or constituted.

10. Payment of Termination Amount

- (a) Either party may set off against any amount due from such party any amount due from the other party under or for breach of the terms of this Early Works Agreement.
- (b) Within 5 Business Days of the date of termination of the performance of the Early Works, the Design and Construction Subcontractor shall provide to the City full details of the amounts which it believes to be due to the Design and Construction Subcontractor pursuant to Section 9 and the basis for their calculation, together with such supporting documentation as may be necessary to verify such amounts (the “**Design and Construction Subcontractor Claim**”).
- (c) Within 5 Business Days of receipt of such Design and Construction Subcontractor Claim, the City may request that the Design and Construction Subcontractor provide such further details and supporting documentation as it may reasonably require to verify the amounts due to the Design and Construction Subcontractor pursuant to Section 9.
- (d) The amounts due to the Design and Construction Subcontractor pursuant to Section 9, and the basis for their calculation, shall be notified to the Design and Construction Subcontractor by the City within 5 Business Days of receipt of such further details and supporting documentation or, if no such details have been requested by the City, within 5 Business Days of receipt of Design and Construction Subcontractor Claim, and the Design and Construction Subcontractor shall then submit to the City a full invoice for such amounts.
- (e) Within 60 days following receipt of such invoice, the City will, subject to any holdback required in accordance with Applicable Law and subject to the City being satisfied that no lien or claim of lien under Applicable Law or in equity has been made against the City or filed or registered against the Lands, the Existing Facilities or the Infrastructure by reason of work, services or materials supplied or claimed to have been supplied to the Design and Construction Subcontractor or anyone holding any interest through or under the Design and Construction Subcontractor, pay such amounts to the Design and Construction Subcontractor.
- (f) In the event that, notwithstanding the termination of this Early Works Agreement, Financial Close is subsequently achieved, the City’s liability to make payment pursuant to Section 9 shall cease, and the Design and Construction Subcontractor shall repay any amounts paid by the City pursuant to this Early Works Agreement to the City within 5 Business Days of Financial Close.
- (g) Any amount payable under this Early Works Agreement and not paid when it becomes due shall bear interest at Prime plus 2%, without compounding, from the due date of the amount payable until the date (or dates) of payment.

11. Post-Termination Transition

- (a) Upon termination of the Early Works pursuant to Section 8, the Design and Construction Subcontractor shall forthwith cease the performance of the Early Works in a proper and orderly manner and:
 - (i) within 5 Business Days, the Design and Construction Subcontractor shall vacate the Lands and remove therefrom in a proper and orderly manner all waste materials and site accommodation, plant and machinery used in or arising out of the Early Works, and shall leave the Lands in a clean, tidy and safe condition;
 - (ii) ownership of all completed permanent work and goods and materials incorporated in the Early Works shall pass to the City; and
 - (iii) the Design and Construction Subcontractor shall deliver to the City all Documents as are then in the possession of the Design and Construction Subcontractor.

12. Completion of the Early Works

- (a) In the event that Financial Close is not achieved by the Financial Close Target Date, the City may, in its sole discretion and as an alternative to terminating this Early Works Agreement pursuant to Section 8, require the Design and Construction Subcontractor to complete the Early Works subject to and in accordance with the terms of this Early Works Agreement.
- (b) Within 30 days following Early Works Substantial Completion in accordance with Section 12(a), the City will, subject to any holdback required in accordance with Applicable Law and subject to the City being satisfied no lien or claim of lien under Applicable Law or in equity has been made against the City or filed or registered against the Lands, the Existing Facilities or the Infrastructure by reason of work, services or materials supplied or claimed to have been supplied to the Design and Construction Subcontractor or anyone holding any interest through or under the Design and Construction Subcontractor, pay the Early Works Contract Price to the Design and Construction Subcontractor.

13. Insurance

- (a) The Design and Construction Subcontractor shall, throughout the term of this Early Works Agreement, maintain or cause to be maintained:
 - (i) comprehensive general liability insurance in the amount of \$2,000,000 per occurrence;
 - (ii) pollution liability insurance in the amount of \$1,000,000 per loss; and
 - (iii) automobile liability insurance in the amount of \$1,000,000 per occurrence.

- (b) Any insurance maintained by or on behalf of the Design and Construction Subcontractor in accordance with Section 13(a) shall comply with the insurance requirements specified in Section 2 of Schedule 11 (Insurance Requirements) to the Draft Project Agreement.

