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DOCKET NO. _____

COMPLAINT, REQUEST FOR	§	PUBLIC UTILITY COMMISSION
IMMEDIATE SUSPENSION OF	§	
CONDUCT, AND REQUEST FOR	§	
EXPEDITED RELIEF OF ACS DC	§	
HICKS FIELD ROAD, LLC AGAINST	§	
THE ELECTRIC RELIABILITY	§	
COUNCIL OF TEXAS, INC.	§	OF TEXAS

**COMPLAINT, REQUEST FOR IMMEDIATE SUSPENSION OF CONDUCT, AND
REQUEST FOR EXPEDITED RELIEF OF ACS DC HICKS FIELD ROAD, LLC
AGAINST THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

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TO THE HONORABLE CHAIR AND COMMISSIONERS OF THE PUBLIC UTILITY
COMMISSION OF TEXAS:

ACS DC Hicks Field Road, LLC (Hicks Field) timely files this Complaint, Request for Immediate Suspension of Conduct, and Request for Expedited Relief (Complaint) against the Electric Reliability Council of Texas, Inc. (ERCOT) pursuant to 16 Texas Administrative Code (TAC) § 22.251(e) and respectfully shows as follows:

I. EXECUTIVE SUMMARY

This Complaint challenges ERCOT's reclassification of Hicks Field's [REDACTED] megawatt (MW) data center campus in Fort Worth, Texas (Project), Batch Zero No. BZ-129, from Base Load under Planning Guide § 9.2.1.1(1)(e) to Studied Load under § 9.2.1.2, and ERCOT's September 16, 2026 denial of the dispute filed by Hicks Field and its interconnecting Transmission Service Provider (TSP), Oncor Electric Delivery Company LLC (Oncor). The reclassification rests on a single error: ERCOT failed to recognize that the Project is a legacy Large Load whose interconnection studies must be treated as "fully complete and valid without additional review" under Planning Guide § 9.2.1.4(3), which Planning Guide Revision Request 145 (PGRR145)

adopted to preserve studies completed under the legacy procedures in Planning Guide §§ 9.9 and 9.10.

The Project plainly qualifies as a legacy Large Load. Planning Guide § 9.2.1.4(3)(b) asks a single question: whether the Large Load “met the requirements of Section 9.9, Legacy LLIS Report and Follow-up, and Section 9.10, Legacy Interconnection Agreements and Responsibilities, on or before March 4, 2026.”¹ If it did, ERCOT “*shall* consider previous studies for Large Loads that have not achieved Initial Energization by July 10, 2026, to be fully complete and valid without additional review.”² The Project met both requirements.

First, the Project met § 9.9, which “outlines the former procedures” for informing an Interconnecting Large Load Entity (ILLE) of the results of its Large Load Interconnection Study (LLIS).³ ERCOT approved the Project’s steady-state and stability studies on March 12, 2024, during the interim Large Load interconnection process.⁴ On March 20, 2024, ERCOT notified Oncor in writing that the Project (LLI-1345) “just had its SSR Study passed as not required”—the final LLIS study element—and moved the Project out of ERCOT review.⁵

Second, the Project met § 9.10. Hicks Field and Oncor fully executed the Transmission/Substation Facility Extension Agreement (FEA) on February 22, 2026, and by February 26, 2026, Hicks Field had posted the full \$ [REDACTED] in financial security the FEA

¹ ERCOT Planning Guide § 9.2.1.4(3)(b).

² *Id.*

³ *Id.* § 9.9(1).

⁴ Exhibit D, ACS DC Hicks Field Road, LLC’s ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3 (Sept. 11, 2026).

⁵ *Id.* at 3; see Exhibit O, ERCOT Study Approval Email to Oncor Electric Delivery Company LLC (Mar. 20, 2024); see also ERCOT Planning Guide § 9.9(7) (“The LLIS is deemed complete when the final report has been provided for all LLIS study elements.”).

required for Oncor to proceed with construction.⁶ The parties have performed under the FEA ever since, and the Project is under construction.⁷ Oncor has confirmed that the Project met Planning Guide- §§ 9.9 and 9.10 before March 4, 2026.⁸

ERCOT nonetheless invalidated the Project's studies and provisionally classified it as Studied Load, even though ERCOT was aware no later than April 21, 2026 that the Project had met the legacy requirements.⁹ On May 28, 2026—the same day study submissions were due for guaranteed review before ERCOT's July 10, 2026 approval deadline—ERCOT notified Oncor that the Project required restudy.¹⁰ That demand was both unauthorized, because qualifying legacy studies are not subject to restudy, and impossible to meet.

ERCOT denied the dispute on two grounds, and neither is supported by the Planning Guide or the FEA. *ERCOT's first ground*—that it did not receive notice before March 4, 2026 that the Project met Planning Guide §§ 9.9 and 9.10, including the ILLE's written acknowledgement under § 9.10.1(1)(a)(ii)—adds a requirement that does not exist.¹¹ Section 9.2.1.4(3)(b) asks whether the

⁶ Exhibit I, Transmission/Substation Facility Extension Agreement ACS Infrastructure – Fort Worth, TX at Art. VII, § 10(b) (Feb. 20, 2026) (FEA); Exhibit H, Letter of Credit for Security Required under the FEA (Feb. 26, 2026).

⁷ See Exhibit E, Amendment No. 1 to Transmission/Substation Facility Extension Agreement ACS Infrastructure – Fort Worth, TX at 1 (July 9, 2026) (“[Hicks Field] and [Oncor] desire to amend the Agreement to comply with the provisions of ERCOT PGRR 145 Batch Zero Process for Large Load Interconnections (“PGRR 145”) so that Customer’s projected load demand may be included in Batch Zero pursuant to Section 9.2.1.1 of PGRR 145.”).

⁸ Exhibit D, ACS DC Hicks Field Road, LLC’s ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3.

⁹ *Id.*

¹⁰ *Id.*; see also ERCOT Batch Zero Readiness FAQs at Question No. 31 (July 21, 2026), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ercot.com%2Ffiles%2Fdocs%2F2026%2F06%2F26%2FBatch_Zero_Readiness_FAQs_V8.1.xlsx&wdOrigin=BROWSELINK (setting May 28, 2026 as the deadline for study submissions to meet the July 10, 2026 deadline for ERCOT study approval).

¹¹ Exhibit C, ERCOT Denial of Reclassification Complaint at 2 (Sept. 16, 2026).

Large Load *met* the requirements by March 4, not whether ERCOT was *told* by that date.¹² In any event, Oncor notified ERCOT of the executed FEA and maximum load ramp for the Project on April 18, 2026,¹³ and Hicks Field understands that ERCOT acknowledged the Project's status as a legacy Large Load on April 21, 2026.

ERCOT's second ground—that Hicks Field did not give Oncor notice to proceed with construction or make all applicable payments by March 4, 2026—misreads the FEA and ignores Oncor's Commission-approved tariff.¹⁴ ERCOT reasoned that Hicks Field's July 2026 payment of a \$ [REDACTED] contribution in aid of construction (CIAC) for the Project's second point of delivery was the "notice to proceed," relying on a single FEA sentence that it miscited as Article V (the disclosure article) rather than Article VII, Section 2.¹⁵ Under Oncor's tariff, which the FEA incorporates, the executed FEA is the instrument that authorizes construction; the FEA itself is the notice to proceed.¹⁶ Nor was the CIAC an applicable payment on March 4, 2026: the FEA made it due 30 days after Oncor's invoice, and Oncor did not invoice it until *after* March 4, 2026.¹⁷ An un-invoiced, not-yet-due payment is not an "applicable" payment under Planning Guide § 9.10.1(1)(a)(iv).¹⁸ As of March 4, 2026, Oncor held an executed FEA and all required financial

¹² ERCOT Planning Guide § 9.2.1.4(3) ("ERCOT shall consider previous studies for Large Loads that have not achieved Initial Energization by July 10, 2026, to be fully complete and valid without additional review if they meet one of the criteria in paragraphs (a) through (c) below. . . . (b) The Large Load *met* the requirements of Section 9.9, Legacy LLIS Report and Follow-up, and Section 9.10, Legacy Interconnection Agreements and Responsibilities, on or before March 4, 2026.") (emphasis added).

¹³ Exhibit G, Communication from Oncor Electric Delivery Company LLC Notifying ERCOT of Signed FEA (Apr. 18, 2026).

¹⁴ Exhibit C, ERCOT Denial of Reclassification Complaint at 1–2.

¹⁵ *Id.* at 1–2; see Exhibit I, FEA at Art. V (Disclosure) & Art. VII, § 2.

¹⁶ Exhibit I, FEA at Art. VII, § (2).

¹⁷ Exhibit I, FEA at Art. I, § 1(b) ("Upon execution of this Agreement, Company shall invoice Customer and Customer shall pay Company a CIAC in the amount of \$ [REDACTED] associated with such Non-Standard Facilities. Such CIAC shall be due and payable within thirty (30) days after the date of Company's invoice.").

¹⁸ See ERCOT Planning Guide § 9.10.1(1)(a)(iv).

security (i.e., the \$ [REDACTED] required to secure Oncor's construction its standard facilities for the interconnection), and Hicks Field paid the CIAC promptly once it was invoiced.¹⁹

The governing documents leave no doubt. Oncor's tariff defines a Facility Extension Agreement as "[t]he Service Agreement pursuant to this Tariff that must be executed by Company and the entity . . . **requesting certain Construction Services** before Company can provide such Construction Services to the requesting entity."²⁰ The FEA, in turn, recites that "**Customer has requested that Company construct**" the Company Facilities and that "**Company will construct the Company Facilities.**"²¹ Hicks Field was never out of compliance with the FEA.

ERCOT's decision is arbitrary and capricious and has no basis in the Planning Guide. It penalizes Hicks Field for Oncor's billing sequence and for a reporting step the Planning Guide does not require by March 4, 2026, and it disregards Oncor's conclusion that invalidating the Project's studies is not warranted.²² It also serves no reliability purpose: the Project represents [REDACTED] percent of the Base Load portion of Batch Zero and requires no additional facilities that are not already included in the FEA. The Project is under construction and leased to a hyperscale customer with significant financial implications for failing to meet contractual in-service dates. The reclassification threatens the Project's interconnection timing, its lease and financing, and the jobs and tax revenue it will bring to Fort Worth and Tarrant County.

¹⁹ Exhibit I, FEA at Art. I, § (1)(b) & Art. VII, § (10)(b).

²⁰ Oncor Electric Delivery Company LLC Tariff for Retail Delivery Service, Ch. 1, Definitions at 11 (June 1, 2026) (emphasis added).

²¹ Exhibit I, FEA at 1 (emphasis added).

²² Exhibit D, ACS DC Hicks Field Road, LLC's ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3–4 ("Because LLI-1345 has already been studied, approved, incorporated into subsequent area studies, and supported by an executed interconnection agreement, Oncor does not believe invalidation of the studies for LLI-1345 is warranted.").

As shown in Section VII, ERCOT: (1) failed to treat the Project as a legacy Large Load under Planning Guide § 9.2.1.4(3)(b) and §§ 9.9 and 9.10; (2) imposed a pre-March 4 ERCOT-notice requirement that the Planning Guide does not contain; (3) misconstrued the FEA, Oncor's tariff, and Planning Guide § 9.10.1(1)(a)(iii)–(iv) by treating a later-invoiced CIAC payment as a condition of legacy status; (4) gave no timely notice or opportunity to cure, contrary to the Planning Guide and the notice principles of the Texas Administrative Procedure Act (APA); and (5) reclassified the Project on a ground unrelated to Oncor's ability to serve it, while retroactively impairing the commitments Hicks Field made in reliance on ERCOT's approvals.

Expedited relief is warranted because the reclassification materially jeopardizes the Project. Hicks Field asks the Commission to (1) suspend the reclassification under 16 TAC § 22.251(j) and direct ERCOT to model the Project as Base Load in the Batch Zero study while this Complaint is pending; (2) adopt a procedural schedule that permits a ruling on the suspension by December 17, 2026; and (3) restore the Project's Base Load classification on the merits.

II. IDENTIFICATION OF PARTIES

In accordance with 16 TAC § 22.251(e)(2)(A), Hicks Field provides the following list of all complainants and the entities against whom the complainant seeks relief and the addresses and email addresses of the parties or their counsel or other representatives. In addition to the foregoing entities, Hicks Field will also serve the Office of Public Utility Counsel with a copy of the Complaint.

The name and address of the Complainant, Hicks Field, and its authorized representatives are as follows:

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The entity against whom Hicks Field seeks relief, ERCOT, and its representatives are as follows:

Chad V. Seely
Senior Vice President, Regulatory Policy, General Counsel, Chief Compliance Officer, and
Corporate Secretary
Electric Reliability Council of Texas, Inc.
8000 Metropolis Drive (Bldg. E), Suite 100
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As the Interconnecting TSP, Hicks Field lists Oncor as an interested and essential party to this proceeding:

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III. REQUEST FOR IMMEDIATE SUSPENSION OF ERCOT CONDUCT AND EXPEDITED RELIEF

Pursuant to 16 TAC § 22.251(j), Hicks Field requests that the Commission suspend ERCOT's reclassification of the Project from Base Load to Studied Load while this Complaint is pending, so that the Project is modeled as Base Load in the Batch Zero study, which is anticipated to begin in December 2026. Section 22.251(j) authorizes the Commission to suspend ERCOT conduct that is the subject of a complaint while the complaint is pending after assessing (1) the harm to the complainant if suspension is not ordered, (2) the harm to others if suspension is ordered, (3) the likelihood of the complainant winning on the merits, and (4) any other relevant factors. Each factor favors suspension.

Harm to Hicks Field and the City of Fort Worth. The Base Load designation is necessary to preserve the Project's Batch Zero queue position, its provisional Base Load allocation of [REDACTED] MW of transmission capacity, and the interconnection timeline on which Hicks Field and Oncor have relied. Hicks Field and Oncor relied on their February 2026 FEA and the March 2024 studies supporting that FEA to order long-lead equipment, issue a notice to proceed, post financial security and CIAC, execute a long-term lease with an end-use customer, and commence construction.²³ Studied Load treatment creates a material risk to the availability of transmission capacity, to the Project's lease, and to the Project's access to additional financing because of the regulatory uncertainty attached to a Studied Load project.

If ERCOT's reclassification decision were to stand during the pendency of this case, the Project could face material delays or, ultimately, may not be completed. Failure to suspend

²³ Exhibit D, ACS DC Hicks Field Road, LLC's ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3-4.

ERCOT's conduct would also jeopardize construction of the Project, which has already begun, and the hundreds of well-paying jobs it supports. Without restoration of the Project's Batch Zero queue position, Hicks Field will be unable to obtain timely, meaningful relief.

Harm to Others. Suspension will not harm others. If the Project does not prevail in this Complaint, ERCOT may reclassify its load as Studied Load in the refinement study or similar study contemplated after the initial Batch Zero study is complete.

Further, Hicks Field and Oncor have executed an amendment to their FEA that confirms the Project was studied in accordance with the legacy Large Load process.²⁴ The absence of identified system upgrades, together with the fact that the Project represents approximately [REDACTED] % of the 66.4 gigawatt (GW) Base Load portion of Batch Zero, supports the conclusion that the Project's inclusion would have a *de minimis* impact on other projects. The Project's studies have also been included in subsequent studies for other projects in the surrounding region, so the cumulative impacts of the Project and those later-approved loads have already been assessed assuming that the Project will interconnect at its requested demand.²⁵

Likelihood of Success. As shown in Section VII, Hicks Field is likely to succeed on the merits. The Project is a legacy Large Load that met §§ 9.9 and 9.10 before March 4, 2026, and its studies are therefore valid under Planning Guide § 9.2.1.4(3)(b); ERCOT supplied no timely notice or reasoned basis for reclassification; and Oncor's approved studies show that it can serve the Project. To prevent lasting harm, the Commission should stay the reclassification decision and order ERCOT to include the Project as Base Load in the Batch Zero study while this Complaint is pending.

²⁴ Exhibit E, Amendment No. 1 to the FEA at § (3)(i).

²⁵ Exhibit D, ACS DC Hicks Field Road, LLC's ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3.

In the alternative, Hicks Field moves for a good cause exception that would preserve its right to be included as Base Load in the Batch Zero study. As demonstrated by this Complaint, Hicks Field has shown that it meets all the requirements of a Base Load project and would be subject to substantial harm if it were not included as Base Load. The Commission should ensure the continued viability of the Project by maintaining its Base Load status during the pendency of this case.

In addition to the foregoing requests, Hicks Field also moves for an expedited schedule for this proceeding given the compressed timelines surrounding the initiation of the Batch Zero study. ERCOT's Batch Zero Eligibility Verification Report, which will officially close the Batch Zero study, is due on December 10, 2026.²⁶ Hicks Field requests that the Commission make a determination on Hicks Field's request for emergency suspension of ERCOT's reclassification by December 17 to secure the Project's Base Load status throughout the Batch Zero process. To achieve this deadline, Hicks Field respectfully requests that ERCOT be required to file its response to this Complaint within 14 days of receipt rather than the 28 days afforded to ERCOT under 16 TAC § 22.251(g). Hicks Field also includes additional procedural requests with its proposed procedural schedule in Section X to ensure the timely resolution of this Complaint, including compressed deadlines to respond to Requests for Information (RFIs) and the prompt entry of a protective order. Adopting these procedures will ensure this Complaint is processed expeditiously to prevent the potential for permanent harm to Hicks Field.

²⁶ Project No. 59142, ERCOT Update for September 11, 2026 Open Meeting – Batch Zero and State and Community Impact RFI Responses at 7 (Sept. 11, 2026).

IV. STATEMENT OF THE CASE

A. Underlying or Related Proceedings

No prior or pending related proceedings exist before the Commission involving the conditional classification of the Project. This Complaint is the first formal proceeding concerning ERCOT's reclassification of the Project from Base Load to Studied Load under Planning Guide § 9.2.1.2(1).

B. Affected Entities

The affected entities are: Hicks Field, as the ILLE for the Project; ERCOT, as the entity whose conduct is challenged in the Complaint by Hicks Field; and Oncor, as the Interconnecting TSP.

C. Conduct from Which Hicks Field Seeks Relief

Hicks Field challenges ERCOT's denial of its reclassification dispute and ERCOT's resulting reclassification of the Project from Base Load to Studied Load under Planning Guide § 9.2.1.2(1). ERCOT based that decision on its after-the-fact assertion that the Project's previously approved studies are subject to restudy because the FEA executed by Oncor and Hicks Field does not meet the requirements of Planning Guide § 9.2.1.4(3)(b).

D. Applicable ERCOT Procedures, Protocols, Operating Guides, or Law

The applicable ERCOT procedures, protocols, operating guides, and law include: Planning Guide §§ 9.1 (Introduction to Large Load Interconnection or Modification Rules); 9.2.1.1 (Eligibility Criteria for Inclusion of a Large Load as Base Load not Subject to Additional Study in the Batch Zero Process); 9.2.1.2 (Eligibility Criteria for Inclusion as Load to be Studied and Allocated in Batch Zero); 9.2.1.4 (Evaluation of Existing Interconnection Studies for Large

Loads); 9.3.1 (Batch Zero Process Overview and Timelines); 9.8 (Legacy Interconnection Study Procedures for Large Loads); 9.9 (Legacy LLIS Report and Follow-up); 9.10 (Legacy Interconnection Agreements and Responsibilities); 16 TAC § 22.251 (Review of ERCOT Conduct); 16 TAC § 25.361 (Electric Reliability Council of Texas (ERCOT)); PURA §§ 11.007, 37.0561, 39.001, 39.151; and Tex. Gov't Code §§ 2001.003, 2001.051, 2001.174.

E. Use of Applicable ERCOT Dispute Resolution Procedures

Planning Guide § 9.3.1(2)(a)(i) prescribes the procedures for ILLEs, Interconnecting TSPs, and ERCOT to follow if a project initially submitted for Base Load under § 9.2.1.1 is subsequently reclassified as Studied Load under § 9.2.1.2. Oncor notified Hicks Field of the conditional reclassification on September 8, 2026. Hicks Field subsequently notified ERCOT that it believed the reclassification was based on incomplete or inaccurate information through Oncor on September 11, 2026 in compliance with § 9.3.1(2)(a)(i). Hicks Field, Oncor, and ERCOT then held a conference to discuss the basis of the reclassification on September 16, 2026.²⁷ After the conference, ERCOT's counsel notified Oncor and Hicks Field that ERCOT's conditional reclassification would stand. Hicks Field requested reconsideration of that decision, but, on October 19, 2026, ERCOT responded to the request for reconsideration and confirmed its decision.²⁸

Hicks Field complied with this dispute resolution process and exhausted its remedies under Planning Guide § 9.3.1(2)(a)(i) prior to filing this formal complaint. Planning Guide § 9.3.1(2)(a)(i) is the only dispute resolution process applicable to the reclassification of a Batch Zero Base Load project to Studied Load under Section 9 of the ERCOT Planning Guide. Therefore,

²⁷ Exhibit C, ERCOT Denial of Reclassification Complaint.

²⁸ Exhibit B, ERCOT Denial of Reconsideration Request (Oct. 19, 2026).

Hicks Field has satisfied the requirement to exhaust its applicable remedies prior to filing a formal complaint under 16 TAC § 22.251(e).²⁹

F. Request for Suspension of ERCOT Conduct

As discussed above, Hicks Field seeks immediate suspension of ERCOT's reclassification decision under Planning Guide § 9.3.1(2)(a)(i) while this Complaint is pending pursuant to 16 TAC § 22.251(j).

G. Jurisdiction

The Commission has jurisdiction over this Complaint pursuant to PURA § 39.151(d-4)(6), which authorizes the Commission to resolve disputes between ERCOT and affected persons, and 16 TAC § 22.251, which allows parties to file formal complaints against ERCOT within 35 days of the conduct from which the complainant seeks relief. ERCOT notified Hicks Field on September 16, 2026 that Hicks Field's and Oncor's disputes on the reclassification to Studied Load were denied. This Complaint, filed on October 21, 2026, is within 35 days of that denial and is therefore timely.³⁰

V. STATEMENT OF ISSUES PRESENTED FOR COMMISSION REVIEW

Hicks Field presents the following issues for Commission review:

²⁹ The Alternative Dispute Resolution (ADR) process in Section 20 of the ERCOT Nodal Protocols does not apply to Hicks Field because Hicks Field is not a Market Participant under the ERCOT Protocols. Nonetheless, it is Hicks Field's understanding that ERCOT has elected to waive the ADR procedure for this Complaint due to the urgent need for relief. *See* ERCOT Nodal Protocols § 20.5(7) ("The parties to the dispute may elect to waive ADR by written agreement, which will also complete the ADR proceeding.").

³⁰ 16 TAC § 22.251(e)(1).

- (1) Whether the Project met the requirements of Section 9.9, Legacy LLIS Report and Follow-up, and Section 9.10, Legacy Interconnection Agreements and Responsibilities, on or before March 4, 2026.
- (2) Whether ERCOT erred by asserting that the Project's previously approved studies are subject to restudy even though the Project had a validly executed legacy interconnection agreement before March 4, 2026 and met the requirements of Sections 9.9 and 9.10 on or before that date, as Planning Guide § 9.2.1.4(3)(b) requires.
- (3) Whether ERCOT's claim that the Project did not issue a notice to proceed with construction by March 4, 2026 is inconsistent with the FEA and Oncor's tariff.
- (4) Whether ERCOT's claim that Oncor was required to notify ERCOT before March 4, 2026 that the Project met the legacy requirements of §§ 9.9 and 9.10 conflicts with the plain language of § 9.2.1.4(3)(b), which asks whether the Large Load "*met the requirements*" of §§ 9.9 and 9.10 by March 4, 2026.
- (5) Whether ERCOT provided timely and sufficient notice of its newly asserted requirement that the approved studies include additional loads, such that Oncor and Hicks Field had a meaningful opportunity to respond or complete any required restudy before the applicable Batch Zero deadlines.
- (6) Whether ERCOT violated Hicks Field's property rights by retroactively reclassifying the Project as Studied Load based on rules not in effect at the time the project studies were conducted and approved.

VI. STATEMENT OF FACTS

Hicks Field is a \$2.1 billion data center on a 107-acre site near Hicks Field Road in far northern Fort Worth, Texas. The Project is currently being constructed in Tarrant County within the city limits of Fort Worth, Texas. Oncor is the Interconnecting TSP for the Project. The Project has been in development since [2023], and Hicks Field has been working with Oncor since 2024 to interconnect the Large Load to the ERCOT grid. Based on ERCOT's most recent Batch Zero updates, the Project represents [REDACTED] percent of the 66.4 GW included in the Base Load portion of the Batch Zero study.³¹

Hicks Field provides the following timeline for the Project that demonstrates its mature status as a Base Load project and status as a legacy large load under Planning Guide §§ 9.9 and 9.10:

- **October 10, 2023:** The original Discretionary Services Agreement (DSA) is executed.³² The required security of \$ [REDACTED] is promptly posted under the agreement for Phase 1 Discretionary Services, which include:

³¹ Project No. 59142, ERCOT Update for September 11, 2026 Open Meeting – Batch Zero and State and Community Impact RFI Responses at 4.

³² At the time the original DSA was signed, the Project was owned by a separate entity. On January 30, 2025, Hicks Field acquired the property under a purchase and sale agreement. On April 16, 2025, Hicks Field was assigned all of the rights, powers, titles, privileges, and interests of the previous owner under the DSA, and posted security under the terms of the DSA and Amendment No. 1 to the DSA. Exhibit L, Assignment of Discretionary Service Agreement at § 1 (Apr. 16, 2025); Exhibit K, Letter of Credit for Discretionary Services Agreement (May 14, 2025); Exhibit J, Letter of Credit Amendment for Discretionary Services Agreement (May 27, 2025) (correcting clerical errors in original letter of credit). Oncor gave express written consent to the assignment prior to Hicks Field's purchase of the Project. Exhibit M, Oncor Electric Delivery Company LLC Consent Letter at 1 (Jan. 6, 2025). Therefore, while Hicks Field was not the original entity to sign the DSA or Amendment No. 1 to the DSA, it has posted security in accordance with these agreements and has validly assumed all the rights, powers, titles, privileges, interests, and duties contain therein.

- “Activities associated with the determination of land rights necessary to be conveyed to Company for the construction and operation of the Company Facilities . . .”
 - “Conducting preliminary engineering for the Company Facilities . . .”
 - “Providing a preliminary estimate of the cost of the Company Facilities, including an estimate of Customer’s security requirements and contribution in aid of construction (“CIAC”); and
 - “Providing a preliminary non-binding project schedule for the design, procurement, and construction of the Company Facilities”³³
- **March 12, 2024:** ERCOT approves the steady-state and stability studies for the Project under LLI-1345.³⁴ These studies have since been included in subsequent studies for other projects in the area.³⁵
 - **March 20, 2024:** ERCOT emails Oncor that LLI-1345 “just had its SSR Study passed as not required. This project should be moving forward from ‘ERCOT REVIEW’ TO ‘PRODUCTION SYSTEMS PENDING.’”³⁶ This email moves LLI-1345 out of ERCOT review.
 - **July 8, 2024:** Oncor notifies the Project that it has moved out of ERCOT review.³⁷

³³ Exhibit P, Discretionary Service Agreement – Provident Hicks Site at 6 (Oct. 10, 2023).

³⁴ Exhibit D, ACS DC Hicks Field Road, LLC’s ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3.

³⁵ *Id.* at 3.

³⁶ Exhibit O, ERCOT Study Approval Email to Oncor Electric Delivery Company LLC (Mar. 20, 2024).

³⁷ *Id.*

- **October 17, 2024:** Amendment No. 1 to the DSA is executed. The additional \$ [REDACTED] in security is promptly paid so that Oncor “will proceed with the Phase 2 Discretionary Services Scope specified in the [DSA],” which includes:
 - “Conducting full engineering for the Company Facilities”
 - “Obtaining property owner access and survey permission”
 - “Surveying”
 - “Soil Testing”
 - “Environmental Assessment”
 - **“Procuring equipment for construction of the Company Facilities”**
 - “Preparing and obtaining final approval of easement documents for the land rights to be conveyed to [Oncor] for the construction and operation of the Company Facilities.”³⁸

- **February 22, 2026:** Oncor and Hicks Field fully execute the FEA, which meets the requirements applicable to a legacy interconnection agreement under the Planning Guide.³⁹ The FEA requires [\$20,239,658] in financial security within ten business days after its effective date to cover Oncor’s estimated costs of constructing the Standard Facilities associated with Point of Delivery 1. The FEA also requires a [\$3,762,143] CIAC for Non-

³⁸ Exhibit N, Amendment No. 1 to Discretionary Service Agreement at § (I)(1)(b) (Oct. 17, 2024) (emphasis added).

³⁹ Exhibit I, FEA at Art. I, § (1)(b) & Art. VII, § (10)(b); *see also* ERCOT Planning Guide § 9.10.1(1)(a).

Standard Facilities (i.e., a second Point of Delivery) and specifies that “[s]uch CIAC shall be due and payable within thirty (30) days after the date of the Company’s invoice.”⁴⁰

- **February 26, 2026:** Hicks Field completes posting of the \$[REDACTED] in security required under the FEA to cover Oncor’s identified company facilities.⁴¹
- **March 4, 2026:** Study-validity cutoff date under Planning Guide § 9.2.1.4(3)(b).
- **April 18, 2026:** Oncor notifies ERCOT that the Project has a signed FEA that was fully executed on February 22, 2026 and a maximum load ramp of [REDACTED] MW.⁴²
- **April 21, 2026:** ERCOT was aware no later than April 21, 2026, that LLI-1345 had satisfied the requirements of Sections 9.4 and 9.5 and had an executed interconnection agreement in place.⁴³
- **May 28, 2026:** ERCOT’s administrative cutoff for submitting new or updated LLIS reports for which ERCOT could reasonably guarantee completing its review before the July 10, 2026 sunset of the legacy process; ERCOT issues restudy request to Oncor, identifying additional loads to be included in the Project’s steady-state and stability studies, notwithstanding the Project’s legacy Large Load status.⁴⁴

⁴⁰ Exhibit I, FEA at Art. I, § 1(b) and Art. VII, §10(b).

⁴¹ *Id.* at Art. VII, § (10)(b); *see also* Exhibit H, Letter of Credit for Security Payment under the FEA.

⁴² Exhibit G, Communication from Oncor Electric Delivery Company LLC Notifying ERCOT of Signed FEA.

⁴³ Exhibit D, ACS DC Hicks Field Road, LLC’s ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute for BZ-129 at 3.

⁴⁴ *Id.*

- **July 9, 2026:** Hicks Field submits all required Base Load Batch Zero materials to Oncor, including required attestations and dynamic data submissions, and pays Oncor the \$ [REDACTED] CIAC payment for non-standard facilities.⁴⁵
- **July 24, 2026:** Oncor submits the Project into the Base Load Batch Zero study under Planning Guide § 9.2.1.1(1)(e).
- **September 8, 2026:** Hicks Field is notified by Oncor of the Project's conditional reclassification under Planning Guide § 9.3.1.
- **September 11, 2026:** Hicks Field and Oncor submit, through Oncor, a Formal Dispute Form to ERCOT challenging the reclassification and seeking restoration of the Project's Base Load classification.⁴⁶
- **September 16, 2026:** ERCOT, Oncor, and Hicks Field meet to discuss the reclassification dispute; ERCOT affirms its decision to conditionally reclassify the Project as Studied Load.⁴⁷
- **October 21, 2026:** Hicks Field files this Complaint.

As demonstrated by the timeline above, the Project is precisely the type of facility that qualifies for inclusion in Batch Zero. Construction has begun and the Project is leased to a hyperscale customer with significant financial implications for failing to meet contractual in-service dates. Hicks Field and Oncor's FEA also includes a notice to proceed and a load ramp that

⁴⁵ Exhibit F, ACS DC Hicks Field Road, LLC's Confirmation of CIAC Payment (July 9, 2026).

⁴⁶ Exhibit D, ACS DC Hicks Field Road, LLC's ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 4.

⁴⁷ Exhibit C, ERCOT Denial of Reclassification Complaint.

complies with the legacy interconnection agreement requirements.⁴⁸ Finally, Amendment No. 1 to the FEA clarifies that it can serve the Project with construction of the identified company facilities.⁴⁹

VII. ARGUMENT

ERCOT's reclassification rests on a misreading of the Planning Guide and the FEA. Section VII.A shows that the Project met §§ 9.9 and 9.10 before March 4, 2026, and is therefore a legacy Large Load whose studies ERCOT must treat as complete and valid without restudy. Sections VII.B and VII.C address ERCOT's two grounds for denying the dispute: the Planning Guide contains no pre-March 4 ERCOT-notice requirement, and the executed FEA, read with Oncor's Commission-approved tariff, was the notice to proceed, while the un-invoiced CIAC was not an applicable payment. Section VII.D shows that, even if ERCOT's reading were correct (which it is not), ERCOT denied Hicks Field the notice and opportunity to cure that the Planning Guide and the APA require. Finally, Sections VII.E and VII.F show that ERCOT's CIAC-timing theory has no bearing on Oncor's ability to serve the Project and that the reclassification retroactively impairs commitments Hicks Field made in reliance on ERCOT's approvals.

A. Hicks Field Met the Requirements of Section 9.9, Legacy LLIS Report and Follow-up, and Section 9.10, Legacy Interconnection Agreements and Responsibilities, Before March 4, 2026.

PGRR145 replaced individual LLISs with the Batch Zero Process, but it preserved the studies of Large Loads that had completed the legacy process. Planning Guide § 9.2.1.4(3)

⁴⁸ Exhibit I, FEA at Art. VII, § (2) & Att. 2.

⁴⁹ Exhibit E, Amendment No. 1 to the FEA at § (3)(i).

provides that ERCOT “shall consider previous studies for Large Loads that have not achieved Initial Energization by July 10, 2026, to be fully complete and valid without additional review” if the Large Load meets one of the listed criteria.⁵⁰ One criterion is that “[t]he Large Load met the requirements of Section 9.9, Legacy LLIS Report and Follow-up, and Section 9.10, Legacy Interconnection Agreements and Responsibilities, on or before March 4, 2026.”⁵¹ The Project satisfied § 9.9 in March 2024 and § 9.10 by February 26, 2026,⁵² and none of the underlying facts is in dispute.

1. The Project Satisfied Section 9.9 When ERCOT Approved Its Studies in March 2024.

Section 9.9 preserves the former procedures for completing an LLIS: the lead TSP submits preliminary study reports, ERCOT reviews them, the TSP issues final reports, and the LLIS is “deemed complete when the final report has been provided for all LLIS study elements.”⁵³ PGRR145 also supplies a direct path to satisfying § 9.9: “[a] Large Load studied by a TSP through individual interconnection studies that were approved by ERCOT during the interim Large Load interconnection process established on March 25, 2022 and ending December 14, 2025, is deemed to have satisfied Section 9.9, Legacy LLIS Report and Follow-up.”⁵⁴

The Project meets that standard on undisputed facts. Oncor studied the Project (LLI-1345) at its full [REDACTED] MW load ramp, and ERCOT approved the steady-state and stability studies on March 12, 2024, during the interim process.⁵⁵ On March 20, 2024, ERCOT informed Oncor that

⁵⁰ ERCOT Planning Guide § 9.2.1.4(3).

⁵¹ *Id.* § 9.2.1.4(3)(b).

⁵² Exhibit O, ERCOT Study Approval Email to Oncor Electric Delivery Company LLC.

⁵³ ERCOT Planning Guide § 9.9(7).

⁵⁴ *Id.* § 9.1(6).

⁵⁵ Exhibit D, ACS DC Hicks Field Road, LLC’s ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3.

the Project “just had its SSR Study passed as not required” and “should be moving forward from ‘ERCOT REVIEW’ to ‘PRODUCTION SYSTEMS PENDING.’”⁵⁶ Oncor has also confirmed that ERCOT approved its Reliability Impact Assessment under the interim process, finding “no identified or anticipated system limitations” that would prevent Oncor from serving the Project’s █████ MW.⁵⁷ ERCOT’s denial does not contend otherwise. The Project therefore satisfied § 9.9 nearly two years before the March 4, 2026 cutoff.

2. The Project Satisfied Each Element of Section 9.10 by February 26, 2026.

For a Large Load not co-located with generation, Planning Guide § 9.10.1(1)(a) identifies four commitments the Large Load must make with its interconnecting TSP before Initial Energization: (i) execution of “[a]ll required interconnection agreements or equivalent service extension agreements”; (ii) the ILLE’s written acknowledgement of its obligations to notify the TSP of changes to the Large Load and to “[m]aintain Load consumption at or below the level(s) of peak Demand established in the Load Commissioning Plan”; (iii) the TSP’s receipt of “notice to proceed with the construction of all required interconnection Facilities”; and (iv) the TSP’s receipt of “the financial security, applicable payments, and/or other agreements required to fund all required interconnection Facilities.”⁵⁸ The FEA, and the security Hicks Field posted under it, satisfied each element before March 4, 2026.

Executed agreement and acknowledgement. Hicks Field signed the FEA on February 20, 2026, and Oncor countersigned on February 22, 2026; the FEA “becomes effective on the date of

⁵⁶ Exhibit O, ERCOT Study Approval Email to Oncor Electric Delivery Company LLC.

⁵⁷ Exhibit M, Oncor Electric Delivery Company LLC Consent Letter at 1–2.

⁵⁸ ERCOT Planning Guide § 9.10.1(1)(a).

execution by both parties.”⁵⁹ In the FEA, Hicks Field also committed to provide an updated load ramp each year through Oncor’s Annual Load Data Request process, accepted that its capacity allocation “in no event shall be more than [REDACTED] kW” absent amendment, and agreed “to adhere to all applicable ERCOT requirements.”⁶⁰ Those signed commitments to Oncor supply the substance of the acknowledgement described in § 9.10.1(1)(a)(ii), which runs to the TSP, not to ERCOT.⁶¹ As shown in Section VII.B, no provision in the Planning Guide requires ERCOT to receive that acknowledgement before March 4, 2026.

Notice to proceed and funding. The FEA recites that “Customer has requested that Company construct” the Company Facilities and that “Company will construct the Company Facilities,”⁶² and its “Notice to Proceed” clause directs that, following execution, Oncor “will proceed with the services contemplated under this Agreement.”⁶³ By February 26, 2026—within ten business days of execution—Hicks Field had posted the full \$ [REDACTED] in financial security the FEA required: \$ [REDACTED] previously posted under the DSA⁶⁴ and a \$ [REDACTED] irrevocable standby letter of credit issued that day to secure the construction of Oncor’s company facilities.⁶⁵ The only other payment the FEA contemplated, the \$ [REDACTED] in CIAC for the Non-Standard Facilities serving the second point of delivery, was “due and payable within thirty (30)

⁵⁹ Exhibit I, FEA at Art. III, § 1.

⁶⁰ *Id.* at 13, Art. III, § 1, Art. VII, §§ 11, 14 & Att. 2.

⁶¹ See ERCOT Planning Guide § 9.10.1(1)(a)(ii) (“*The interconnecting TSP* has received written acknowledgement from the ILLE of the ILLE’s obligations” to notify load changes and maintain load below peak demand established in the Project’s Load Commissioning Plan) (emphasis added).

⁶² Exhibit I, FEA at 1.

⁶³ *Id.* at Art. VII, § 2.

⁶⁴ Exhibit K, Letter of Credit for DSA.

⁶⁵ Exhibit H, Letter of Credit for Security Payment under the FEA.

days after the date of Company’s invoice,” and Oncor had not invoiced it.⁶⁶ As shown in Section VII.C, the executed FEA was the notice to proceed under Oncor’s Commission-approved Tariff, and an un-invoiced payment was not an “applicable payment” on March 4, 2026.

3. Because the Project Is a Legacy Large Load, ERCOT Had No Basis to Require Restudy.

Meeting §§ 9.9 and 9.10 by March 4, 2026 is not merely a factor for ERCOT to weigh. Section 9.2.1.4(3) states that ERCOT “shall consider” qualifying studies “fully complete and valid without additional review.”⁶⁷ The legacy rules confirm the point: § 9.9(9) permits ERCOT or the lead TSP to require a restudy for a material change in study assumptions only if the change “occurs before the requirements of Section 9.10, Legacy Interconnection Agreements and Responsibilities, have been met.”⁶⁸ That window closed when the Project executed and secured the FEA in February 2026. ERCOT’s May 28, 2026 demand that Oncor restudy the Project with additional loads—most of which were submitted months or years after ERCOT approved the Project’s studies—was therefore unauthorized, and ERCOT’s provisional finding that the Project fails Planning Guide § 9.2.1.4(3)(b) rests on that error.

ERCOT’s two grounds for denying the dispute do not change that result. The first adds an ERCOT-notice deadline that the Planning Guide does not contain. The second misreads the FEA and Oncor’s Commission-approved Tariff. Each is addressed below.

⁶⁶ Exhibit I, FEA at Art. VII, § 1(b); *see also* Exhibit E, Amendment No. 1 to the FEA at § 4 (confirming that Oncor “has not yet invoiced” the Non-Standard CIAC).

⁶⁷ ERCOT Planning Guide § 9.2.1.4(3).

⁶⁸ *Id.* § 9.9(3).

B. Notice to ERCOT Before the March 4, 2026 Deadline Is Not a Planning Guide Requirement.

ERCOT's first stated ground for denying the dispute assumes that Hicks Field or Oncor was required to notify ERCOT before March 4, 2026 to meet Planning Guide § 9.2.1.4(3)(b).⁶⁹ That position rewrites the Planning Guide. Section 9.2.1.4(3)(b) asks only whether the Large Load “*met* the requirements of Section 9.9, Legacy LLIS Report and Follow-up, and Section 9.10, Legacy Interconnection Agreements and Responsibilities, on or before March 4, 2026.”⁷⁰ It contains no notice requirement. Where the Planning Guide imposes reporting deadlines, it states them expressly: the Base Load criteria in § 9.2.1.1(1)(e) require the Interconnecting TSP to inform ERCOT of each qualifying milestone “[o]n or before July 24, 2026.”⁷¹ Large Loads qualifying under § 9.2.1.4(3)(b) were thus expected to be reported to ERCOT after March 4, 2026, not before.

Nor does Planning Guide § 9.10.1 supply the missing deadline. That provision states that “ERCOT shall not allow Initial Energization prior to receiving” the interconnecting TSP's confirmation of the listed items.⁷² TSP confirmation is thus a gate ERCOT applies before Initial Energization—an event that will not occur until after the *conclusion* of the Batch Zero process—not a test of when the underlying requirements were met.

In any event, ERCOT was informed. Oncor notified ERCOT that the FEA had been executed, met with ERCOT's Large Load Integration team beginning March 18, 2026 to clarify the Project's status, and has confirmed that the Project met the legacy requirements as of March 4,

⁶⁹ Exhibit C, ERCOT Denial of Reclassification Complaint at 2.

⁷⁰ ERCOT Planning Guide § 9.2.1.4(3)(b) (emphasis added).

⁷¹ *Id.* § 9.2.1.1(1)(c)(ii)–(viii); *see also id.* § 9.3.1(2)(a) (requiring TSPs to provide all Batch Zero information to ERCOT on or before July 24, 2026).

⁷² *Id.* § 9.10.1(1)(a).

2026.⁷³ According to Oncor, ERCOT was aware no later than April 21, 2026 that the Project had satisfied those requirements and had an executed interconnection agreement in place.⁷⁴ As to ERCOT's statement that it has "no record of receiving confirmation" of the ILLE's written acknowledgement under § 9.10.1(1)(a)(ii), that acknowledgement runs to the interconnecting TSP, and the FEA already obligates Hicks Field to supply updated load ramps through Oncor's annual load data process and caps its capacity allocation at [REDACTED] MW.⁷⁵ Although the record is sufficient, Hicks Field stands ready to provide any further written acknowledgement ERCOT requires. A confirmation that ERCOT need not receive until Initial Energization cannot strip a fully studied and contracted Large Load of its Base Load status.

C. ERCOT's Notice-to-Proceed and Payment Theories Ignore the Full Terms of the FEA and Oncor's Tariff.

ERCOT's second ground rests on one sentence of the FEA. ERCOT's September 16, 2026 denial reasoned that because "FEA Article V, Sec. 2 states that, upon payment under Article I, Oncor will proceed with construction," the July 2026 CIAC payment "serves as 'notice to proceed with construction,'" and that "applicable payments" had not been made until then.⁷⁶ Article V of the FEA is the disclosure article; the provision ERCOT means is Article VII, Section 2. More fundamentally, ERCOT read that sentence in isolation, without the rest of the FEA or the Tariff the FEA incorporates. Read as a whole, those documents establish that the executed FEA was Hicks

⁷³ Exhibit G, Communication from Oncor Electric Delivery Company LLC Notifying ERCOT of Signed FEA.

⁷⁴ Exhibit D, ACS DC Hicks Field Road, LLC's ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3-4.

⁷⁵ Exhibit I, FEA at Art. VII, § 11 & Att. 2.

⁷⁶ Exhibit C, Denial of Reclassification Complaint at 1-2.

Field's notice to proceed, that the CIAC was not due on March 4, 2026, and that Oncor held everything Planning Guide § 9.10.1(1)(a)(iii) and (iv) require.

1. The FEA Itself Includes a Valid Notice to Proceed.

Article VII, Section 2 of the FEA, captioned "Notice to Proceed," provides:

Following execution of this agreement, upon receipt of payment in accordance with Article I and financial security in accordance with Article VII, Section 10, Company will proceed with the services contemplated under this Agreement.⁷⁷

The parties thus embedded the notice to proceed in the executed agreement, which became effective on full execution on February 22, 2026. Hicks Field gave its direction to build when it signed; nothing in the FEA calls for any further notice from Hicks Field. The clause's remaining conditions sequence Oncor's own work, and each was satisfied according to its terms. Hicks Field posted the full \$ [REDACTED] in financial security within ten business days of execution, as Article VII, Section 10 requires, in order to backstop Oncor for construction of the Company's standard facilities under the FEA.⁷⁸ And payment "in accordance with Article I" means payment when Article I makes it due: the FEA set the Standard Facilities CIAC at \$0, and the Non-Standard Facilities CIAC was due "within thirty (30) days after the date of Company's invoice," which Oncor had not issued by March 4, 2026.⁷⁹ Treating a later, contractually timed payment as the "notice" itself would read the words "in accordance with Article I" out of the FEA.⁸⁰ It would also mean that Oncor lacked authority to build even the Standard Facilities for the first point of

⁷⁷ Exhibit 1, FEA at Art. VII, § 2.

⁷⁸ *Id.* at Art. VII, § 10(b).

⁷⁹ *Id.* at Art. I, § 1(b).

⁸⁰ See, e.g., *El Paso Field Servs., L.P. v. MasTec N. Am., Inc.*, 389 S.W.3d 802, 805-06 (Tex. 2012) ("In discerning the parties' intent, 'we must examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless.'" (quoting *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003)); *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011) (same).

delivery—facilities to which the Non-Standard CIAC does not relate—until Oncor chose to issue an invoice. Nothing in the FEA or the Tariff supports that result.

2. ERCOT's Position Conflicts with Oncor's Commission-Approved Tariff.

ERCOT's reading also cannot be squared with Oncor's Commission-approved Tariff for Retail Delivery Service (Tariff), which the FEA makes "part of this Agreement to the same extent as if fully set out herein" and whose definitions govern the FEA's terms.⁸¹ ERCOT did not address the Tariff at all. Under the Tariff, the executed FEA is the instrument that authorizes construction. The Tariff defines the Facility Extension Agreement as "[t]he Service Agreement pursuant to this Tariff that must be executed by Company and the entity . . . requesting certain Construction Services before Company can provide such Construction Services to the requesting entity," and defines Construction Service to include "the construction, extension, installation, [and] modification . . . of Delivery System facilities."⁸² Where construction is required before service begins, "[a]ll such requests shall be governed by the provisions in Section 5.7, FACILITIES EXTENSION POLICY."⁸³ Section 5.7.2 then provides that Oncor "may require an executed Facility Extension Agreement . . . prior to Company constructing standard and non-standard Delivery System facilities."⁸⁴ Under each provision, execution of the FEA is the event that authorizes construction.

The Tariff treats payment as a separate question that the FEA itself governs. Section 5.8.2 provides that Oncor may require "prepayments, contributions in aid of construction, or lump-sum

⁸¹ Exhibit I, FEA at Art. IV, § 3.

⁸² Oncor Electric Delivery Company LLC Tariff for Retail Delivery Service, Ch. 1, Definitions at 10–11.

⁸³ *Id.* § 5.3.1.2.

⁸⁴ *Id.* § 5.7.2.

payments for Construction Services” “pursuant to this Tariff and according to the terms of [the] Facility Extension Agreement.”⁸⁵ Section 5.7.5 requires the requesting entity to pay the cost of non-standard facilities “as detailed in Chapter 6, and the Facility Extension Agreement.”⁸⁶ And Section 6.2.4.2 provides that charges for Discretionary Services “will be invoiced by Company in the manner specified in the applicable service agreement,” while expressly contemplating “alternative arrangements” to prepayment.⁸⁷ The FEA specified those arrangements: Oncor would invoice the Non-Standard Facilities CIAC, and payment would be due 30 days later.⁸⁸ At most, the Tariff ties payment for non-standard facilities to Oncor’s construction of those particular facilities—here, the second point of delivery—not to the customer’s authorization to proceed with construction of the Project as a whole.

The Commission-approved form of Transmission/Substation Facility Extension Agreement in Section 6.3.2 of the Tariff confirms the point. Like the FEA, the form provides that the agreement “becomes effective on the date of execution by both parties,” and it contains no separate notice-to-proceed instrument that a customer must later deliver.⁸⁹ Because a Commission-approved tariff has the force and effect of law,⁹⁰ ERCOT may not adopt a reading of the FEA under which the executed agreement is not the customer’s notice to proceed.

⁸⁵ *Id.* § 5.8.2.

⁸⁶ *Id.* § 5.7.5.

⁸⁷ *Id.* § 6.2.4.2; *see also id.*, Ch. 1, at 11 (defining “Discretionary Services” as “customer-specific services for which costs are recovered through separately priced Rate Schedules specified in Chapter 6,” including FEAs).

⁸⁸ Exhibit I, FEA at Art. I, § 1(b).

⁸⁹ Oncor Electric Delivery Company LLC Tariff for Retail Delivery Service at § 6.3.2, Art. III, § 1.

⁹⁰ *CenterPoint Energy Res. Corp. v. Ramirez*, 640 S.W.3d 205, 212 (Tex. 2022) (“An approved tariff carries the binding force and effect of law until suspended or set aside and, while in effect, defines the terms under which the utility’s services are provided.”) (citing *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 217 (Tex. 2002)).

3. *Read Holistically, the FEA Shows that Both Parties Were Committed to Construction Upon Execution.*

Texas courts construe a contract as a whole, giving effect to all of its provisions rather than isolating a single clause.⁹¹ Read in that manner, the FEA shows that both parties committed to construction on execution. The agreement recites that “Customer has requested that Company construct” the Company Facilities and that “Company will construct the Company Facilities.”⁹² The FEA “becomes effective on the date of execution by both parties,” and Hicks Field may terminate only on seven days’ written notice while remaining liable for the costs Oncor has incurred or committed to incur for “engineering, procuring equipment and materials, construction, and any other costs related to the Company Facilities.”⁹³ The FEA imposes construction-sequenced obligations on Hicks Field, including transferring the land rights Oncor needs “to construct the Company Facilities”⁹⁴ and removing conflicting underground facilities “prior to the start of construction.”⁹⁵ It required \$ [REDACTED] in financial security within ten business days of execution to cover Oncor’s costs of construction, describes security as a payment “in advance of constructing facilities,” and provides that the final security amount will be set “during detailed design and construction of the Company Facilities.”⁹⁶ And Oncor was already “performing design and procurement activities associated with the Company Facilities” under the predecessor

⁹¹ See, e.g., *El Paso Field Servs., L.P. v. MasTec N. Am., Inc.*, 389 S.W.3d 802, 805-06 (Tex. 2012) (“In discerning the parties’ intent, ‘we must examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless.’”) (quoting *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003)); *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011) (same).

⁹² Exhibit I, FEA at 1.

⁹³ *Id.* at Art. I, § 3 & Art. III, §§ 1–2.

⁹⁴ *Id.* at Art. VII, § 1.

⁹⁵ *Id.* at Art. VII, § 3.

⁹⁶ *Id.* at Art. VII, § 10.

Discretionary Services Agreement (DSA), backed by \$[REDACTED] in security.⁹⁷ None of these provisions makes sense if construction remained unauthorized until a CIAC invoice for the customer-funded second point of delivery was issued and paid months later. ERCOT's reading elevates one clause over the agreement's evident purpose and should be rejected.⁹⁸

4. Hicks Field Made All Applicable Payments Under the FEA's Terms.

ERCOT's final contention—that “applicable payments” under Planning Guide § 9.10.1(1)(a)(iv) were not made because the CIAC was paid after March 4, 2026—fails on the FEA's plain terms. By February 26, 2026, Hicks Field had posted the full \$[REDACTED] in required financial security, consisting of \$[REDACTED] under the DSA⁹⁹ and a \$[REDACTED] letter of credit under the FEA.¹⁰⁰ Oncor may draw on that security “to satisfy any payment obligation to Company arising under this Agreement,” so Oncor was fully secured from the outset.¹⁰¹ The Non-Standard Facilities CIAC of \$[REDACTED], by contrast, was to be invoiced by Oncor and was “due and payable within thirty (30) days after the date of Company's invoice,” with no default possible until that period and a further five-business-day cure period had run.¹⁰² In Amendment No. 1 to the FEA, executed July 9, 2026, Oncor and Hicks Field confirmed that Oncor “has not yet invoiced and Customer has not yet paid” the CIAC and set a July 10, 2026 payment deadline. Hicks Field

⁹⁷ Exhibit N, Amendment No. 1 to Discretionary Service Agreement at § (1)(1)(b).

⁹⁸ *Occidental Permian, Ltd. v. Citation 2002 Investment LLC*, 689 S.W.3d 899, 905 (Tex. 2024) (“In interpreting a contract, ‘[w]e consider the entire agreement and, to the extent possible, resolve any conflicts by harmonizing the agreement's provisions, rather than by applying arbitrary or mechanical default rules.’”) (quoting *Piranha Partners v. Neuhoff*, 596 S.W.3d 740, 744 (Tex. 2020)).

⁹⁹ Exhibit K, Letter of Credit for Discretionary Services Agreement.

¹⁰⁰ Exhibit I, FEA at Art. VII, § 10; Exhibit H, Letter of Credit for Security Payment under the FEA.

¹⁰¹ Exhibit I, FEA at Art. VII., § 10(f).