14. Design and Construction Subcontractor Indemnity

- (a) The Design and Construction Subcontractor agrees to indemnify the City against all Direct Losses arising out of or in connection with or by reason of the execution of the Early Works pursuant to this Early Works Agreement, save to the extent caused by any breach of this Early Works Agreement by the City, or by any deliberate act or omission of the City.

15. City Indemnity

- (a) The City agrees to indemnify the Design and Construction Subcontractor against all Direct Losses arising out of or in connection with or by reason of a breach of this Early Works Agreement by the City, save to the extent caused by any breach of this Early Works Agreement by the Design and Construction Subcontractor, or by any deliberate act or omission of the Design and Construction Subcontractor.

16. Joint and Several Liability

- (a) Notwithstanding anything else set forth in this Early Works Agreement to the contrary, each of Graham and Lockerbie agrees and confirms to the City that the liabilities and obligations of the Design and Construction Subcontractor under this Early Works Agreement are joint and several as between each of Graham and Lockerbie.

17. Notices

- (a) Any notice, consent, approval or other communication under any provision of this Early Works Agreement must be in writing to be effective, and is effective when delivered by any means, including e-mail or fax transmission, to the following respective addresses:

if to the City: City of Regina
 2476 Victoria Avenue
 P.O. Box 1790
 Regina, Saskatchewan
 S4P 3C8

Attention: Brent Sjoberg, Deputy City Manager & COO
Fax: (306) 777-6818
E-mail: bsjoberg@regina.ca

if to the Design and Graham Infrastructure LP
Construction 10909 – 27th Street SE
Subcontractor: Calgary, Alberta
 T2Z 3V9

Attention:

Fax:

E-mail:



and to:

Lockerbie Stanley Inc.
7335 Flint Road SE
Calgary, Alberta
T2H 1G3

Attention:

Fax:

E-mail:



Either party may change its address information by giving notice to the other in the above manner.

- (b) The parties designate for the time being the following individuals as having authority to communicate to the other any notice, approval, consent, waiver or other communication under this Early Works Agreement:

in the case of the City:

Brent Sjoberg, Deputy City Manager & COO

Telephone: (306) 777-7000

Fax: (306) 777-6818

Email: bsjoberg@regina.ca

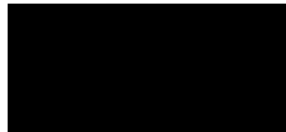
in the case of the Design and Construction Subcontractor:



Telephone:

Fax:

Email:



In the absence of any further designation or limitation communicated with reference to this Section 17(b), each party may assume that any notice, approval, consent, waiver or other communication under this Early Works Agreement given by the above individual has been duly authorized and is binding upon the other party.

18. Applicable Law and Jurisdiction

- (a) This Early Works Agreement shall be governed by the laws of the Province of Saskatchewan, including the federal laws of Canada applicable therein. Saskatchewan courts shall have exclusive jurisdiction over all matters arising in relation to this Early Works Agreement, and each party accepts the jurisdiction of Saskatchewan courts.

19. Amendment and Waiver

- (a) No amendment of this Early Works Agreement is effective unless made in writing and signed by a duly authorized representative of each of the City and the Design and Construction Subcontractor. No waiver of any provision of this Early Works Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the parties with respect to the performance of any obligation under this Early Works Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

20. Severability

- (a) Each provision of this Early Works Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Early Works Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Early Works Agreement. If any such provision of this Early Works Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Early Works Agreement as near as possible to its original intent and effect.

21. Cumulative Remedies

- (a) Except as otherwise set forth in this Early Works Agreement, the rights, powers and remedies of each party set forth in this Early Works Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Early Works Agreement.

22. Costs

- (a) Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Early Works Agreement.

23. Additional Assurances

- (a) The City and the Design and Construction Subcontractor each agree to do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this Early Works Agreement according to their spirit and intent, provided that this Section 23(a) shall not be construed as obligating the City to amend or enact any by-law or regulation.

24. Counterparts

- (a) This Early Works Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by e-mail or fax transmission shall constitute good delivery.

25. Entire Agreement

- (a) Unless otherwise stated in this Early Works Agreement, this Early Works Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Early Works Agreement. No party has relied on any representation except as expressly set out in this Early Works Agreement.

26. Joint and Several

- (a) Where two or more persons execute this Early Works Agreement as the Design and Construction Subcontractor, the liability under this Early Works Agreement of such persons executing this Early Works Agreement shall be joint and several.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF this Early Works Agreement has been executed by the parties on the date first above written.