¹⁰² Exhibit I, FEA at Art. I, § 1(b)–(c).

wired the full amount on July 9, 2026.¹⁰³ A payment that was not yet due on March 4, 2026 was not an “applicable” payment on that date; Hicks Field has never been in default under the FEA.

The Planning Guide itself adopts this approach. For Base Load eligibility, the Planning Guide provides that, “[i]f the ILLE has an executed interconnection agreement or equivalent agreement before July 10, 2026, the terms of that agreement govern the manner in which direct interconnection costs are satisfied.”¹⁰⁴ ERCOT cannot defer to the FEA’s payment terms for purposes of Planning Guide § 9.2.1.1(1)(e) while disregarding those same terms under § 9.10.1(1)(a)(iv). Treating an un-invoiced, not-yet-due payment as a failed condition would penalize Hicks Field for the ordinary billing sequence the FEA prescribes and would impose a requirement that appears nowhere in the Planning Guide or Oncor’s Commission-approved Tariff.

D. Even If ERCOT’s Reading of the FEA Were Correct (Which It Is Not), ERCOT Denied Hicks Field the Notice and Opportunity to Cure that the Planning Guide and the APA Require.

Even if ERCOT’s reading of the FEA were correct (which it is not), ERCOT could not apply the restudy conditions without notice and a meaningful opportunity to cure. The Planning Guide consistently pairs ERCOT-identified deficiencies with both. Planning Guide § 9.2.2(3)(a) requires ERCOT to issue a deficiency notice for dynamic modeling data and affords the ILLE 24 days to cure.¹⁰⁵ Planning Guide § 9.3.1(2)(a) likewise sets fixed periods for classification notice,

¹⁰³ Exhibit E, Amendment No. 1 to the FEA at § 4; Exhibit F, ACS DC Hicks Field Road, LLC’s CIAC Payment Confirmation.

¹⁰⁴ ERCOT Planning Guide § 9.2.1.1(1)(e)(vii).

¹⁰⁵ ERCOT Planning Guide at § 9.2.2(3)(a); Project No. 59142, Order Granting Good Cause Exceptions at 2 (Aug. 20, 2026) (creating a general 24-day notice-and-cure period for dynamic data deficiencies).

notice to the ILLE, dispute, and resolution.¹⁰⁶ These provisions reflect a common principle: an ILLE must be told of an alleged deficiency in time to fix it.

Hicks Field received neither. ERCOT was aware no later than April 21, 2026 that the Project had satisfied the legacy interconnection requirements.¹⁰⁷ Yet on May 28—the same day ERCOT set as the last date to submit studies for guaranteed review before the Batch Zero deadline¹⁰⁸—ERCOT requested a restudy with additional loads. According to Oncor, no restudy could be performed before the July 10 and July 24, 2026 deadlines. And ERCOT did not identify the CIAC-timing theory on which it now relies until it denied the dispute on September 16, 2026, long after any cure was possible. The deficiency ERCOT now cites is one its own timing created.

The APA, which applies to proceedings under PURA, reinforces the same constraint.¹⁰⁹ A new, generally applicable requirement that all CIAC payments under legacy interconnection agreements be made by March 4, 2026—stated nowhere in the Planning Guide, a Market Notice, or ERCOT’s April 21 acknowledgement—cannot be applied retroactively to defeat the Project’s Base Load eligibility without notice and an opportunity to respond.¹¹⁰ These notice requirements express “the constitutional guaranty of fundamental fairness implicit in the concepts of ‘notice’ and ‘hearing.’”¹¹¹ “At a minimum, due process requires notice and an opportunity to be heard in a

¹⁰⁶ ERCOT Planning Guide § 9.3.1(2)(a).

¹⁰⁷ Exhibit D, ACS DC Hicks Field Road, LLC’s ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3–4.

¹⁰⁸ ERCOT Batch Zero Readiness FAQs at Question No. 31, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ercot.com%2Ffiles%2Fdocs%2F2026%2F06%2F26%2FBatch_Zero_Readiness_FAQs_V8.1.xlsx&wdOrigin=BROWSELINK.

¹⁰⁹ PURA § 11.007(a).

¹¹⁰ Cf. Tex. Gov’t Code § 2001.051(1) (requiring a “reasonable notice of not less than 10 days” in all contested case proceedings).

¹¹¹ *Personal Care Prods., Inc. v. Smith*, 578 S.W.3d 262, 269 (Tex. App.—Austin 2019, no pet.) (quoting *Madden v. Tex. Bd. of Chiropractic Exam’rs*, 663 S.W.2d 622, 627 (Tex. App.—Austin 1983, writ ref’d n.r.e.)).

meaningful time and in a meaningful manner.”¹¹² A three-business-day dispute window opened after the Batch Zero submission deadlines had passed does not meet that standard. ERCOT’s reclassification should be set aside on this ground alone.

E. ERCOT’s Retroactive CIAC Payment Condition Has No Impact on Oncor’s Ability to Serve the Project’s Load.

ERCOT’s CIAC-timing theory also bears no relationship to the reliability purpose of the study-validity criteria. Whether Oncor invoiced a Non-Standard Facilities CIAC before or after March 4, 2026 says nothing about whether the transmission system can serve the Project.

Oncor is the interconnecting TSP responsible for providing safe, adequate, efficient, and reasonable electric service under PURA.¹¹³ Oncor has shown that it can serve the Project with the construction of the identified company facilities in the FEA.¹¹⁴ ACS Hicks Road further understands that the Project has also been included in several subsequent studies for other nearby Large Loads, so its cumulative effect on the area has been assessed not only in its own interconnection studies but also in those of later projects.¹¹⁵ Given the Project’s integration throughout the local transmission planning process, the relevant studies and planning documents support the conclusion that Oncor can serve the Project without additional company facilities outside the items included in the FEA.

¹¹² *Scally v. Tex. Bd. of Medical Exam’rs*, 351 S.W.3d 434, 447 (Tex. App.—Austin 2011, pet. denied); see also *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

¹¹³ PURA § 38.001.

¹¹⁴ Exhibit I, FEA at 1–2 (identifying company facilities).

¹¹⁵ Exhibit D, ACS DC Hicks Field Road, LLC’s ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3–4.

The relevant question is whether Oncor can reliably serve the Project's Demand, and the record answers it: the approved steady-state and stability studies and Amendment No. 1 to the FEA show that no additional upgrades are needed.¹¹⁶ The Project also represents only about [REDACTED] % of Batch Zero Base Load.¹¹⁷ ERCOT has offered no evidence to the contrary, and no Planning Guide authority under which the timing of a CIAC invoice bears on Oncor's ability to serve the Project. Reclassification therefore serves no identified reliability interest while imposing substantial harm on Hicks Field.

F. ERCOT's Reclassification Decision Impairs Hicks Field's Ability to Timely Interconnect to the ERCOT Grid.

The stakes for the Project are material. Without a Base Load designation, the Project's viability is at serious risk. Removing the Project from Base Load could halt it altogether, harming Hicks Field and causing hundreds of workers to lose their jobs.

Hicks Field and Oncor relied on ERCOT's March 2024 study approvals and the commitments in the February 2026 FEA in ordering long-lead equipment, issuing notice to proceed, posting financial security and CIAC, executing a long-term lease with an end-use customer, and commencing construction.¹¹⁸ Those are precisely the commitments Planning Guide § 9.2.1.1(1)(e) requires for Base Load eligibility to screen out speculative projects. ERCOT's after-the-fact determination that the FEA did not satisfy § 9.10 as of March 4, 2026, based on an unstated and newly asserted requirement to make *all payments* under the FEA by that date, changes the

¹¹⁶ Exhibit I, Amendment No. 1 to the FEA at § (3)(i).

¹¹⁷ Exhibit D, ACS DC Hicks Field Road, LLC's ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3–4.

¹¹⁸ Exhibit D, ACS DC Hicks Field Road, LLC's ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129 at 3–4.

consequences of actions Hicks Field and Oncor completed in reliance on ERCOT's prior approvals and materially impairs Hicks Field's settled contractual and property interests. ERCOT may not retroactively apply newly asserted legacy interconnection agreement requirements to defeat the very commitments and reliance interests that the Base Load eligibility requirements were designed to establish and protect.¹¹⁹

For the reasons in Section VII.D, ERCOT also acted without timely notice or a stated basis for treating the executed legacy interconnection agreement as deficient as of March 4, 2026. ERCOT's decision is therefore reversible as an unlawful procedure that was not reasonably supported by substantial evidence considering the record as a whole.¹²⁰ 16 TAC § 22.251(p) authorizes the Commission to suspend ERCOT's conduct, require corrective protocol action, and provide guidance to ERCOT if it has misapplied its protocols. The Commission should act promptly to reclassify the Project as Base Load under the Batch Zero process and provide guidance to ERCOT on the proper application of its Planning Guide provisions.

Exclusion also undercuts the Legislature's directive in PURA § 37.0561(b) that large-load interconnection standards support business development in Texas while minimizing stranded costs and maintaining reliability. Fundamental fairness and the public interest are served by including the Project in Batch Zero.

VIII. RELIEF REQUESTED

Hicks Field respectfully requests that the Commission grant the following relief:

¹¹⁹See Tex. Const. art. I, § 16 (prohibiting retroactive laws and laws impairing the obligation of contracts).

¹²⁰See Tex. Gov't Code § 2001.174(2)(C) & (E).

- (1) Grant Hicks Field's request for an emergency suspension of ERCOT's conduct by including the Project as Base Load in the Batch Zero study under Planning Guide § 9.2.1.1(1)(e);
- (2) In the alternative, grant the Project a good cause exception to be included as Base Load in the Batch Zero study;
- (3) Correct the Project's conditional classification to Base Load under ERCOT Planning Guide §§ 9.2.1.1(1)(e) and 9.2.1.4(3)(b);
- (4) Order ERCOT to validate the Project's studies under § 9.2.1.4(3);
- (5) In the alternative, direct ERCOT to provide an expedited process for Oncor to conduct any restudy for Project modeled as Base Load at the load ramp reflected in the executed FEA; and
- (6) Grant Hicks Field such other relief as the Commission determines appropriate under 16 TAC § 22.251(p).

IX. QUESTIONS OF FACT

ACS Hicks believes the facts at issue in this Complaint should not reasonably be in dispute and that the parties should be able to work towards reaching stipulated facts. If the parties cannot agree upon stipulated facts, Hicks Field believes that the following questions of fact may require an evidentiary hearing to the extent that ERCOT, Oncor, or any other intervening party disputes them or relies on evidence outside the written denial, the record submitted with this Complaint, and Hicks Field's discovery responses. These questions are material to the Commission's de novo review under 16 TAC § 22.251(m) and the Commission's authority to grant the relief requested in this Complaint under 16 TAC § 22.251(p).

- (1) Communications between Oncor and ERCOT related to the Project having satisfied the legacy interconnection requirements;
- (2) The source and scope of any authority ERCOT contends permitted it to invalidate the legacy interconnection agreement on May 28, 2026 when ERCOT notified Oncor of the need for a restudy; and
- (3) Whether the Project satisfied each requirement of Planning Guide § 9.2.1.1(1)(e) on or before the applicable July 10 and July 24, 2026 deadlines.

X. PROPOSED PROCEDURAL SCHEDULE

Hicks Field respectfully requests that the Commission hear this matter without referring the Complaint to the State Office of Administrative Hearings, given the necessity of emergency relief and the need for prompt adjudication of this matter to coincide with the Batch Zero process.¹²¹ Accordingly, Hicks Field requests that the Commission adopt the following procedural schedule for the Complaint:

Event	Proposed Deadline
Complaint Filed	October 21, 2026
ERCOT Notice	October 28, 2026
ERCOT Response	November 4, 2026
Motions to Intervene	November 12, 2026
Joint Stipulation of Facts (if no Evidentiary Hearing is Required)	November 16, 2026
Commission Staff Comments	November 18, 2026
Intervenor Responses	November 18, 2026

¹²¹ See 16 TAC 22.251(f) (allowing expeditated procedural deadlines for good cause shown).

Event	Proposed Deadline
Complainant Reply	November 25, 2026
Request for Evidentiary Hearing	November 30, 2026
Determination on Emergency Relief	December 3, 2026
Joint Proposed Procedural Schedule (Evidentiary Phase)	December 3, 2026
Commission Consideration (if no Evidentiary Phase)	December 17, 2026

Hicks Field also moves to include the following modified discovery deadlines and procedures:

1. RFIs must be served in Microsoft Word format, and RFIs that are received after 5:00 p.m. shall be deemed to have been received the following day.
2. Initial discovery deadlines: ten calendar days for responses; five working days for objections, five working days for motions to compel, and responses to motions to compel.

XI. REQUEST FOR ENTRY OF PROTECTIVE ORDER

Portions of the record provided in support of this Complaint contain documents considered by Hicks Field to be Protected Materials or Highly Sensitive Protected Materials that are not subject to public disclosure. In addition to the confidential materials contained in its Complaint, Hicks Field has not been able to access critical information relating to the other Large Loads ERCOT subsequently asserted were required to be included in Project restudies. In addition to this Complaint, Hicks Field will submit its first sets of RFIs to both ERCOT and Oncor to obtain this information, which will require the entry of a protective order before either party can provide the required information. Therefore, the expedited entry of a protective order in this case is essential

to the prompt resolution of this Complaint. The protective order will allow Hicks Field to obtain answers to its RFI in a timely manner on the subsequently identified Large Loads to further develop its arguments.

Hicks Field respectfully requests that the Administrative Law Judge promptly issue a protective order protecting Protected and Highly Sensitive Protected Materials that may be produced in this proceeding and order all parties to this proceeding to abide by the Protective Order. A copy of the protective order Hicks Field moves to use in this proceeding is attached as Exhibit A.

XII. EXHIBIT LIST

In addition to this Complaint, Hicks Field submits the following exhibits, attached to this Complaint to support its claims:

- A. Hicks Field's Proposed Protective Order;
- B. ERCOT Denial of Reconsideration Request;
- C. ERCOT Denial of Reclassification Complaint;
- D. ACS DC Hicks Field Road, LLC's ERCOT Batch Zero Process: Planning Guide Section 9.3.1 Conditional Classification Dispute Form for BZ-129;
- E. Amendment No. 1 to the Transmission/Substation Facility Extension Agreement by and between Oncor Electric Delivery Company LLC and ACS DC Hicks Field Road, LLC;
- F. ACS DC Hicks Field Road, LLC's CIAC Payment Confirmation;
- G. Communication from Oncor Electric Delivery Company LLC Notifying ERCOT of Signed FEA;
- H. Letter of Credit for Security Payment under the Facility Extension Agreement;

- I. Transmission/Substation Facility Extension Agreement by and between Oncor Electric Delivery Company LLC and ACS DC Hicks Field Road, LLC;
- J. Letter of Credit Amendment for Discretionary Services Agreement;
- K. Letter of Credit for Discretionary Services Agreement;
- L. Assignment of Discretionary Service Agreement;
- M. Oncor Electric Delivery Company LLC Consent Letter;
- N. Amendment No. 1 to the Discretionary Services Agreement for the Provident Hicks Site;
- O. ERCOT Study Approval Email to Oncor Electric Delivery Company LLC;
- P. The Discretionary Services Agreement for the Provident Hicks Site; and
- Q. The Sworn Affidavit of Howard Boville, Chief Executive Officer of Coravel.

XIII. CONCLUSION

ERCOT identified no Planning Guide authority permitting it to require restudy of a Project that met Planning Guide §§ 9.9 and 9.10, including through a fully executed legacy interconnection agreement, by March 4, 2026, as Planning Guide § 9.2.1.4(3)(b) requires. ERCOT also failed to explain why it disregarded its April 21, 2026 acknowledgement of the Project's validly executed FEA, to apply established principles of contract interpretation to the FEA, or to offer a reasoned justification for treating that agreement as deficient. Hicks Field respectfully requests that the Commission suspend reclassification under 16 TAC § 22.251(j) pending resolution of this Complaint to preserve the Project's Batch Zero position, restore the Project's classification to Base Load under Planning Guide §§ 9.2.1.1(1)(e) and 9.2.1.4(3)(b), and grant Hicks Field any other relief to which it is entitled.

Date signed: October 21, 2026

Respectfully submitted,



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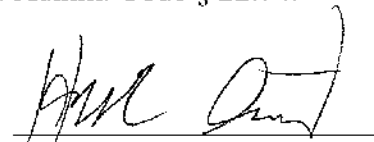
(512) 236-2000

(512) 691-4427 (fax)

*Attorneys for ACS DC Hicks Field Road,
LLC*

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on October 21, 2026 via electronic mail in accordance with 16 Tex. Admin. Code § 22.74.



Henrik Strand

EXHIBIT A

DOCKET NO. _____

COMPLAINT, REQUEST FOR	§	PUBLIC UTILITY COMMISSION
IMMEDIATE SUSPENSION OF	§	
CONDUCT, AND REQUEST FOR	§	
EXPEDITED RELIEF OF ACS DC	§	
HICKS FIELD ROAD, LLC AGAINST	§	
THE ELECTRIC RELIABILITY	§	
COUNCIL OF TEXAS, INC.	§	OF TEXAS

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. XXXX" (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.

2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.¹ Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.
3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.
4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party's claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its

¹ TEX. GOV'T CODE §§ 552.001–552.353 (West 2012 & Supp. 2015).

“Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.

6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;² (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; (d) business operations or financial information that is commercially sensitive; and (e) for the purposes of this Protective Order, ERCOT Critical Energy Infrastructure Information (CEII), as that term is defined in Section 2.1 of the ERCOT Protocols, is also considered Highly Sensitive

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016 (West 2007 & Supp. 2015).

Protected Material. Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. XXXX” (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party’s designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party shall maintain a record of all copies made of Highly Sensitive Protected Material and shall send a duplicate of the record to the producing party when the copy or copies are made. The record shall specify the location and the person possessing the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.**

With the exception of Commission Staff, the Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are: (a) outside counsel for the Reviewing Party; (b) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel; or (c) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff, OAG, and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the

office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and**

Control in the Event of Conflict. The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.

11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff,**

OPC and the OAG. When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC (if OPC is a party) and the OAG (if the OAG is representing a

party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.

12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and**

Outside Consultants. The Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.

13. **Restriction on Copying by Commission Staff, OPC, and the OAG.** Except as allowed

by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive

Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive

Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.

15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and, unless I am an employee of the Commission or OPC, shall be used only for the purpose of the proceeding in Docket No. 59913. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

The Reviewing Party is required to provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record.

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure**

Restrictions after a Person is no Longer Engaged in the Proceeding. Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures**

for Making Additional Copies of Such Materials. Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraph 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one

copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.

18. **Procedures Regarding Voluminous Protected Materials.** 16 TEX. ADMIN. CODE § 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or federal holidays), and at other mutually convenient times upon reasonable request.
19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to

the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All

Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.

22. **Procedures for Confidential Treatment of Protected Materials and Information**

Derived from Those Materials. Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to ensure that the Protected Materials including notes and analyses

made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.
24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order**

Holding Materials are not Protected Materials. In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only

Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. **Notice of Intent to Use Protected Materials or Change Materials Designation.** Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. XXXX at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designating, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.
27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed

disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28. Maintenance of Protected Status during Periods Specified for Challenging Various

Orders. Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.

29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.**

Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.

30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.

31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all Copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, “conclusion of these proceedings” refers to the exhaustion of available appeals, or the

running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the "conclusion of these proceedings" is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this paragraph. Nothing in this paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,³ the Texas Securities Act and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

33. **Procedures for Release of Information under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the

³ TEX. GOV'T CODE §§ 551.001–551.146 (West 2012 & Supp. 2015).

confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel,

that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of 552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

35. **Notify Defined.** “Notify” for purposes of Paragraphs 32, 33, and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission, OAG, or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure.** If the producing party asserts that the requested information should not be disclosed at all or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party shall tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of nondisclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five (5) working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to 16 TEX. ADMIN. CODE § 22.161.
38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

ATTACHMENT A**Protective Order Certification**

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 59913. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order; provided, however, that if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

Signature

Party Represented

Printed Name

Date

Email Address

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date

ATTACHMENT B

I request to view/copy the following documents:

Document Requested	# of Copies	Non- Confidential	Protected Materials and/or Highly Sensitive Protected Materials

EXHIBIT A

Signature

Party Represented

Printed Name

Date

EXHIBIT B

From: Seely, Chad <[REDACTED]>
Sent: Monday, October 19, 2026 5:35 PM
To: Griffiths, Meghan <[REDACTED]>; Garza, Oscar <[REDACTED]>; Lloyd, Brian <[REDACTED]>; Rickerson, Woody <[REDACTED]>;
[REDACTED]
Cc: Peter Crouse <[REDACTED]>; CJ Maier <[REDACTED]>; Tomer Pinkusiewicz <[REDACTED]>; Barchenger, Monica <[REDACTED]>; Sarah Georgiades <[REDACTED]>; Chris Savo <[REDACTED]>; Nasi, Michael <[REDACTED]>; Malmgren, Kallie <[REDACTED]>; jarentaylor <[REDACTED]>; Gallo, Andrew <[REDACTED]>
Subject: RE: Coravel (LLI-1348 Hicks-Provident Realty)(BZ-129) - Following Up with Request for Meeting

Caution: **External Email.

Meghan and Mike:

Thanks for the email and your client's perspective on this matter. I want to make it clear on why ERCOT could not change its classification decision.

Below are some key points:

- Planning Guide (PG) § 9.2.1.4(3)(b) requires the Large Load to have met PG § 9.9 and § 9.10 **before 3/4/26**.
- PG § 9.10.1(1)(a) requires **confirmation from the Interconnecting TSP (Oncor)** that, among other things:
 - (i) All required interconnection agreements or equivalent service extension agreements have been executed;
 - (ii) The TSP received written acknowledgement from the ILLE of: (A) its

- obligations to notify the TSP of changes to the project information or load composition, technology, or parameters; and (B) maintain Load consumption at or below the peak Demand in the Load Commissioning Plan;
- (iii) The TSP received notice to proceed with construction of all required interconnection Facilities; and
- (iv) The TSP received the applicable payments required to fund all required interconnection Facilities.

For item (i), Oncor did not send a notification to ERCOT about the Facilities Extension Agreement (FEA) **until 4/18/26** (see attached email). There is not another way for ERCOT to manage all Large Loads except to rely on TSP communications through their notice process of when it came into ERCOT's awareness.

For item (ii), ERCOT has no record of receiving any confirmation.

For item (iii), the FEA (Article V, Sec. 2) states that, *upon payment under Article I*, Oncor will proceed with construction. The Contribution in Aid of Construction (CIAC) document provided with the dispute form appears to serve as "notice to proceed with construction" and has a payment date of **7/6/26**.

For item (iv), the CIAC provides evidence of payment to Oncor on **7/6/26**.

For those reasons and unless evidence to the contrary, BZ-129 does not meet the requirements to be classified as base load.

Further, regarding your procedural schedule, ERCOT opposes it.

Thanks.

Chad V. Seely
SVP, Regulatory Policy, General Counsel & Chief Compliance Officer
[REDACTED]

EXHIBIT C

From: BZReclassification <[REDACTED]>
Sent: Wednesday, September 16, 2026 4:28 PM
To: Liu, Meng <[REDACTED]>
Cc: Martin, Collin <[REDACTED]>; Holt, Robert <[REDACTED]>; Davitt, Mike <[REDACTED]>; Malmgren, Kallie <[REDACTED]>; Lewis, Jacob <[REDACTED]>; Greenhaw, Deric <[REDACTED]>; Cook, Andrew <[REDACTED]>; Mowles, Meagan <[REDACTED]>
Subject: RE: Dispute Process Follow up - BZ-129

WARNING: This email message did not originate from Oncor and is from an external organization. **DO NOT CLICK** links or attachments unless you recognize the sender and are certain the content is safe.

Good afternoon. ERCOT has reviewed the Batch Zero dispute form and considered the additional information submitted and discussed during and after the dispute meeting today.

During the dispute meeting, the ILLE and TSP raised two issues.

1. BZ-129 meets the requirements of Planning Guide (PG) § 9.2.1.4(3)(b) to treat the previous studies “fully complete and valid without additional review.”
 - PG § 9.2.1.4(3)(b) requires the Large Load to have met PG § 9.9 and § 9.10 before 3/4/26
 - PG § 9.10.1(1)(a) requires *confirmation from the ITSP* that:
 - i. All required interconnection agreements or equivalent service extension agreements with the ILLE and, if applicable, directly affected TSP(s) have been executed
 - ii. The ITSP received written acknowledgement from the ILLE of the ILLE’s obligations to: (A) notify the ITSP of changes to the Large Load project information or to the load composition, technology, or parameters, as described in Section 9.2.3; and (B) maintain Load consumption at or below the level(s) of peak Demand established in the Load Commissioning Plan (LCP);
 - (iii) The ITSP received notice to proceed with the construction of all required interconnection Facilities; and
 - (iv) The ITSP and, if applicable, directly affected TSP(s) received the financial security, applicable payments, and/or other agreements required to fund all required interconnection Facilities
 - The Facilities Extension Agreement (FEA) – dated 2/22/26 - addresses item (i)
 - The Letters of Credit address *part* of item (iv) (financial security) and are dated in 2025 and 2026
 - Item (iv) *also* requires that the TSP received “applicable payments” to fund all required interconnection facilities
 - The Contribution in Aid of Construction (CIAC) provided with the dispute form provides evidence of payment to Oncor on **7/6/26** (*i.e.*, after 3/4/26)
 - With respect to item (iii), FEA Article V, Sec. 2 states that, *upon payment under Article I*, Oncor will proceed with construction

- As mentioned above, the CIAC shows a payment date of 7/6/26 and, it appears, serves as “notice to proceed with construction”
- ERCOT has no record of receiving confirmation of item (ii), above.

Aside from the fact it appears ERCOT did not receive notification BZ-129 met PG § 9.9 and § 9.10 before 3/4/26, the facts set forth above indicate BZ-129 does not meet the requirements of PG § 9.2.1.4(3)(b) to allow ERCOT to consider the previous studies “fully complete and valid without additional review” because ERCOT never received confirmation of item (ii) and the CIAC is dated after 3/4/26.

2. BZ-129 was part of RPG Set 1 and Set 2, which places it under PG § 9.2.1.4(3)(a).

As mentioned during the meeting, the Load Information Form submitted for BZ-129 shows a chosen path of “Base Load Section 9.2.1.1(1)(e)” in Row 84 and “LLIS Only” in Row 86. Thus BZ-129 made its path choice to qualify as base load in Batch Zero. It cannot change paths at this point. Additionally, raising BZ-129’s ladder spot (or other projects making such a request) could invalidate loads BZ-129 would now be placed above on the ladder. Additionally, proceeding under the RPG path could change the financial security the LLIS must provide and the deadline for providing required financial security has passed.

In any event, we confirmed that RPG Set 1 and Set 2 were approved at the ERCOT Board meeting on 6/1/26 and, therefore, do not meet the requirements of PG § 9.2.1.4(3)(a).

Ultimately, no argument was provided to justify granting the dispute and, therefore, ERCOT denies the dispute and BZ-129’s classification as studied load stands.

Regards,

Andrew Gallo

Assistant General Counsel - Regulatory

[REDACTED]
[REDACTED]

EXHIBIT D

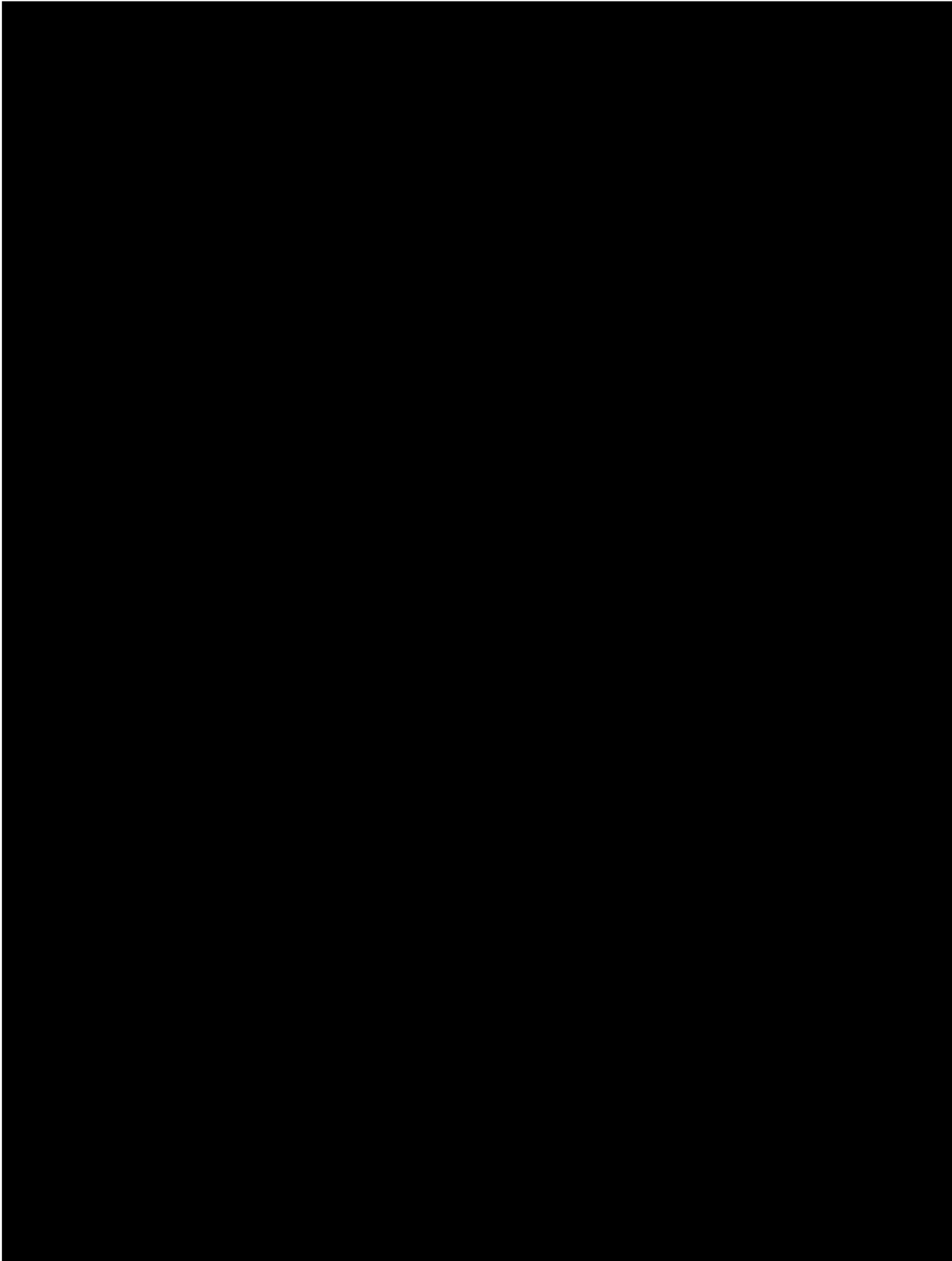
ERCOT Batch Zero Process: Section 9.3.1 Provisional Classification Dispute Form

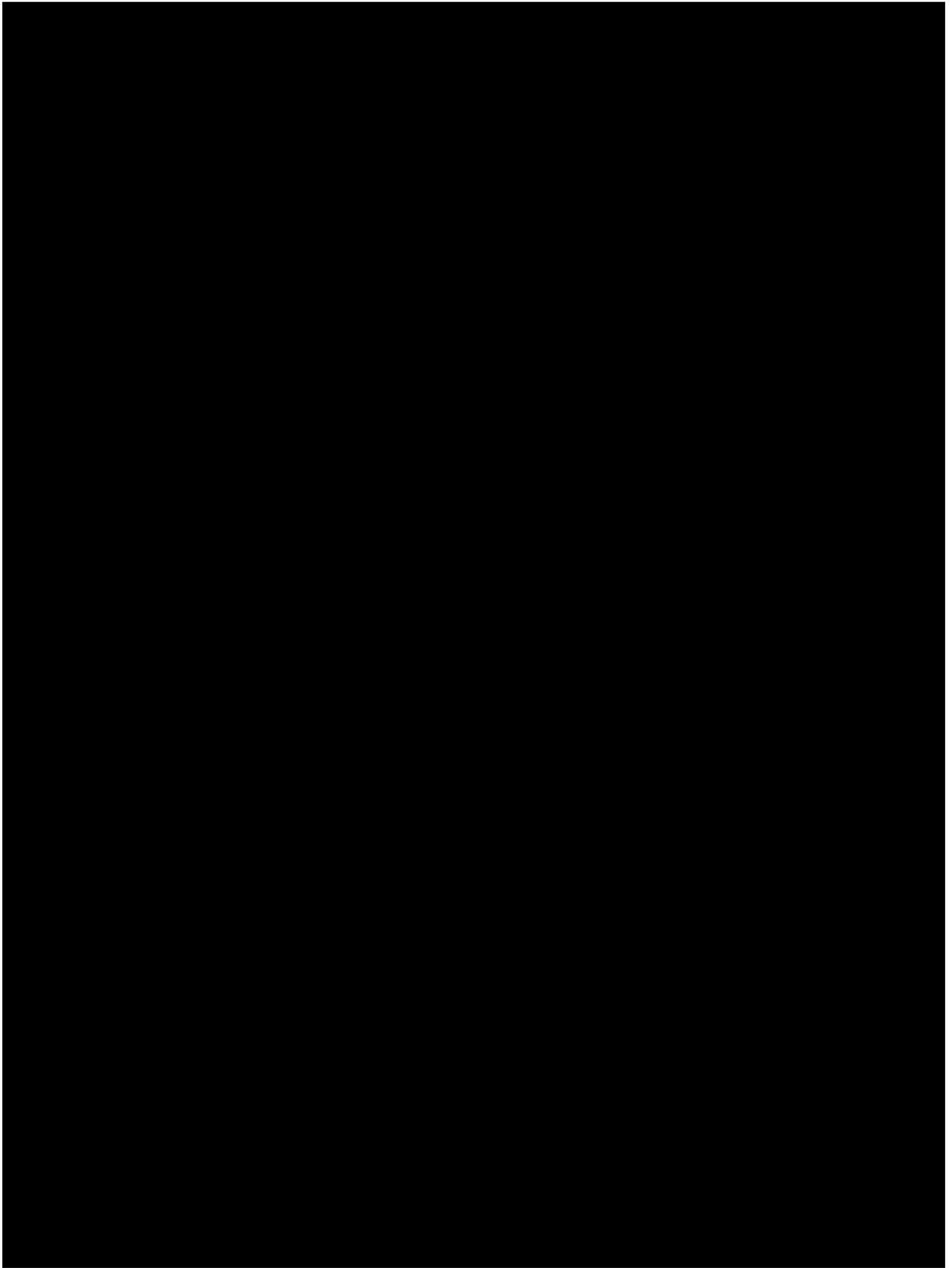
Purpose: ERCOT has provisionally classified the Large Load below under Planning Guide Section 9.2.1.2(1) rather than the base load path Section 9.2.1.1(1) under which it was submitted. Under Section 9.3.1(2)(a)(i), the Interconnecting Large Load Entity (ILLE) may dispute the provisional classification if it believes ERCOT based that classification on incomplete or inaccurate information. The ILLE must use this form to establish the basis for that dispute.

Who completes this form: The ILLE completes Sections 1–3 and returns this form to its Interconnecting Transmission Service Provider or Distribution Service Provider (Responsible TSP/DSP), which may add supporting information in Section 4. The Responsible TSP/DSP must email the form to ERCOT at BZReclassification@ercot.com no later than 5:00 p.m. CT on the due date specified in Section 9.3.1(2)(a)(i)–(iii) of the Planning Guide.

Deadline: Please review the applicable deadlines in Planning Guide Section 9.3.1(2)(a)(i). The chronologically dependent deadlines are illustrated below:

- ERCOT notifies the Responsible TSP/DSP of the provisional classification.
 - The Responsible TSP/DSP shall notify the ILLE within two Business Days of receipt of ERCOT's notice.
 - To initiate a dispute:
 - ILLE must complete and submit this form to the Responsible TSP/DSP no later than three Business Days after receiving notice from the Responsible TSP/DSP; and
 - The Responsible TSP/DSP must submit the completed form to ERCOT by the deadline above (i.e., no later than three Business Days after the ILLE's receipt of notice).
 - ERCOT, the ILLE, and the Responsible TSP/DSP shall attempt to resolve the dispute within three Business Days after ERCOT receives notice of an initiated dispute.
-





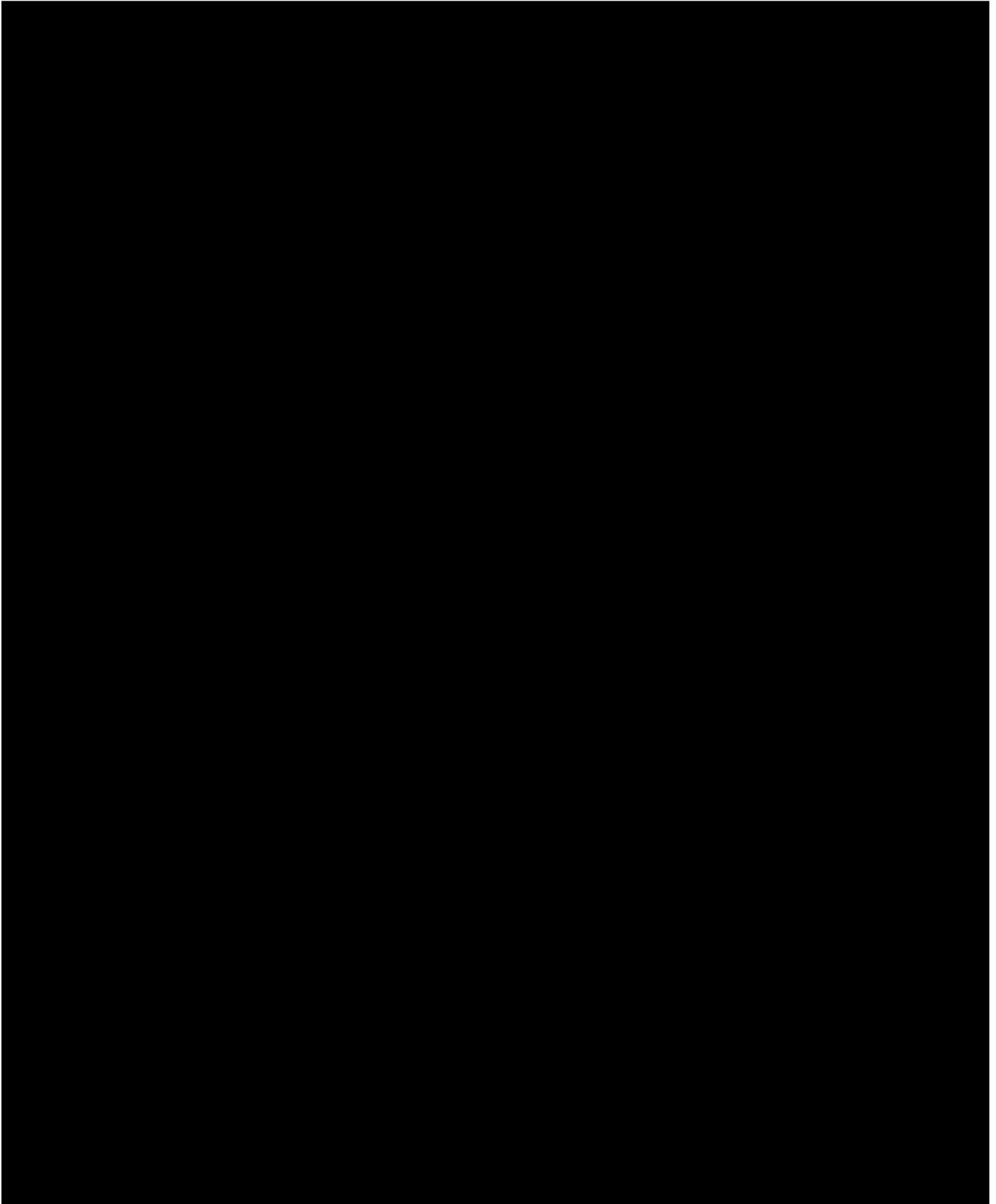
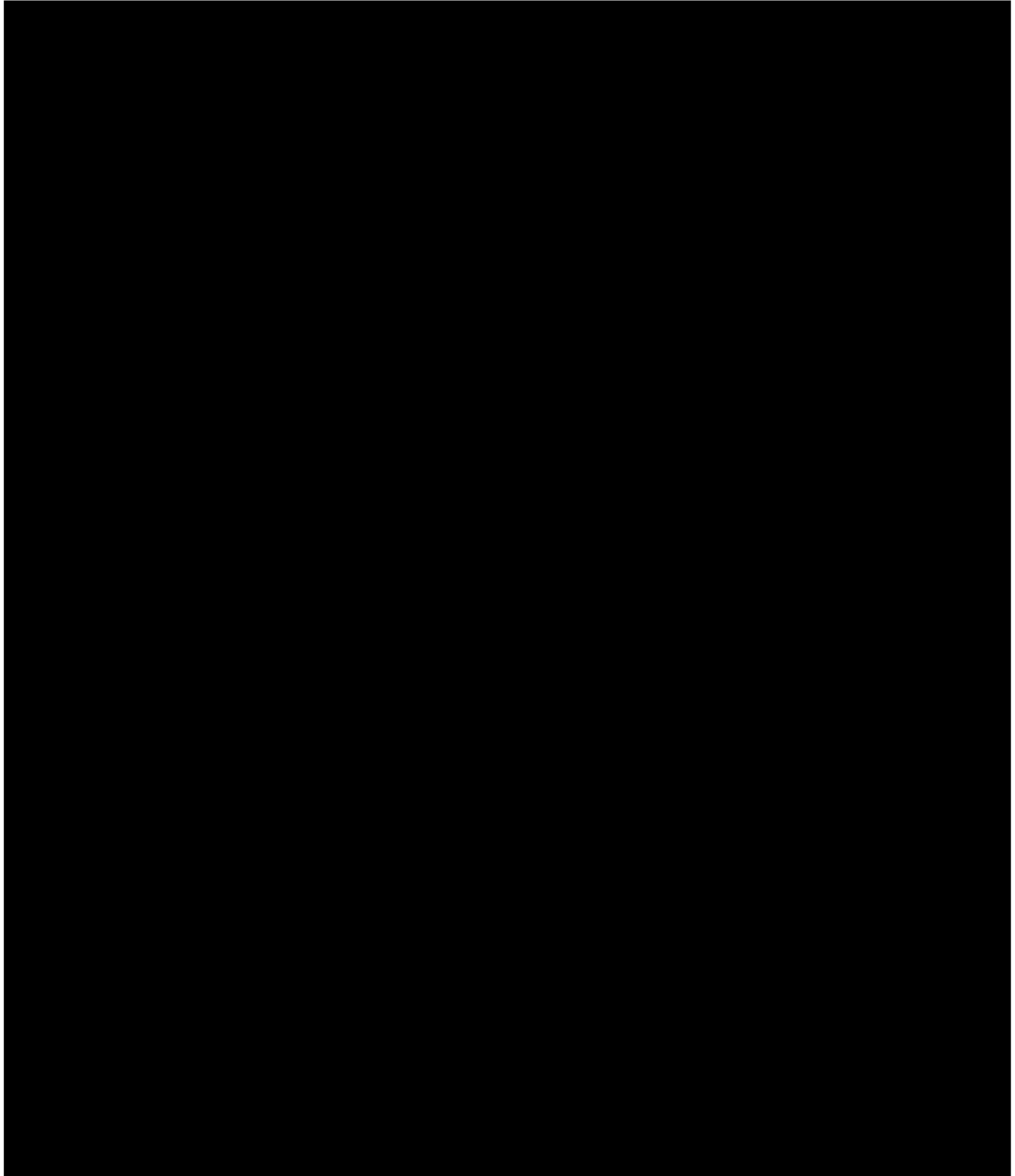
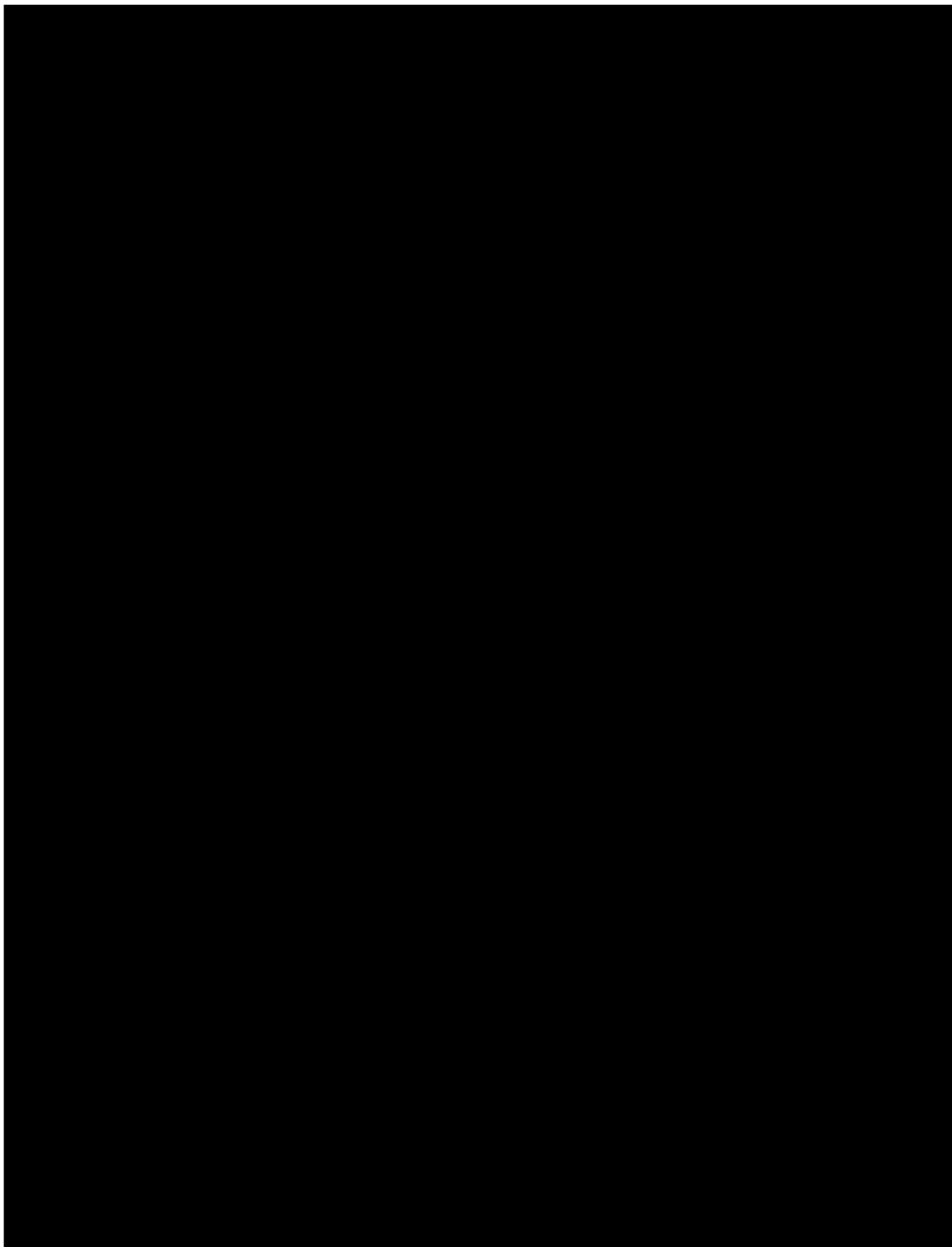


EXHIBIT E

**Amendment No. 1 to
Transmission/Substation Facility Extension Agreement
ACS Infrastructure – Fort Worth, TX
Batch Zero**