CITY OF REGINA

Per: _____

Name: Jim Nicol

Title: City Clerk



I have authority to bind the corporation

GRAHAM INFRASTRUCTURE LP, by
its general partner, **GRAHAM
INFRASTRUCTURE LTD.**

Per: 

Name 

Title: *General Manager*

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation

LOCKERBIE STANLEY INC.

Per:

Name:

Title: *VICE PRESIDENT*

JUNE 13/14

Per:

Name:

Title:

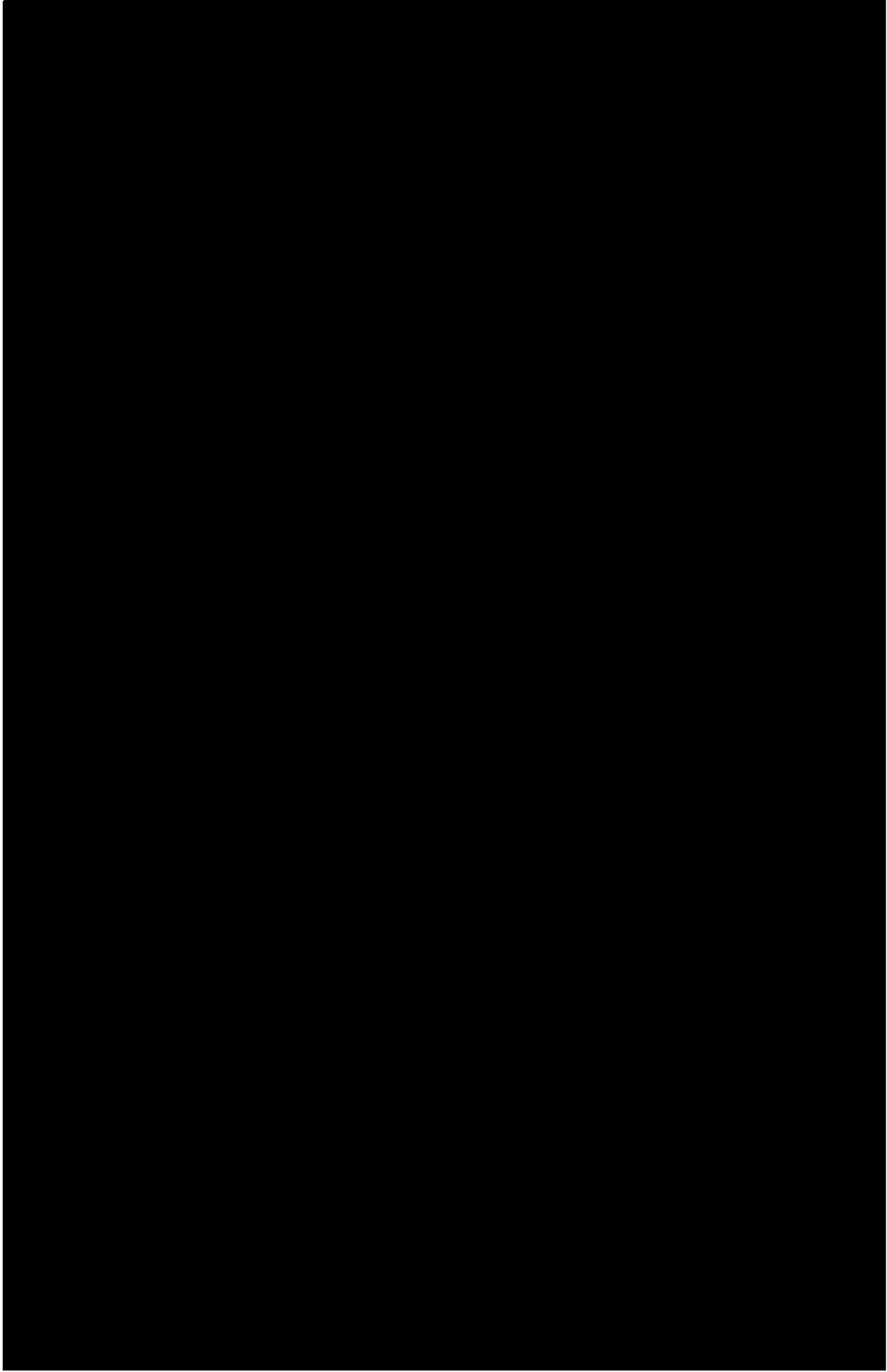
I/We have authority to bind the corporation