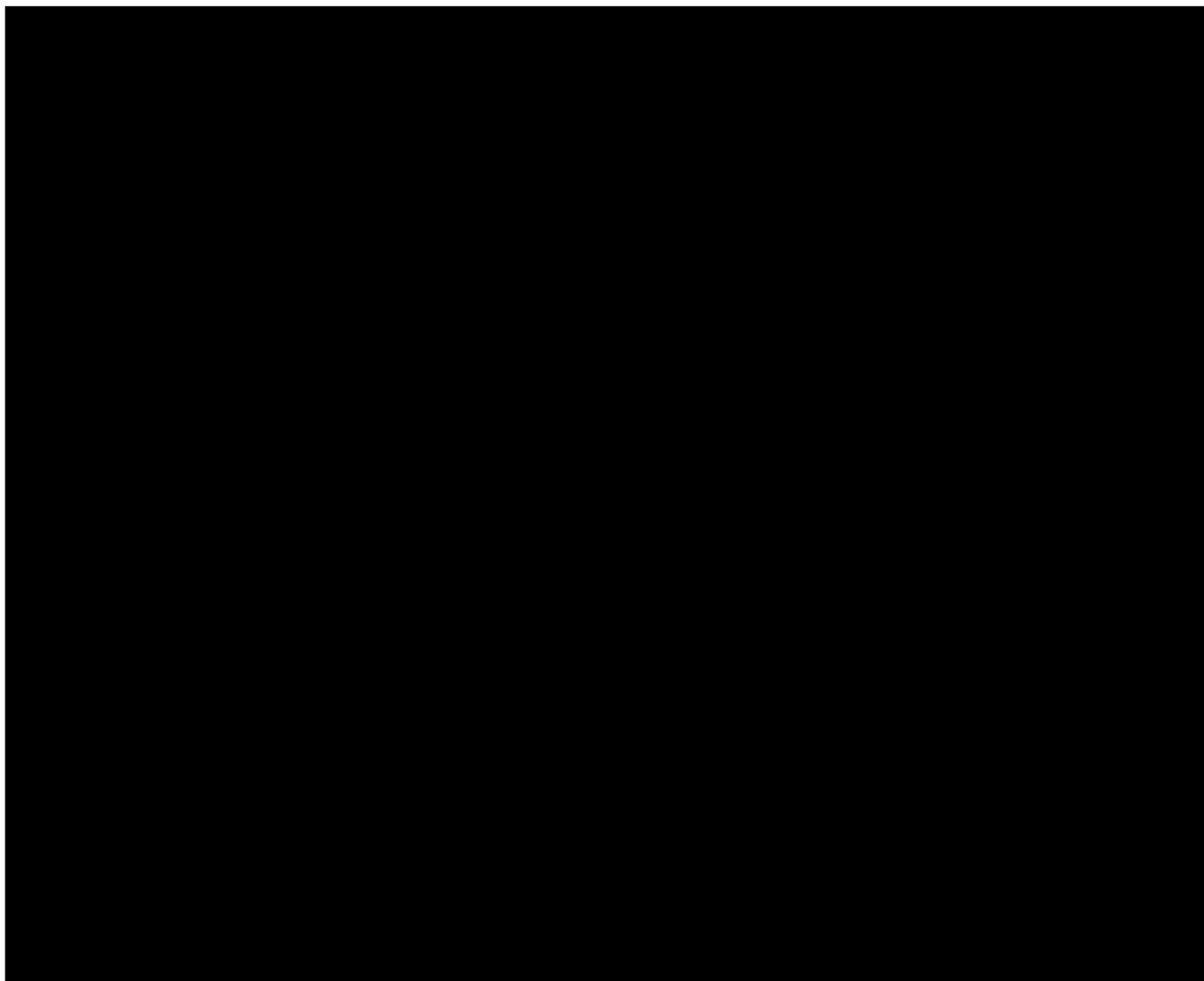


Exhibit A

ATTACHMENT 2

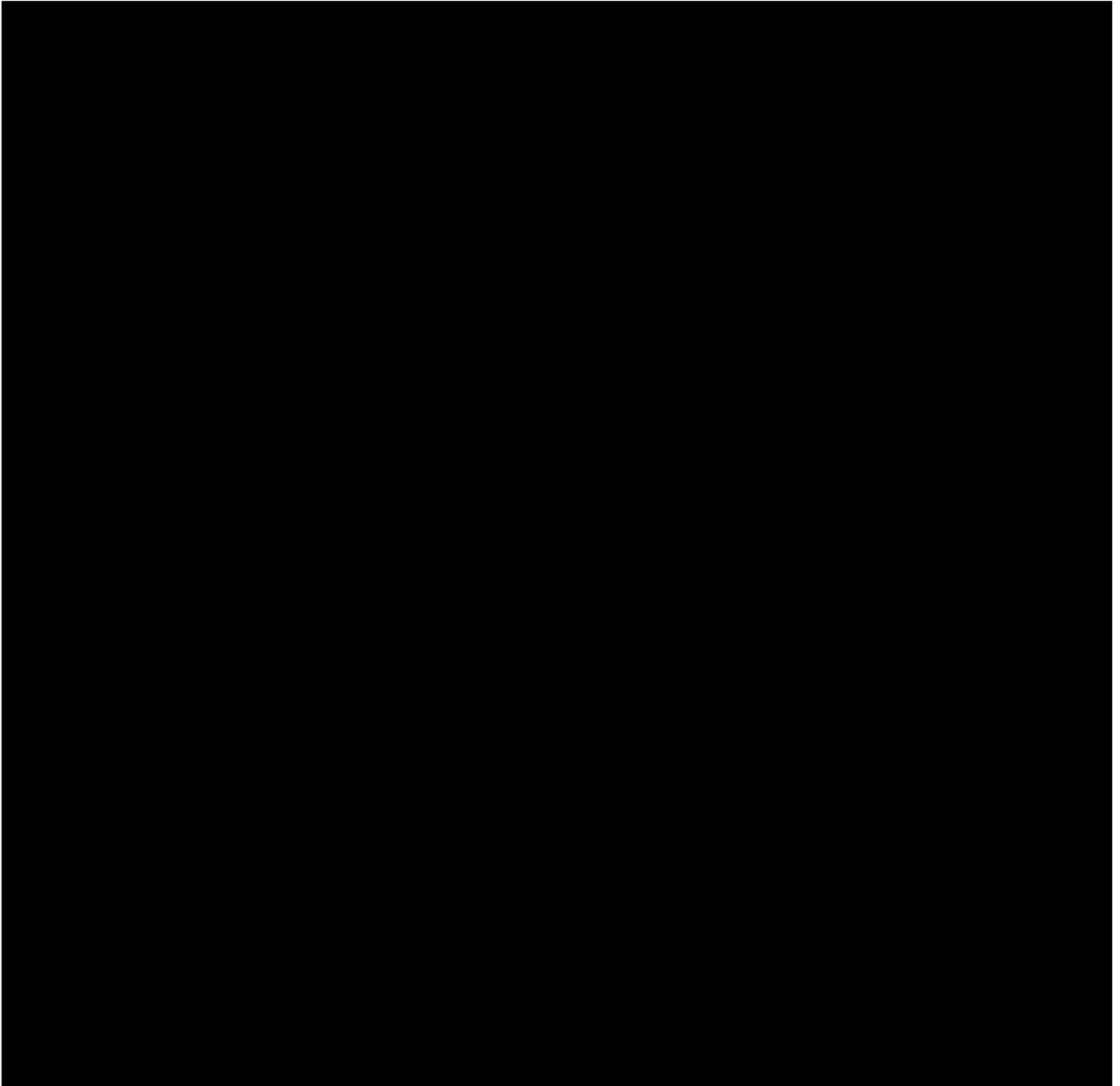


Exhibit B

ATTACHMENT 3

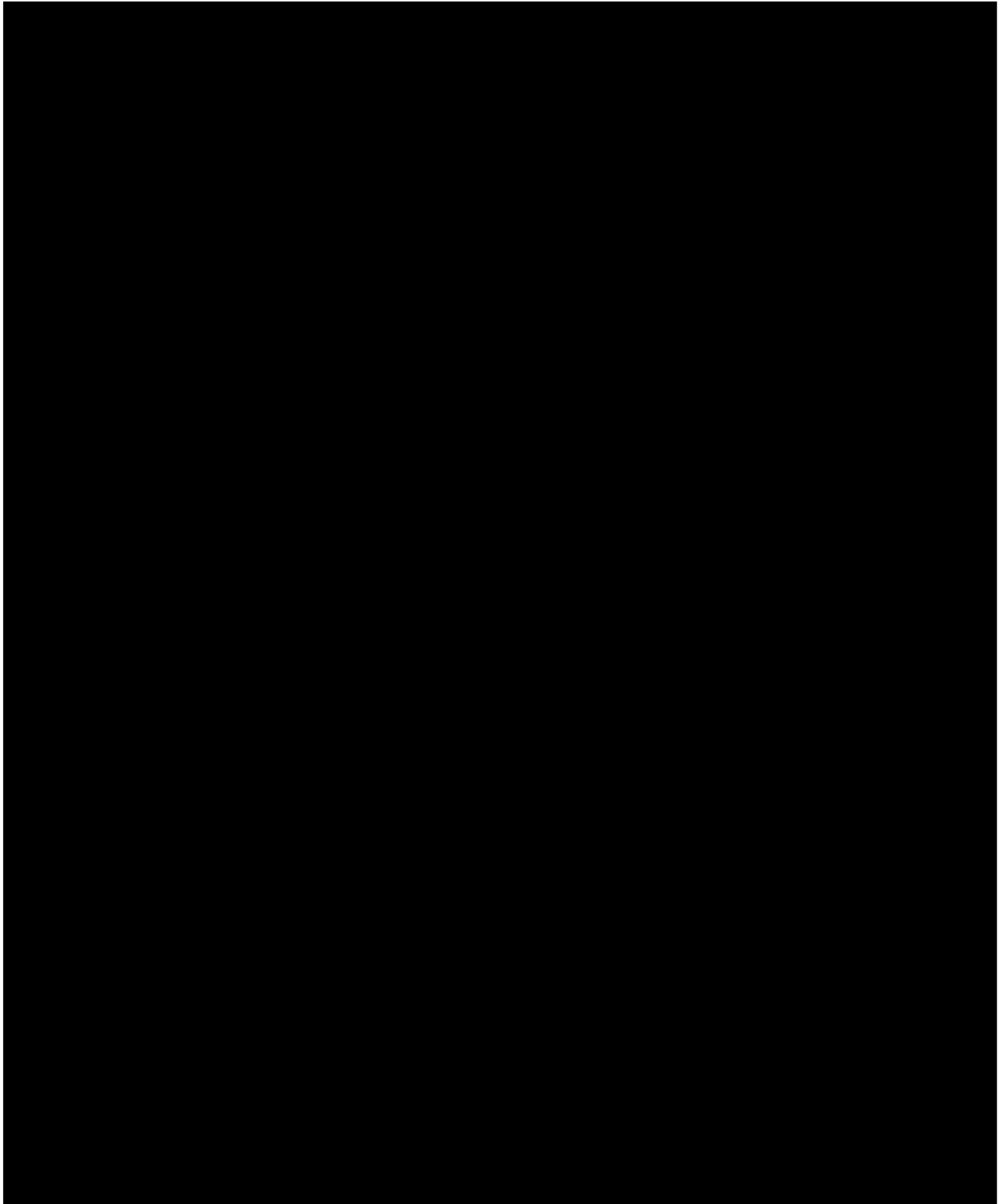


EXHIBIT 'B'

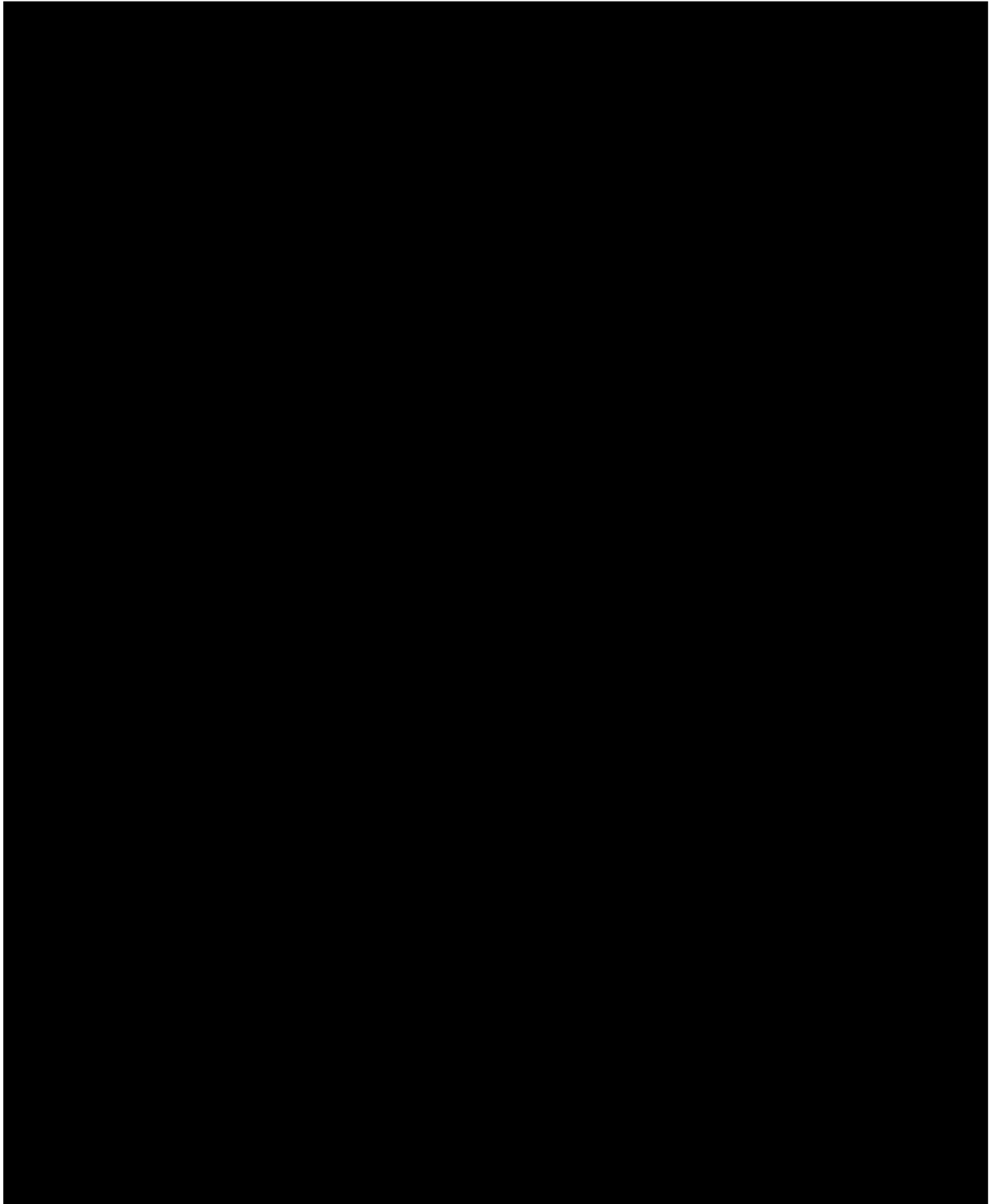


EXHIBIT F

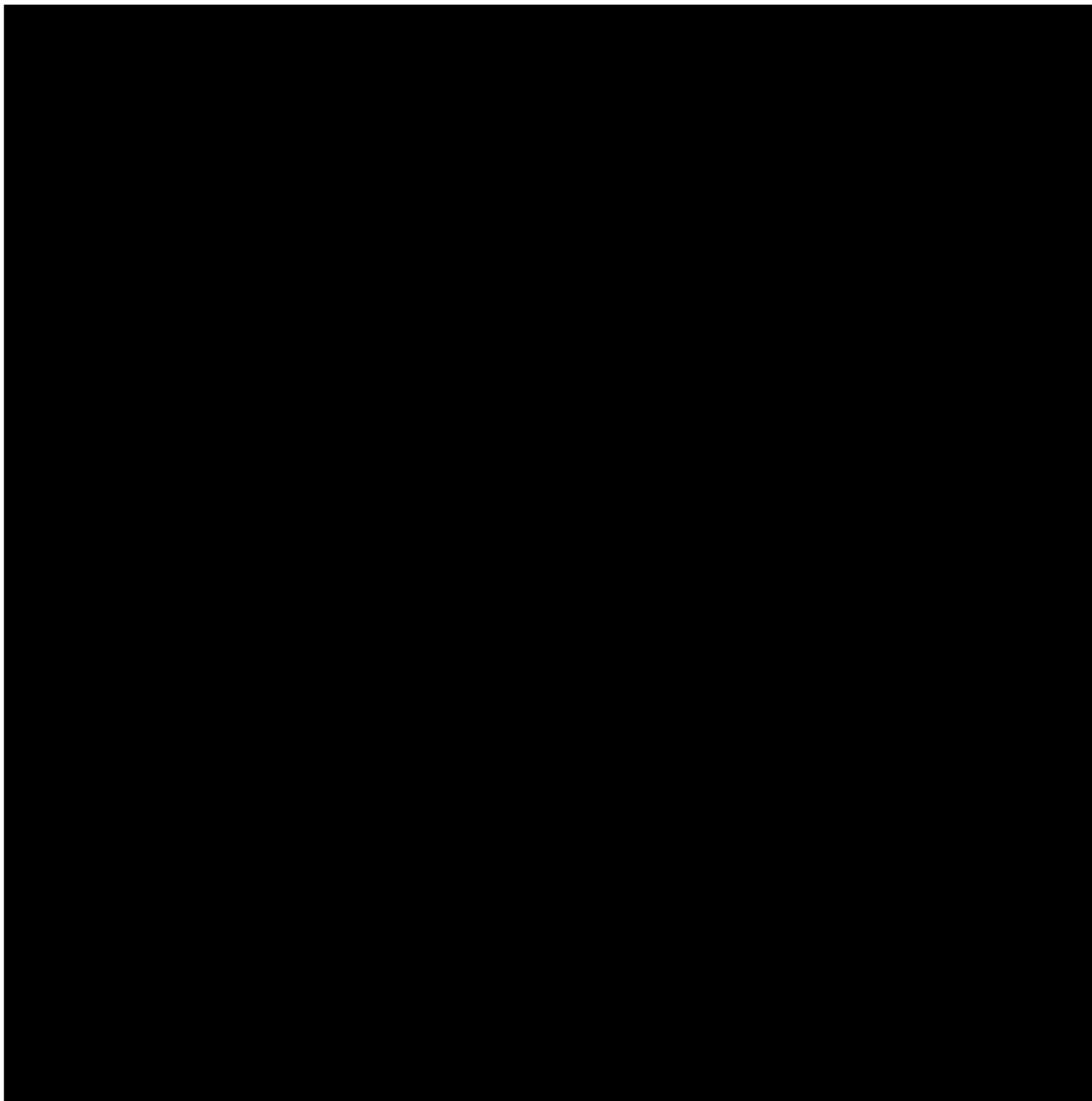


EXHIBIT G

From: [Greenhaw, Deric](#)
To: [LargeLoadInterconnection](#)
Cc: [Liu, Meng](#); [jacob.lewis](#)
Subject: LLI-1345 IA Executed
Date: Saturday, April 18, 2026 5:20:00 PM
Attachments: [Hicks- FEA.pdf](#)
Importance: High

Our apologies if you have received this email before from us, but we wanted to make sure you have received notice. The following LLI-1345 has a signed FEA that was executed on 2/22/2026. The signed FEA has a load ramp with a max of 335 MW.

Thank you,

Deric Greenhaw

Transmission Services Consultant

Oncor Electric Delivery

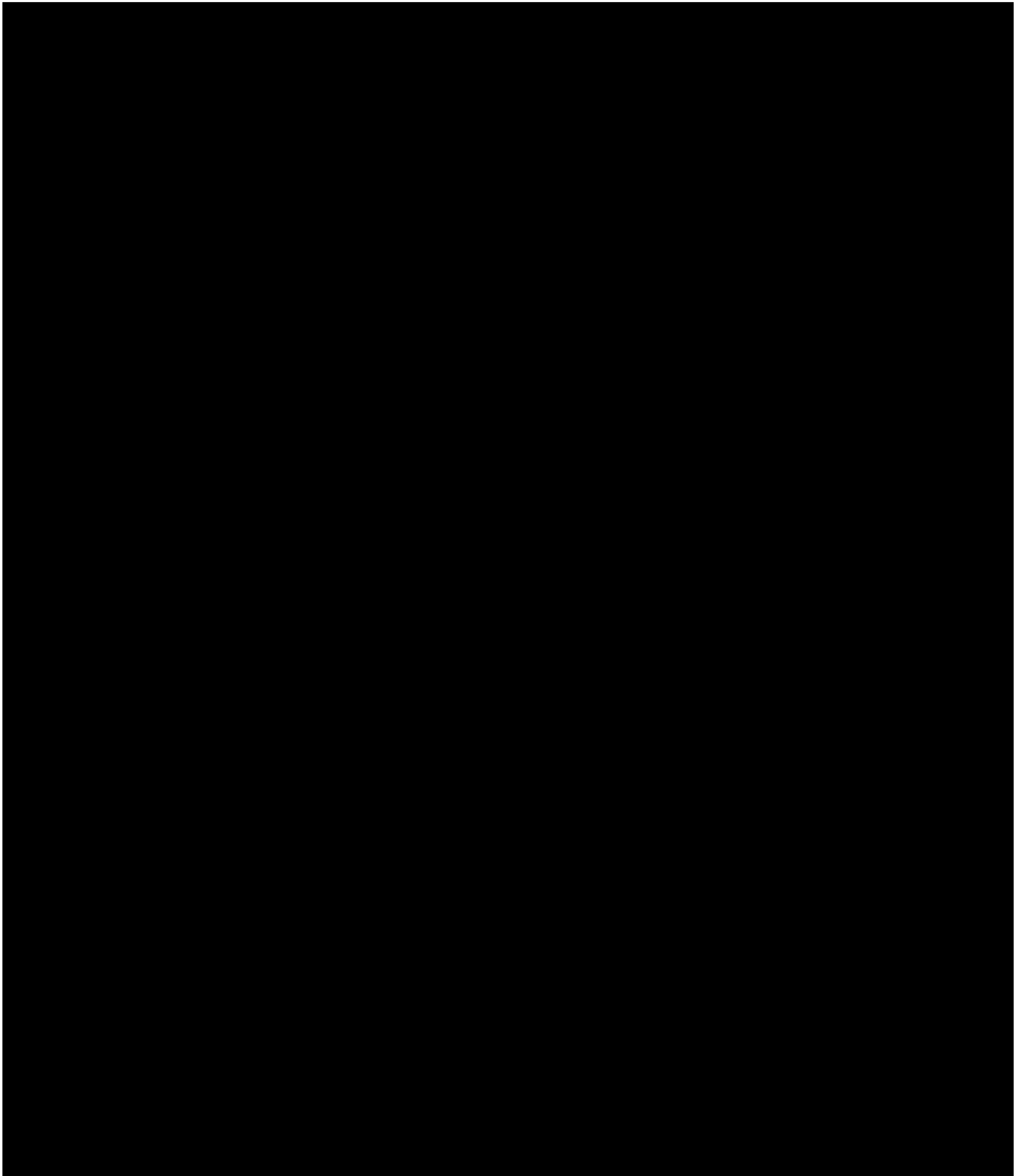
777 Main St, Suite 707

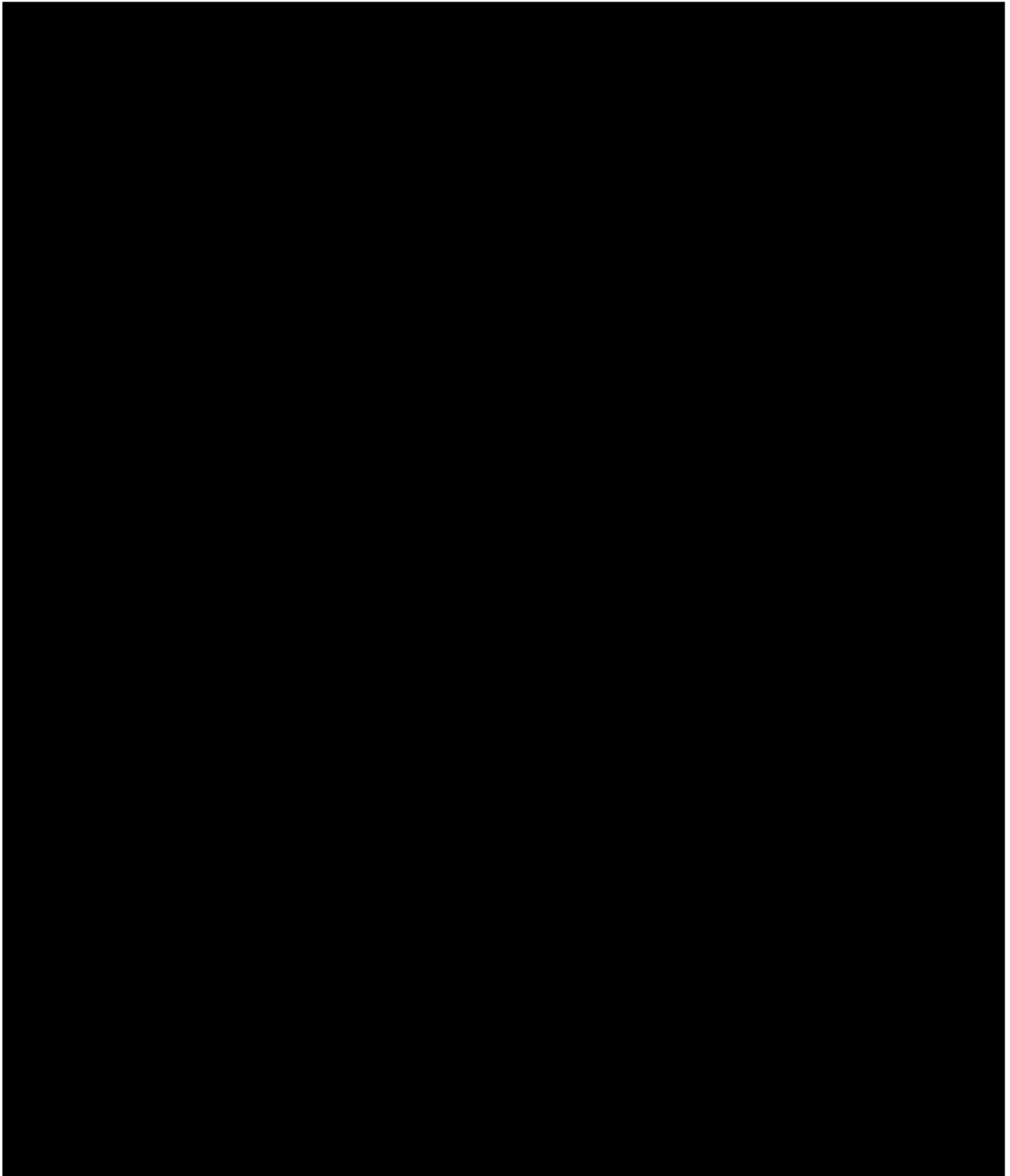
Fort Worth, TX 76102

[REDACTED]

[REDACTED]

EXHIBIT H





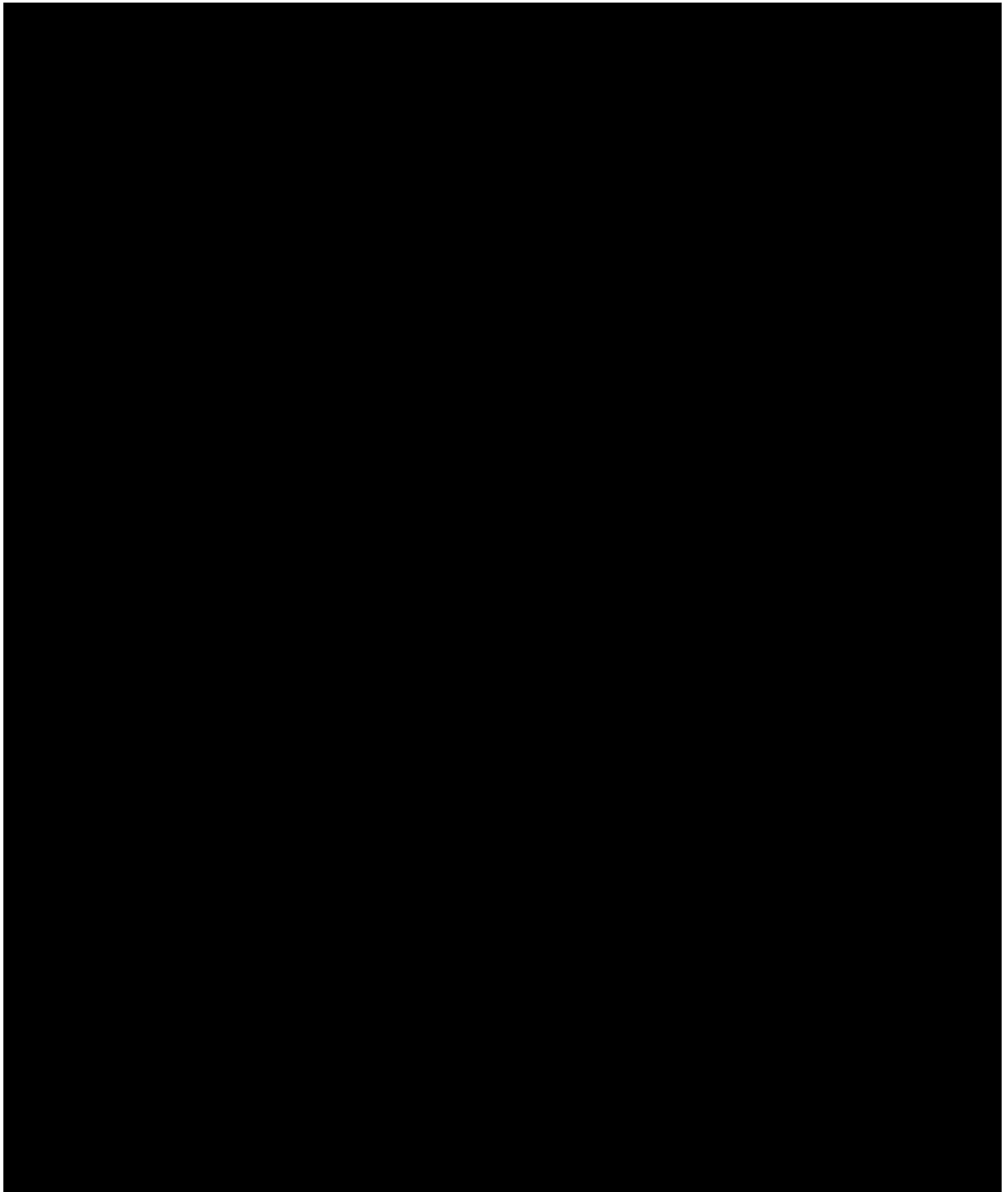


EXHIBIT "A"
SIGHT DRAFT

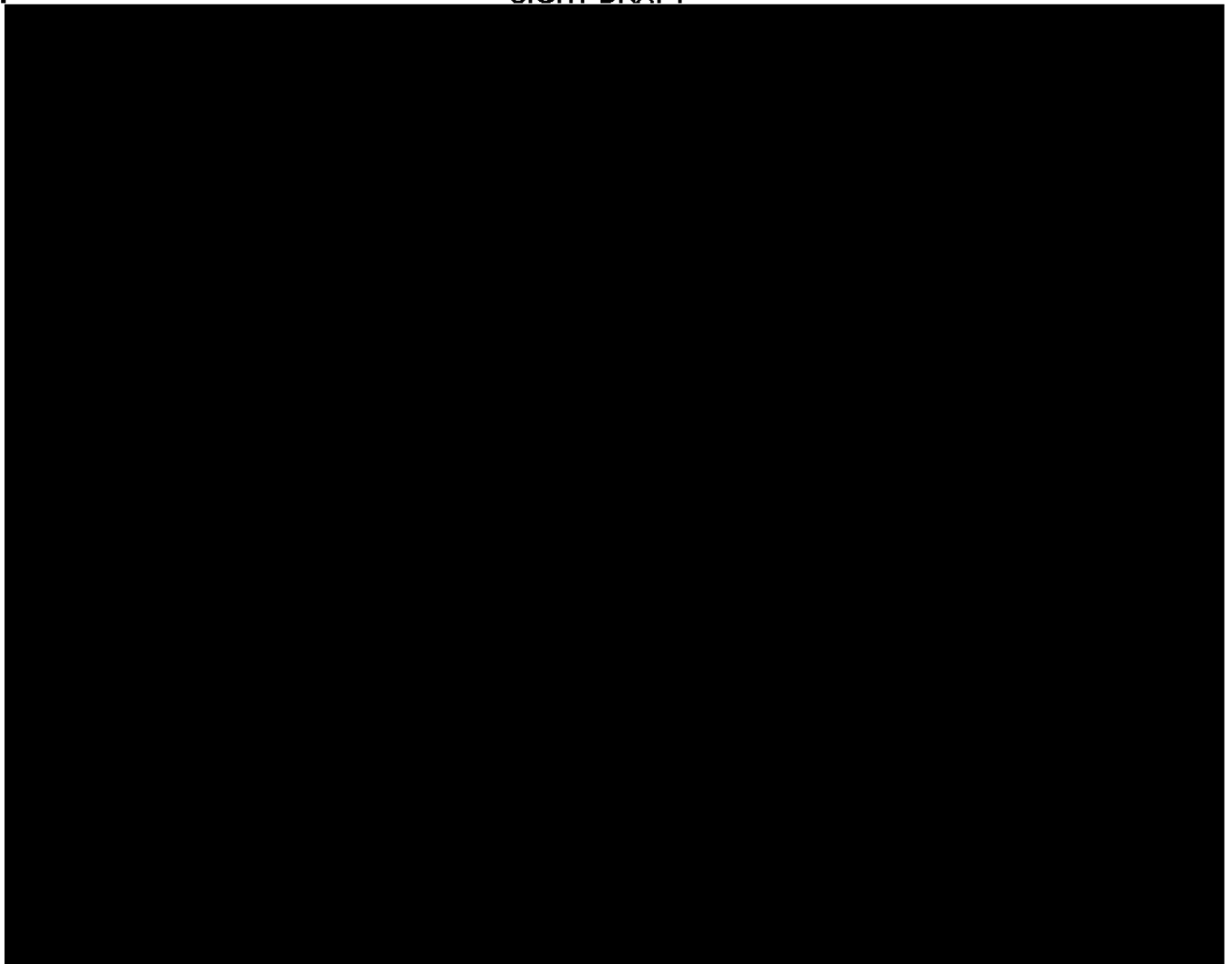
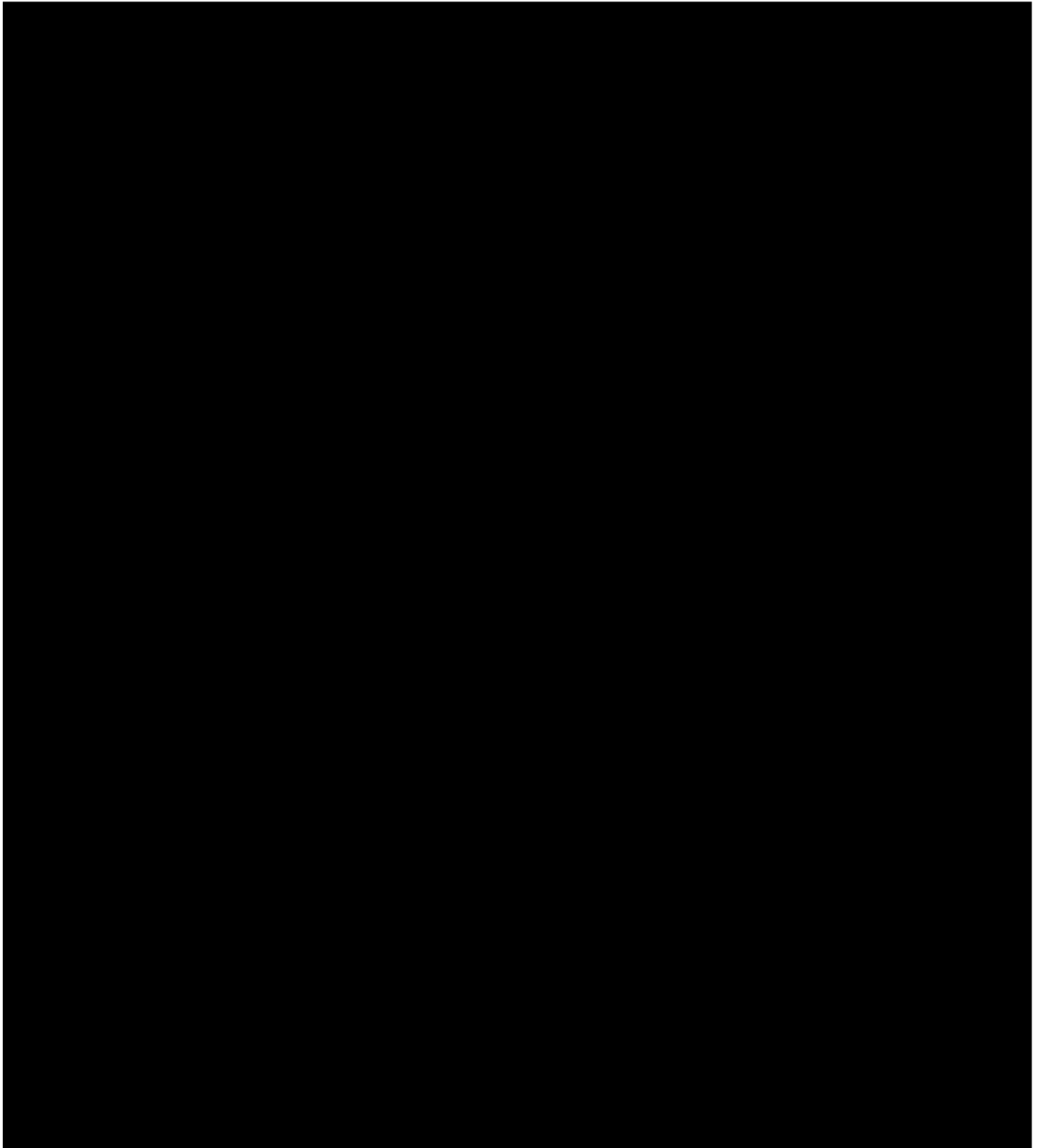
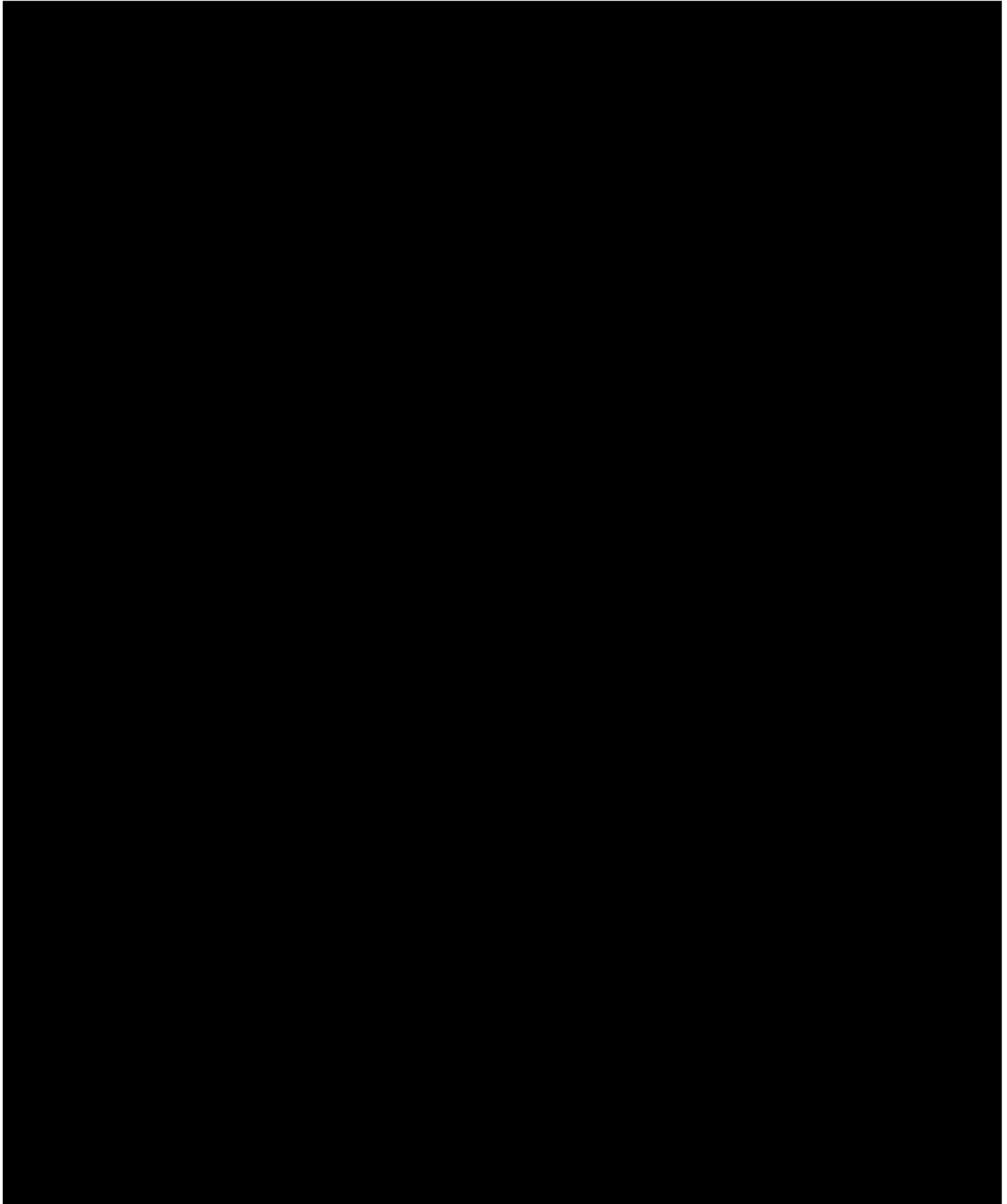


EXHIBIT 'B'
DRAWING CERTIFICATE



ATTACHMENT 4
EXHIBIT 1
(Continued)



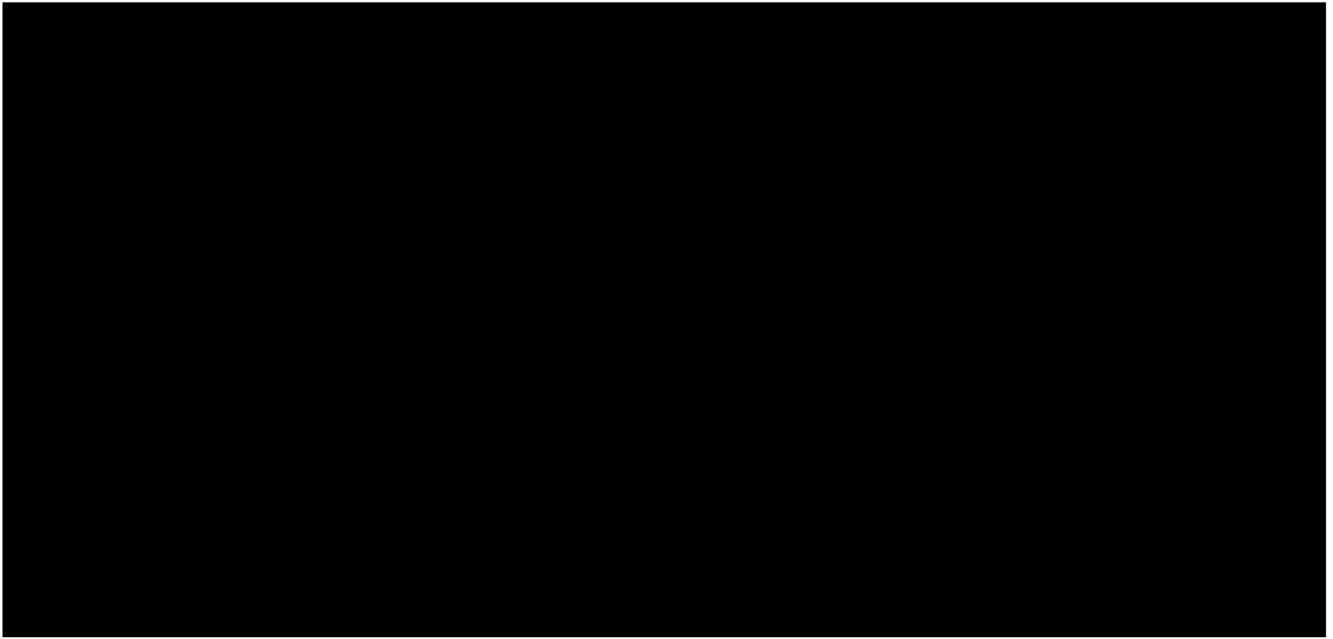
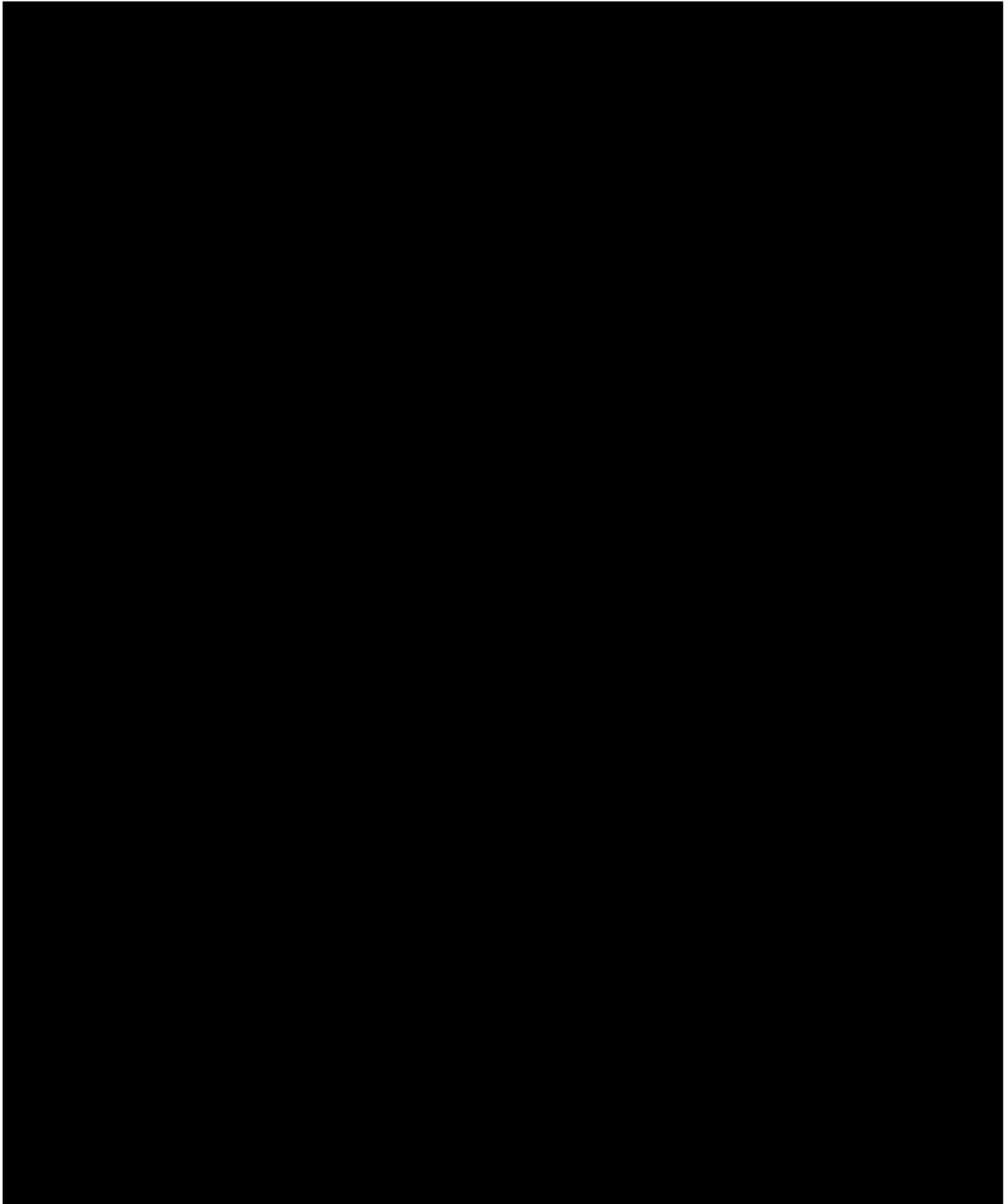
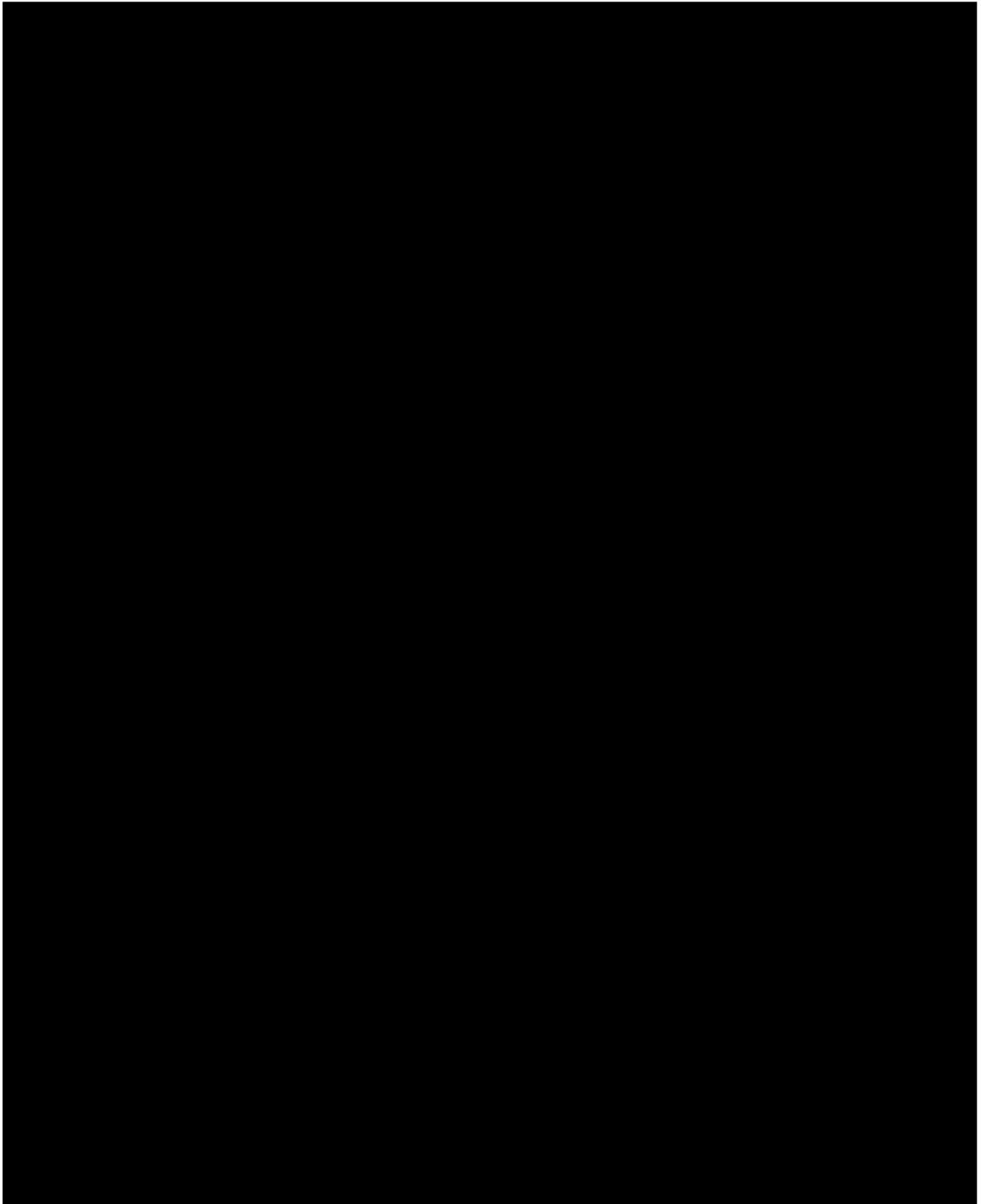
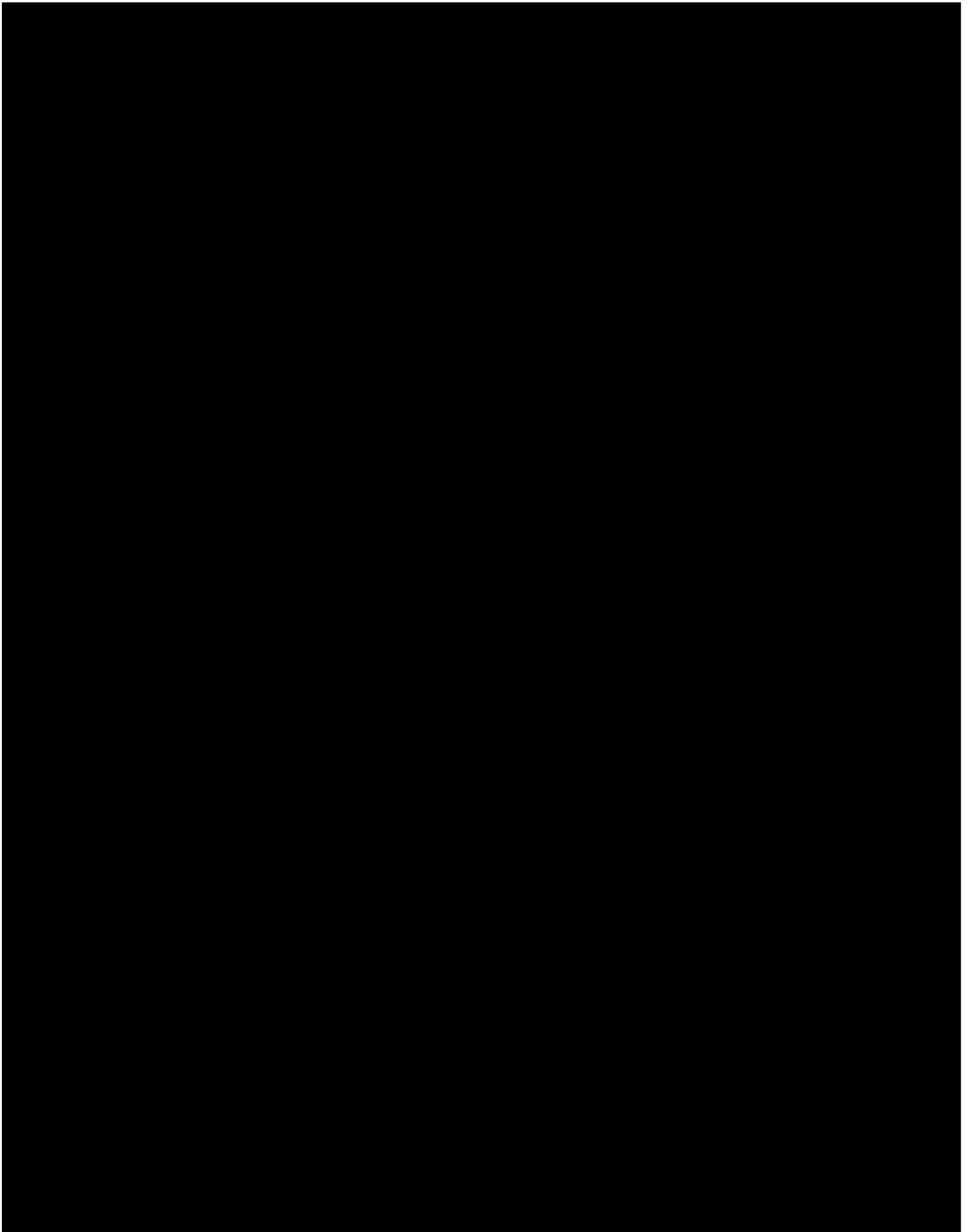


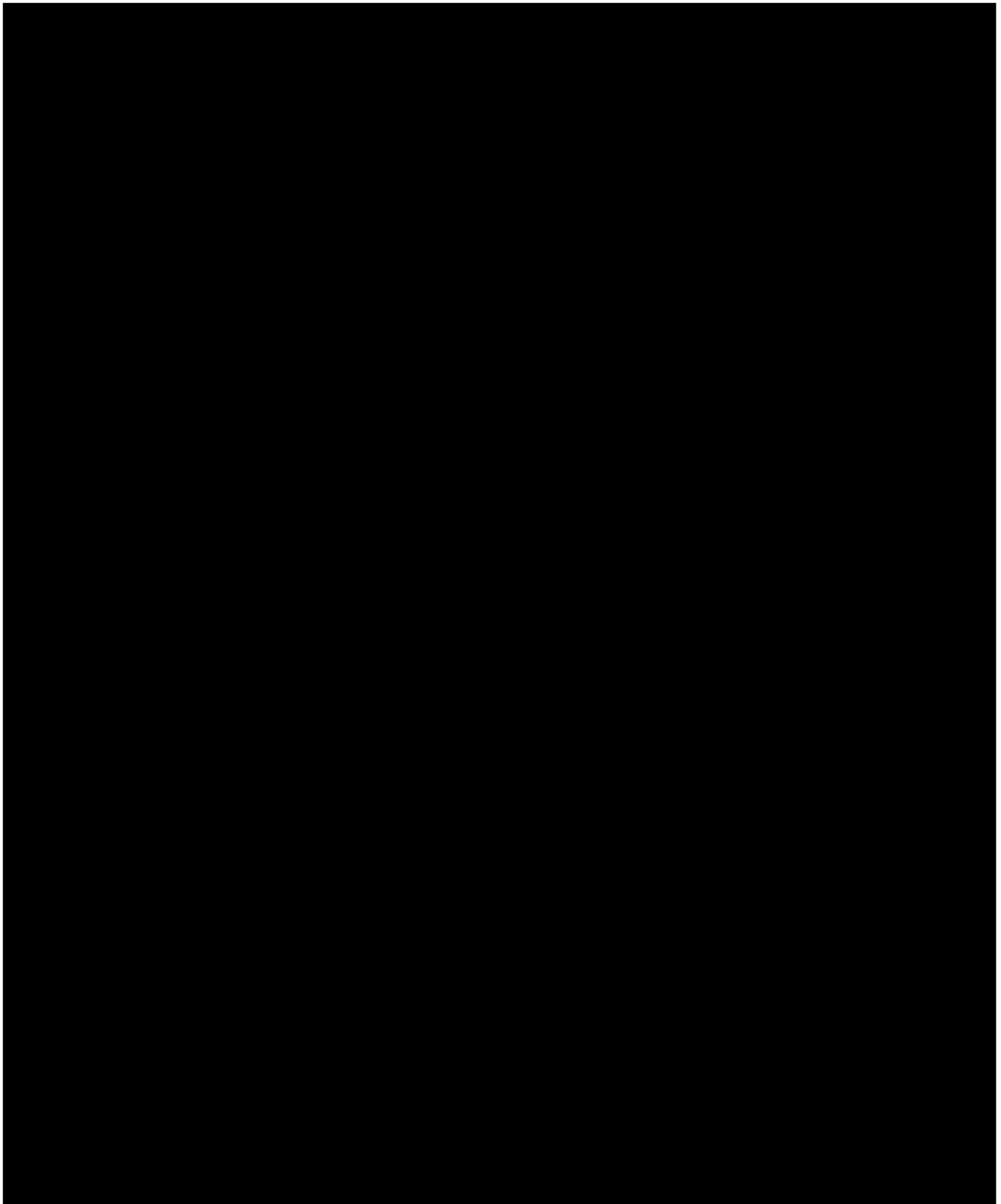
EXHIBIT I

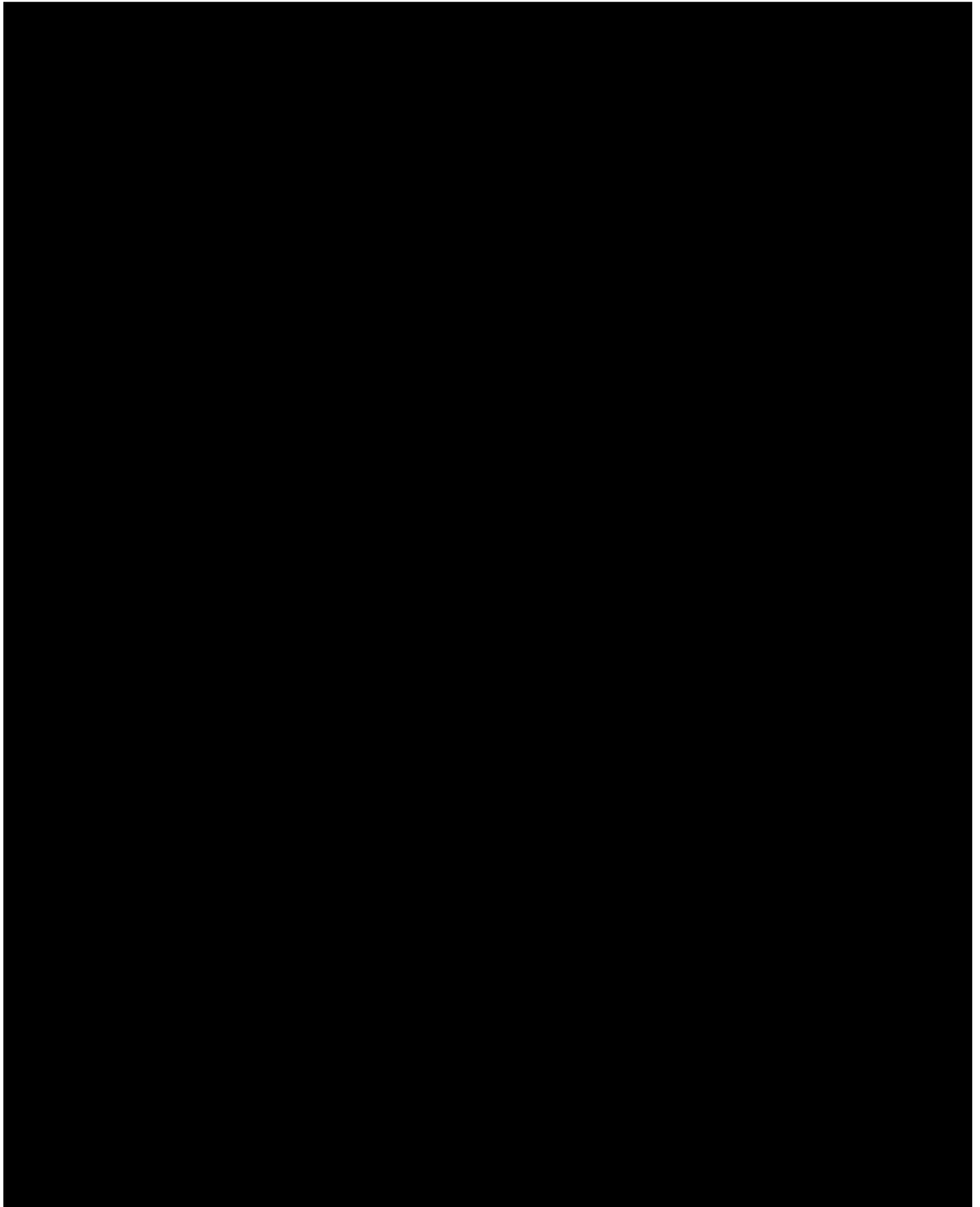
Transmission/Substation Facility Extension Agreement ACS Infrastructure – Fort Worth, TX