APPENDIX A

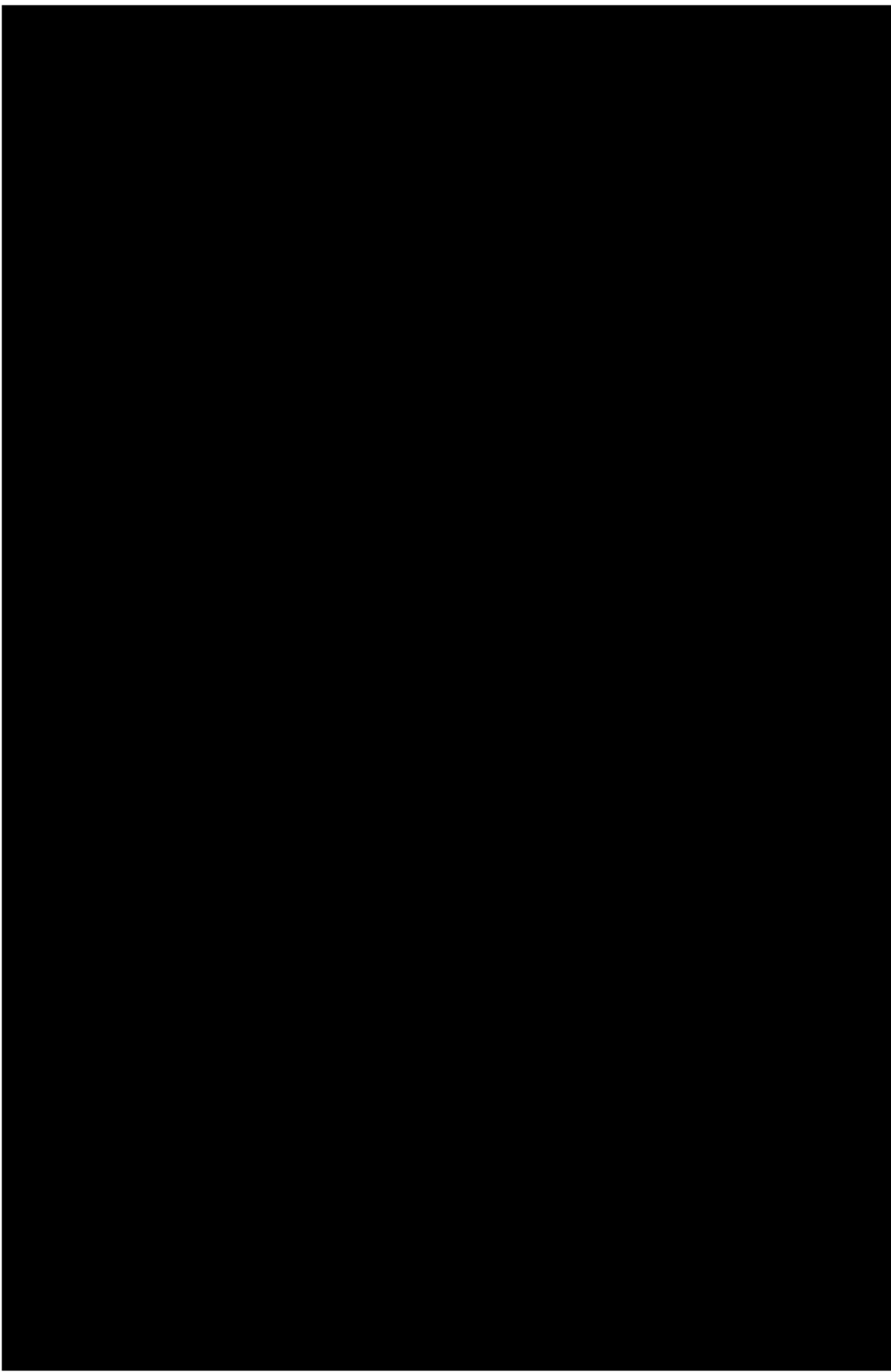
DESCRIPTION OF EARLY WORKS

- (a) Construct road access for the vehicles required for the Early Works and/or necessary for construction activities planned for the winter of 2014/15 (as per **Addendum 1 – Construction Plan Overview**);
- (b) Construct site fencing and gates specific to the Early Works and/or necessary for construction activities planned for the winter of 2014/15 (as per **Addendum 1 – Construction Plan Overview**);
- (c) Construct parking area for Design and Construction Subcontractor personnel needed for the Early Works and/or necessary for construction activities planned for the winter of 2014/15 (as per **Addendum 1 – Construction Plan Overview**);
- (d) Perform site clearing in the location of the major process tanks (as per **Addendum 2 - Excavation Model**);
- (e) Perform site stripping in the location of the major process tanks (as per **Addendum 2 - Excavation Model**);
- (f) Perform excavation in the location of the major process tanks (as per **Addendum 2 - Excavation Model**); and
- (g) Perform erosion control specific to the activities related to the Early Works.