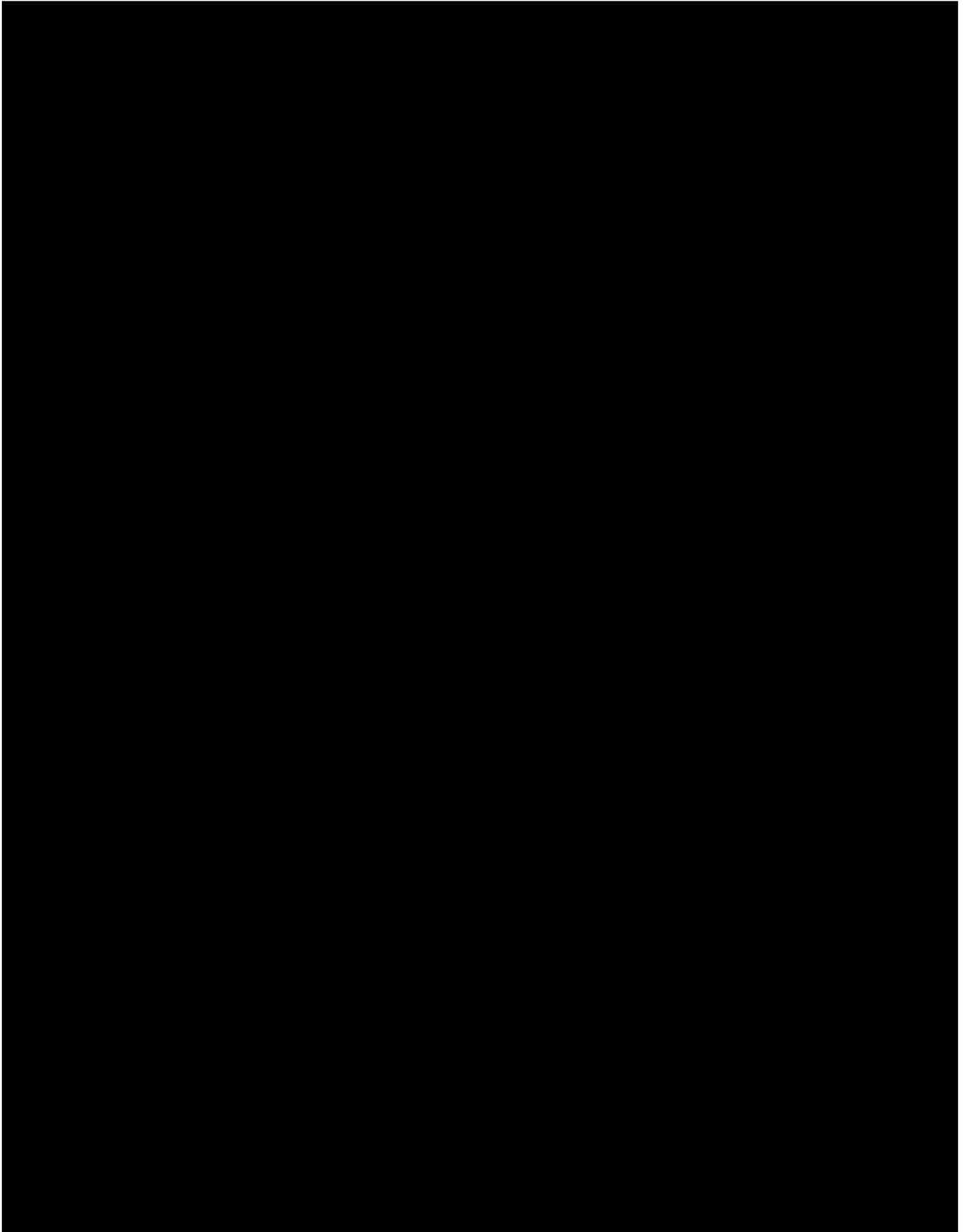


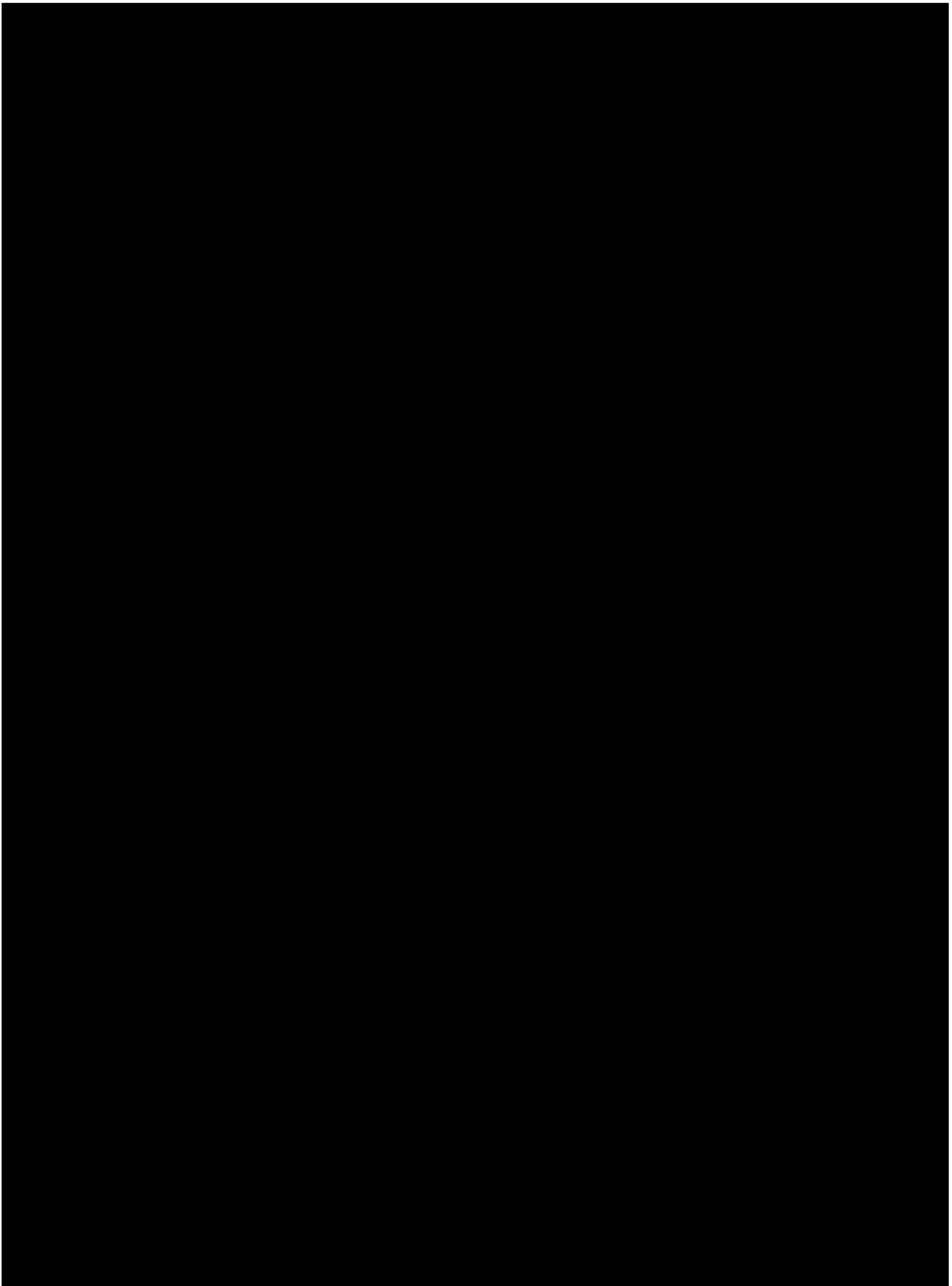


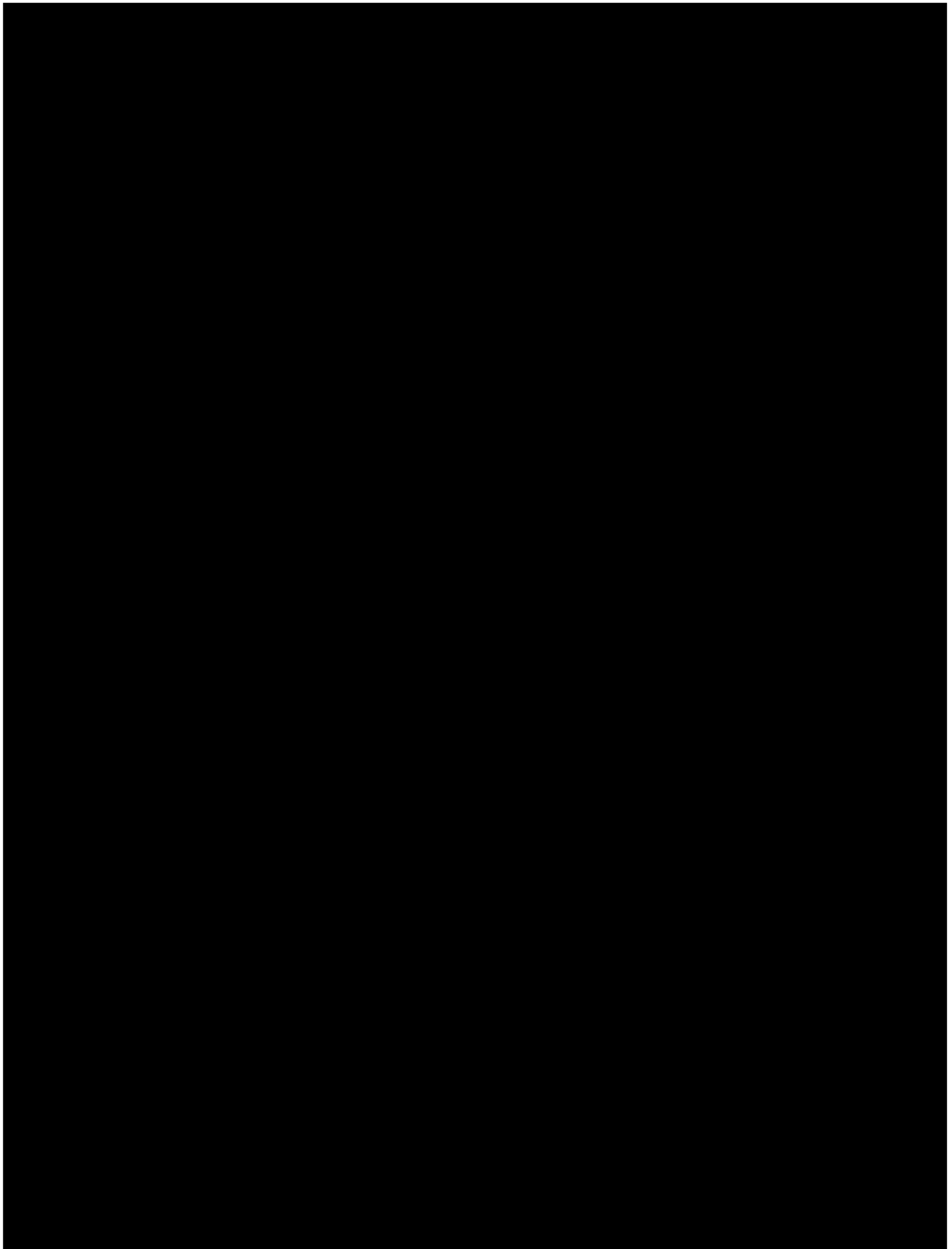


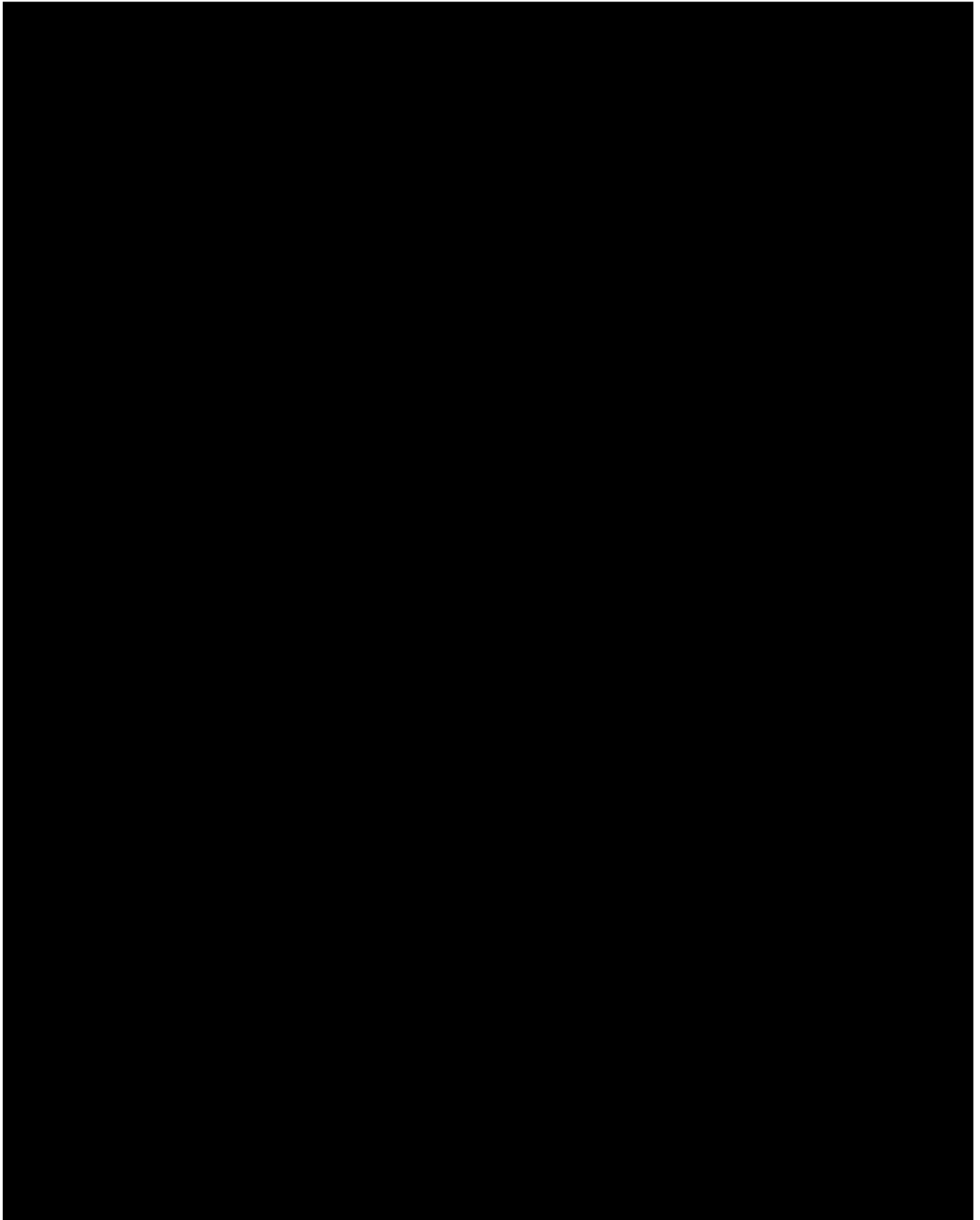


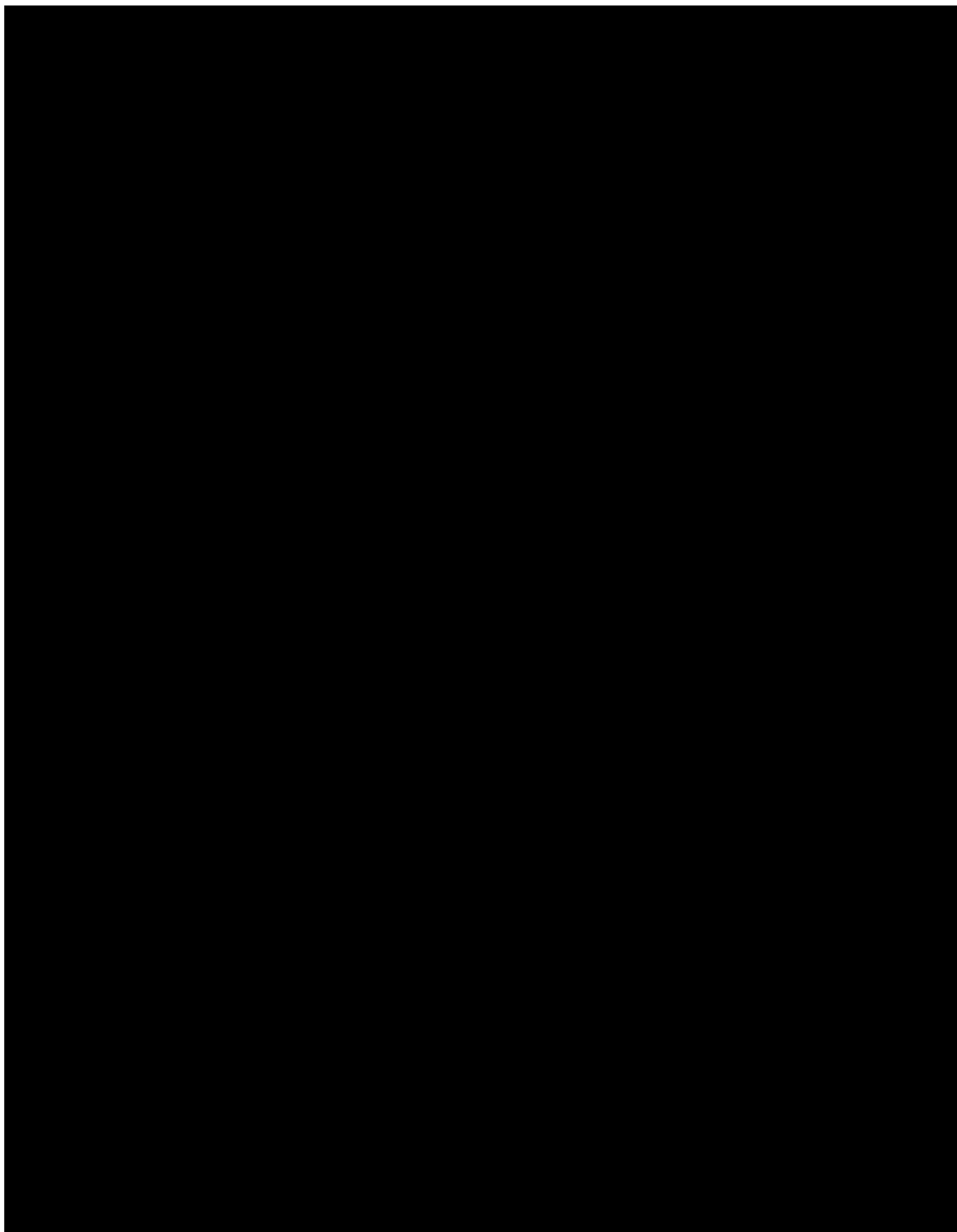


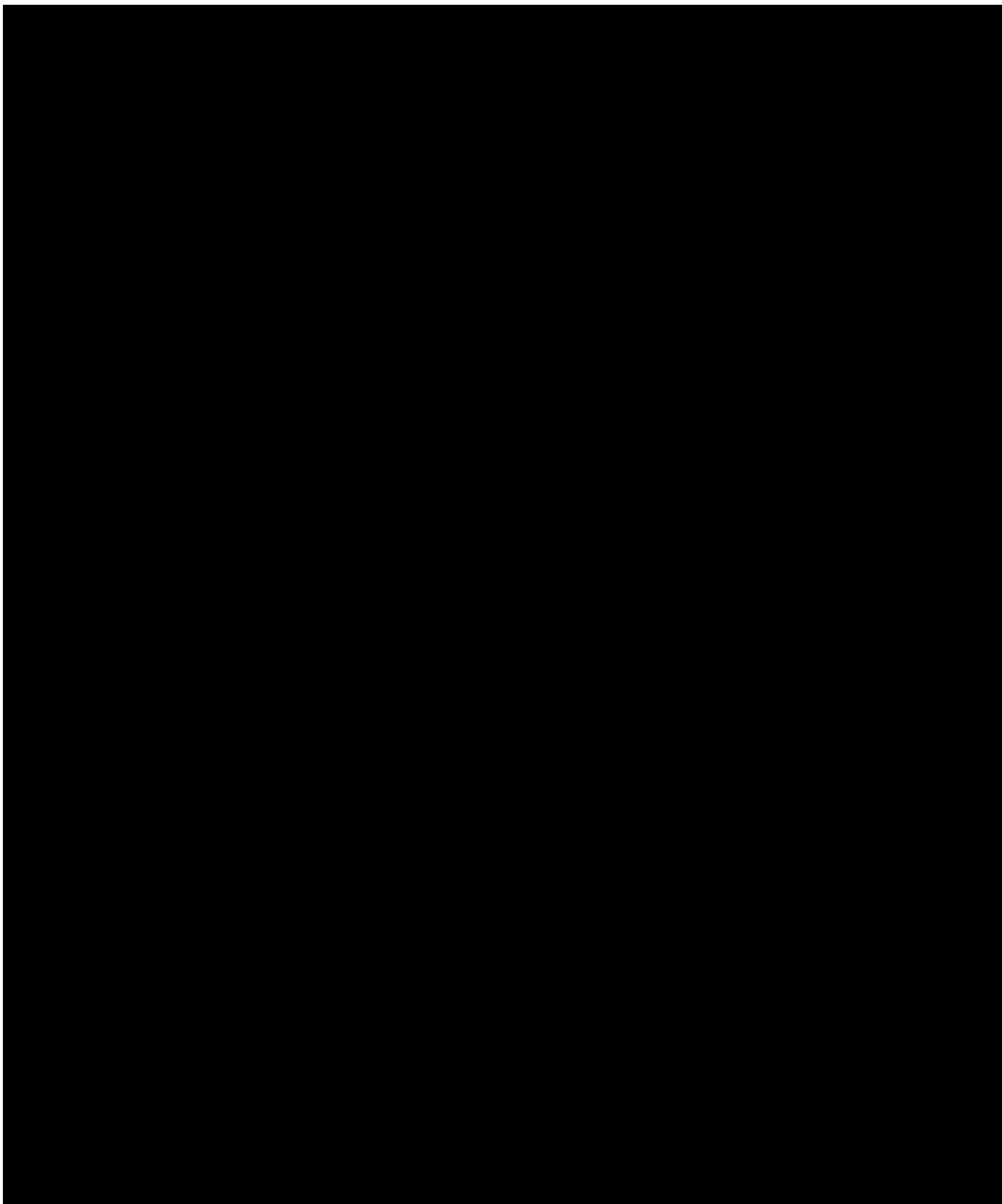


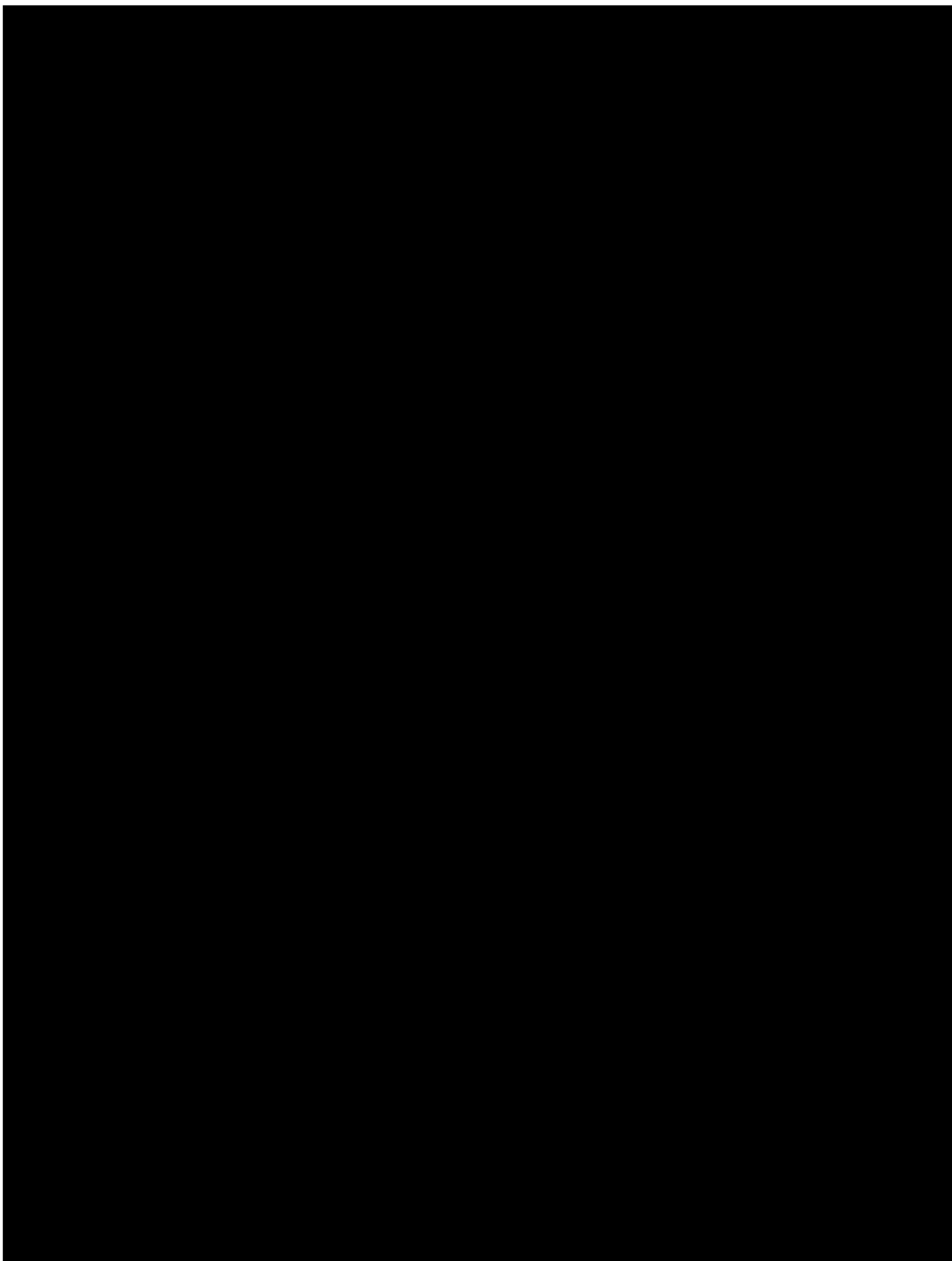


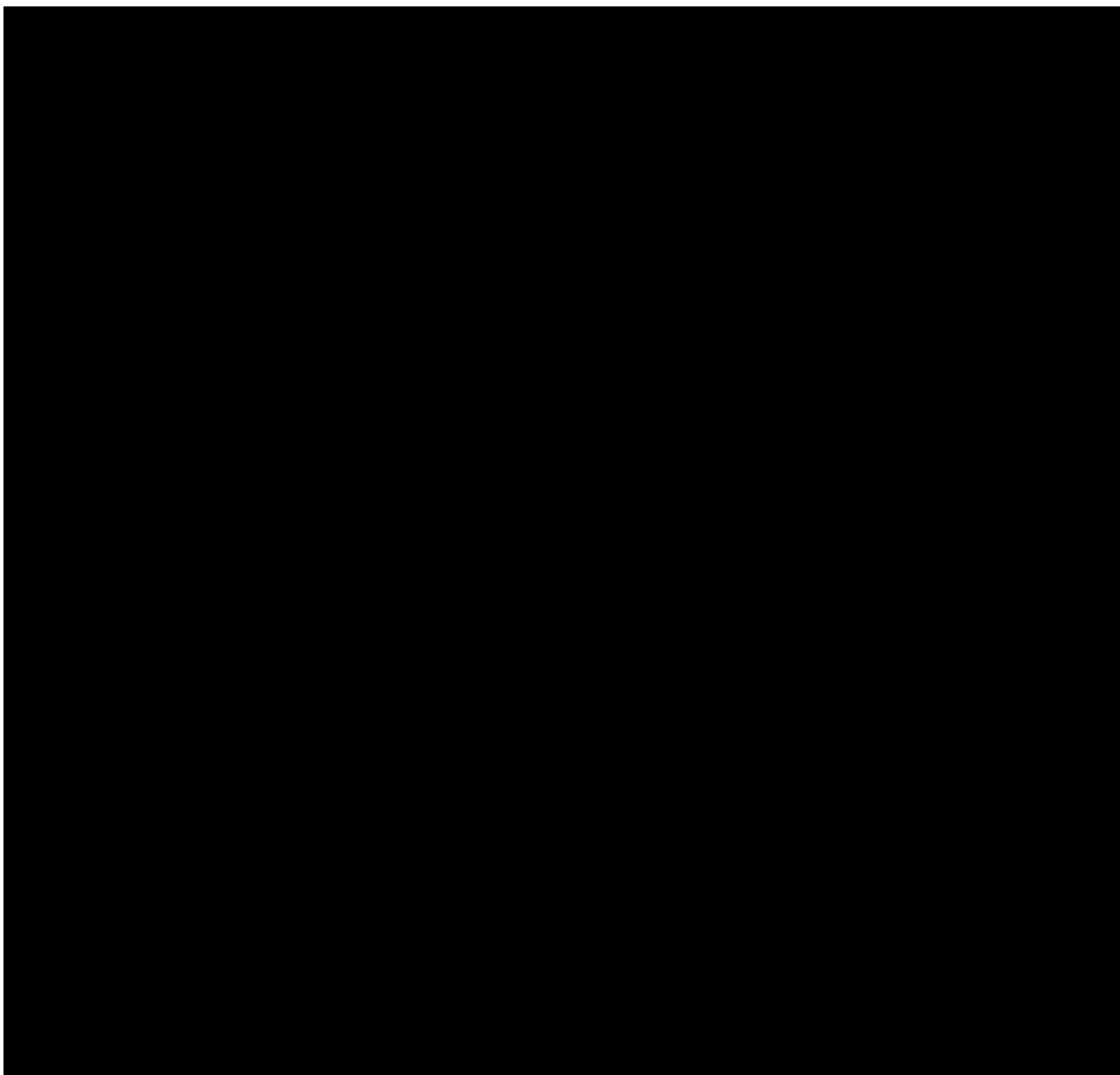




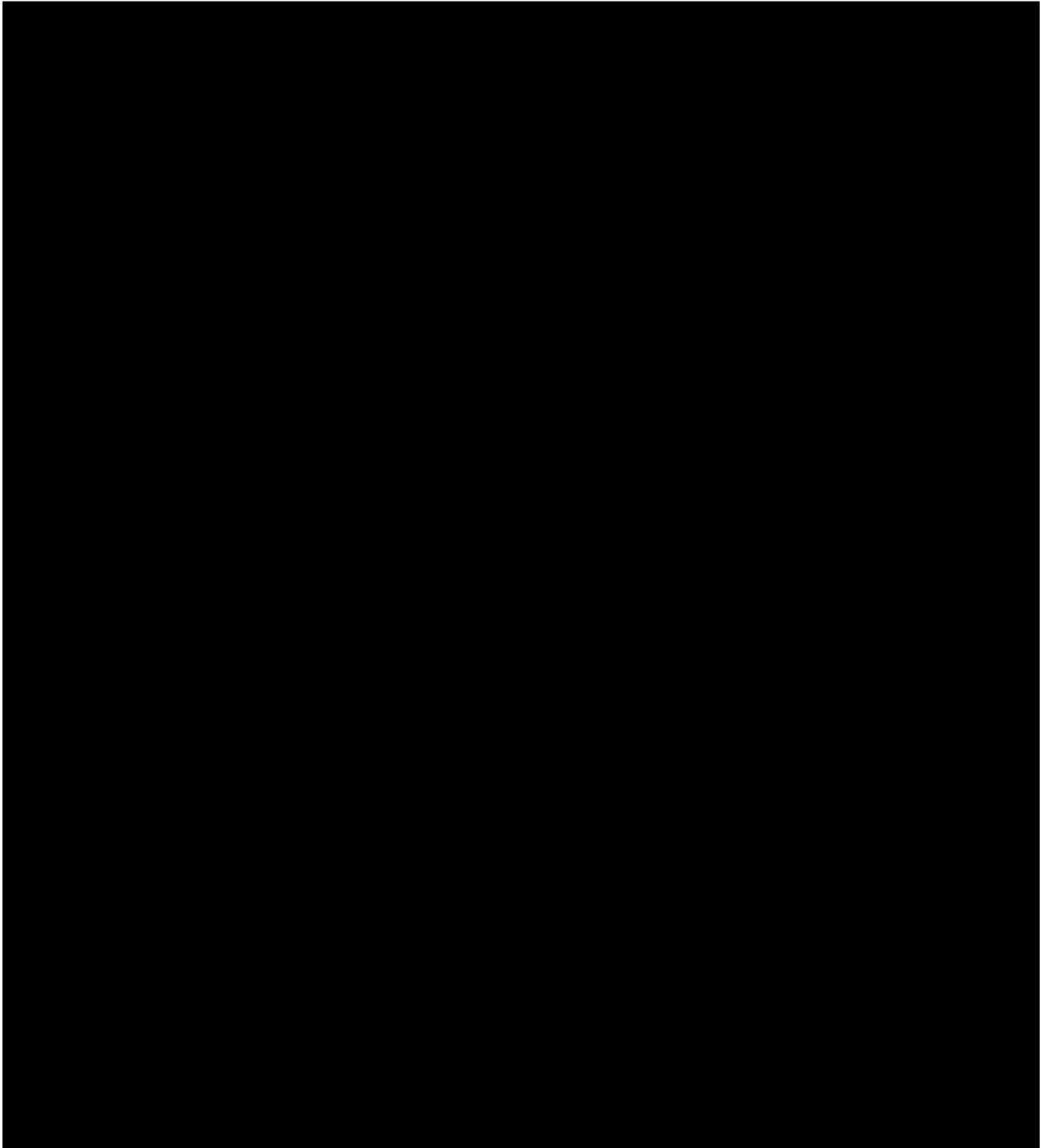