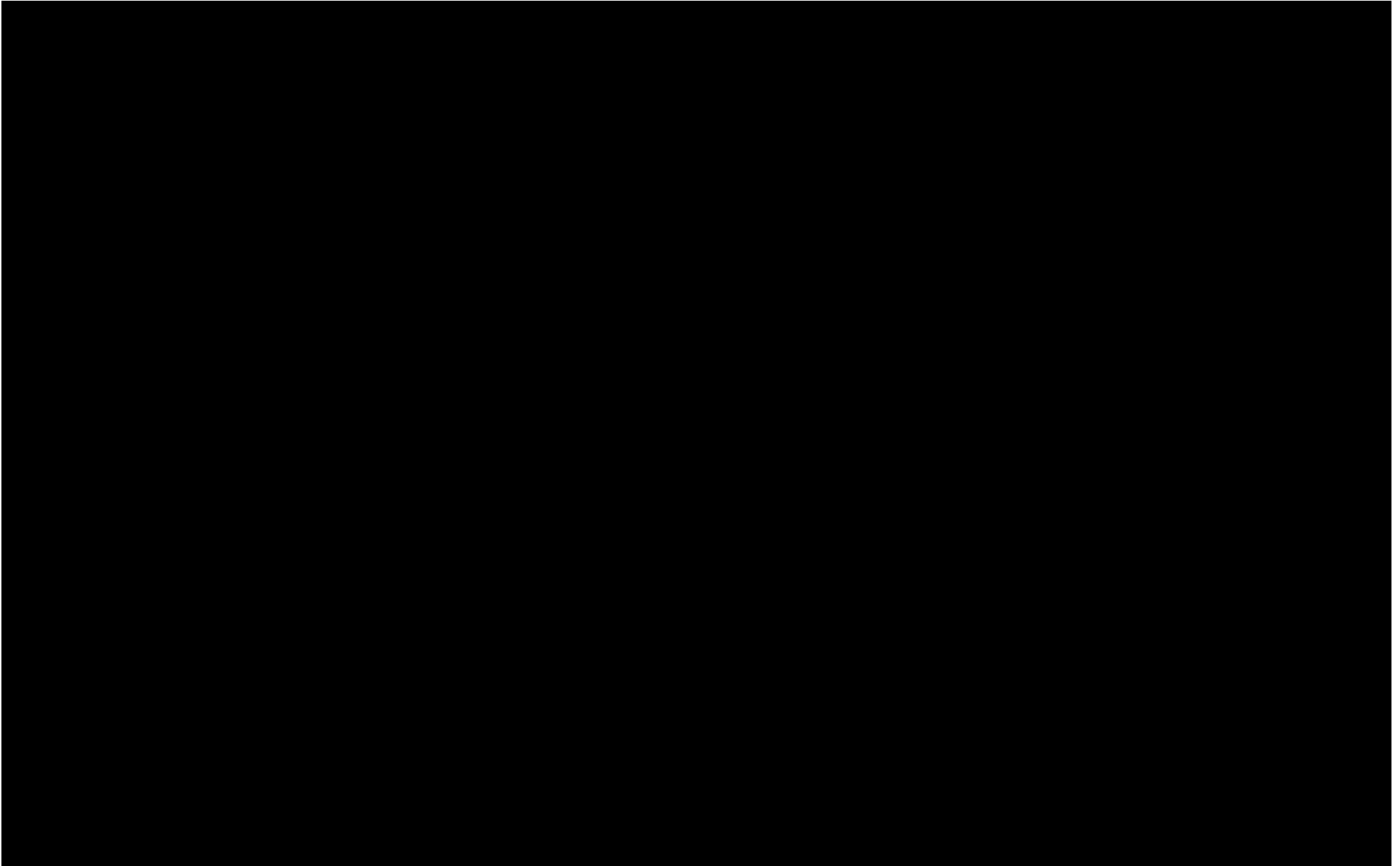
Addendum 1 – Construction Plan Overview



Addendum 2 – Excavation Model



APPENDIX B



DESIGN AND CONSTRUCTION SUBCONTRACTOR'S EARLY WORKS CONTRACT PRICE

Regina Wastewater Treatment Plant Upgrade Project
Early Works Agreement