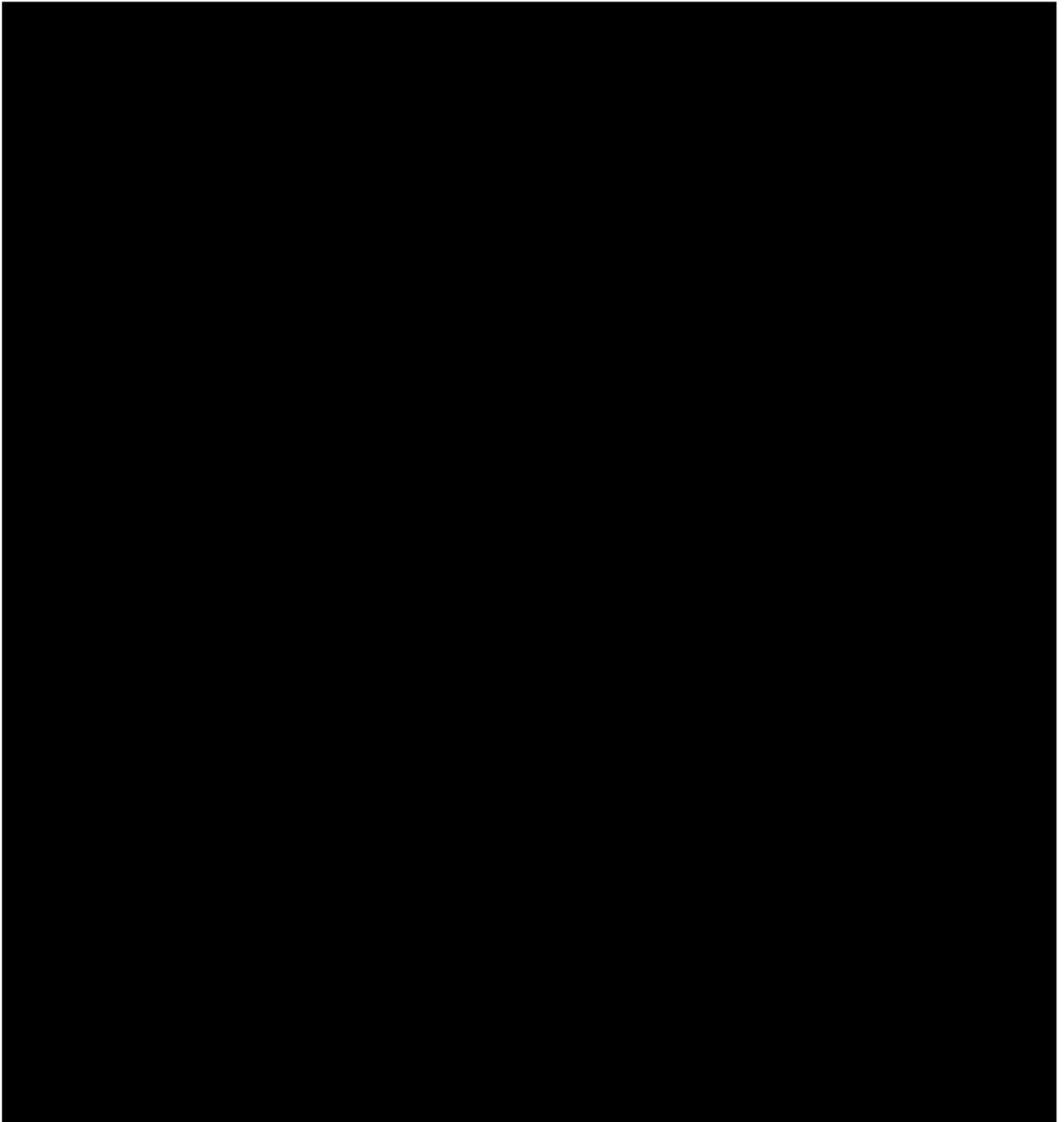




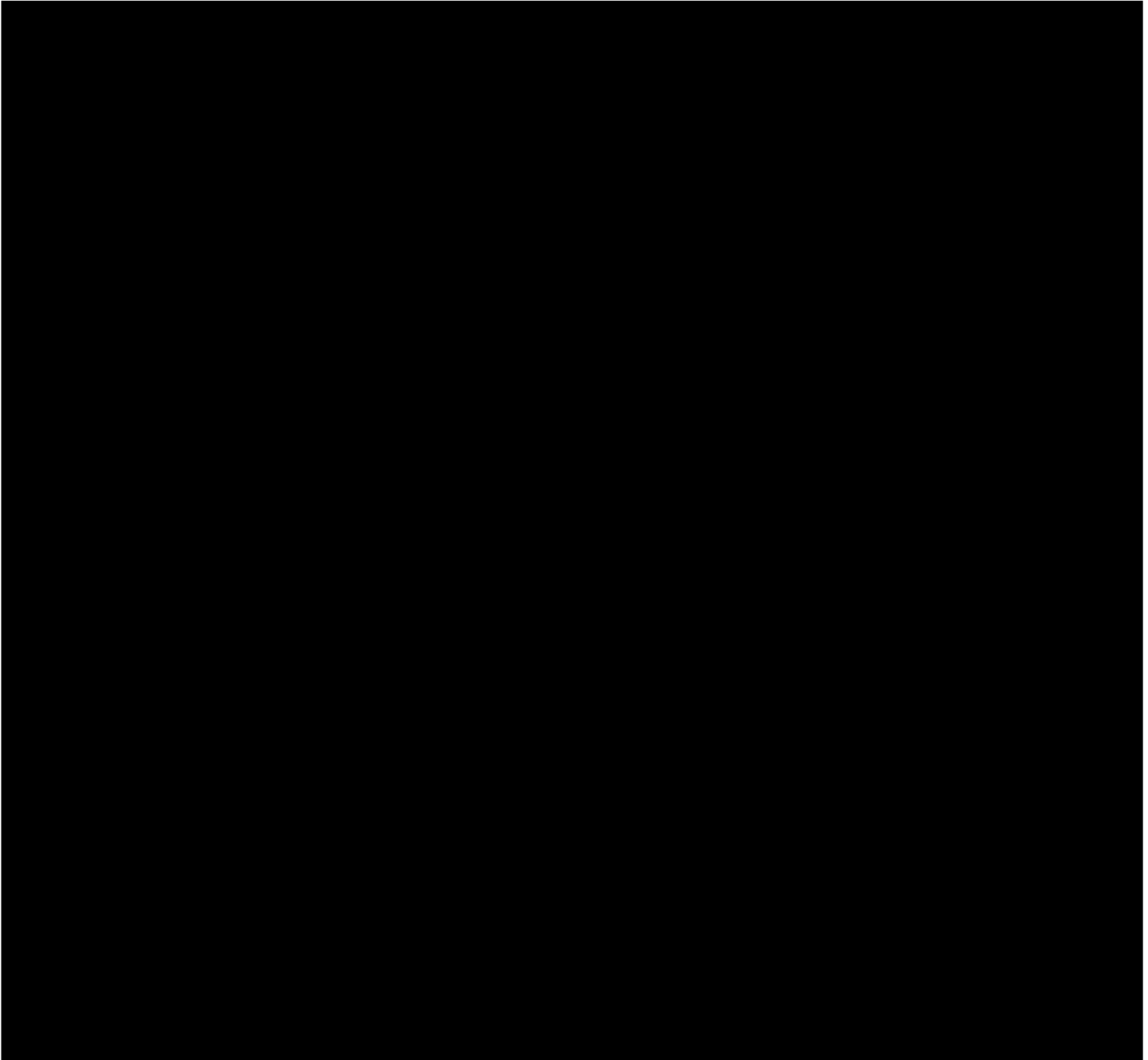
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EXHIBIT 1**



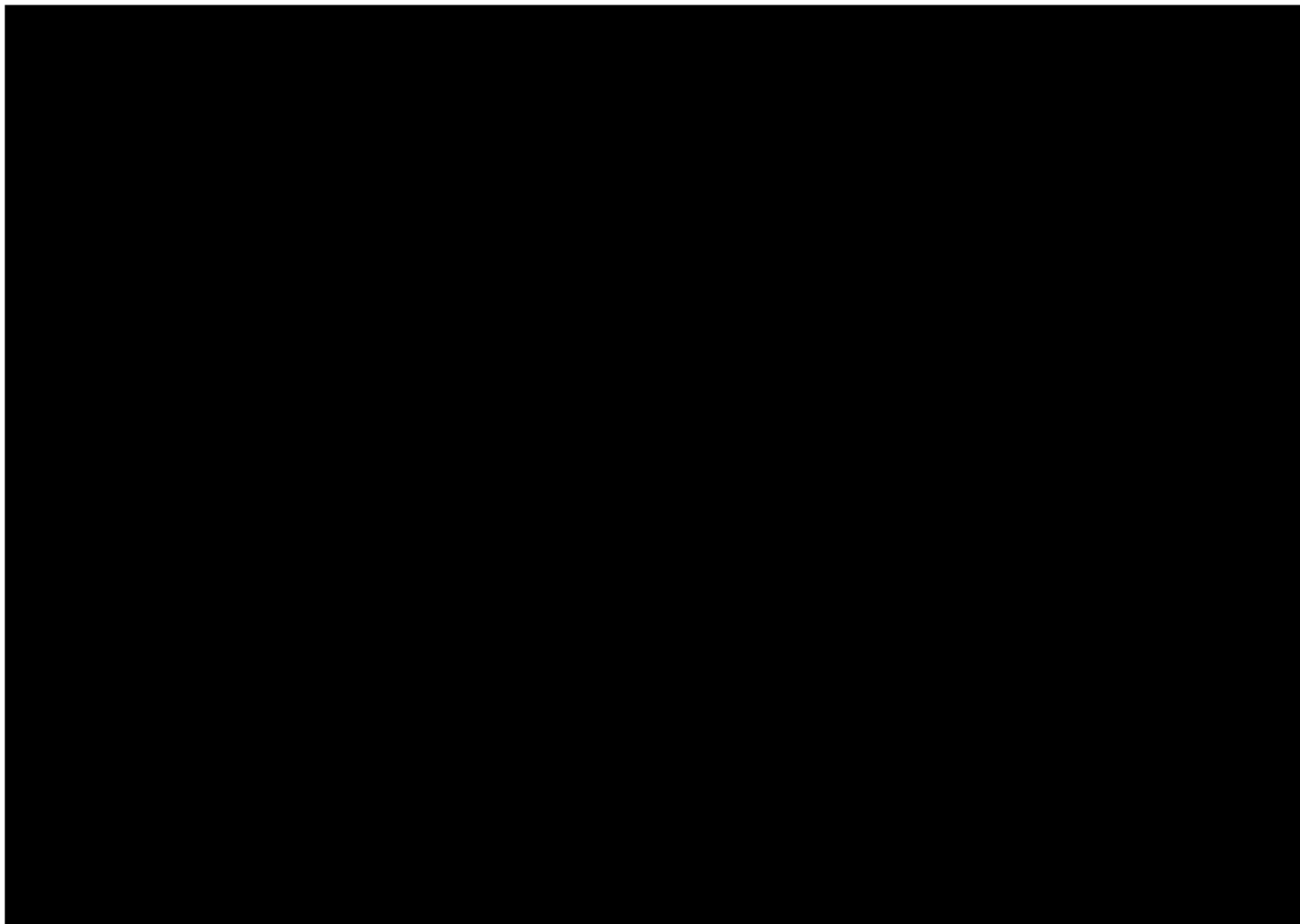
ATTACHMENT 1
EXHIBIT 2
Page 1 of 2



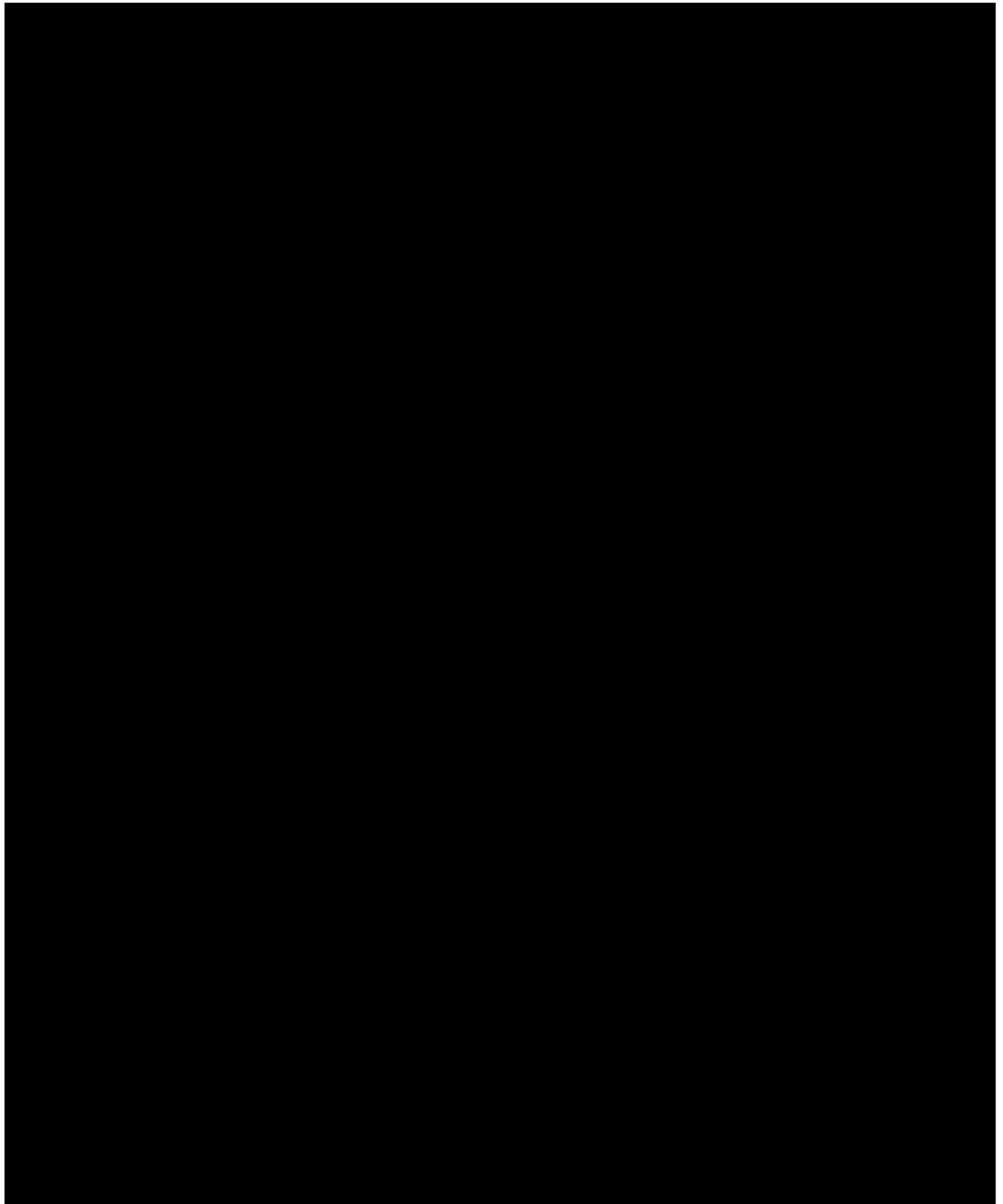
ATTACHMENT 1
EXHIBIT 2
Page 2 of 2



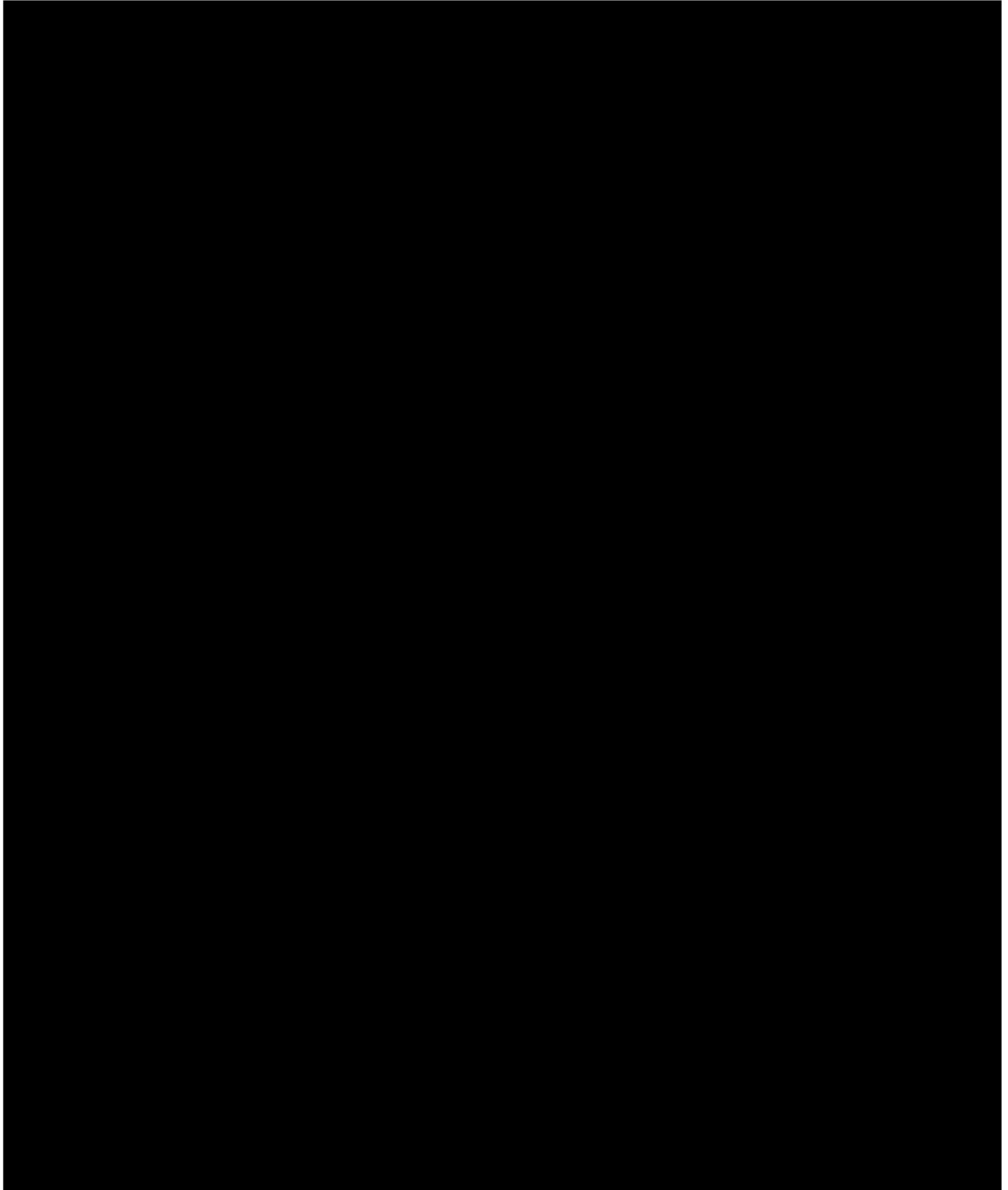
ATTACHMENT 2

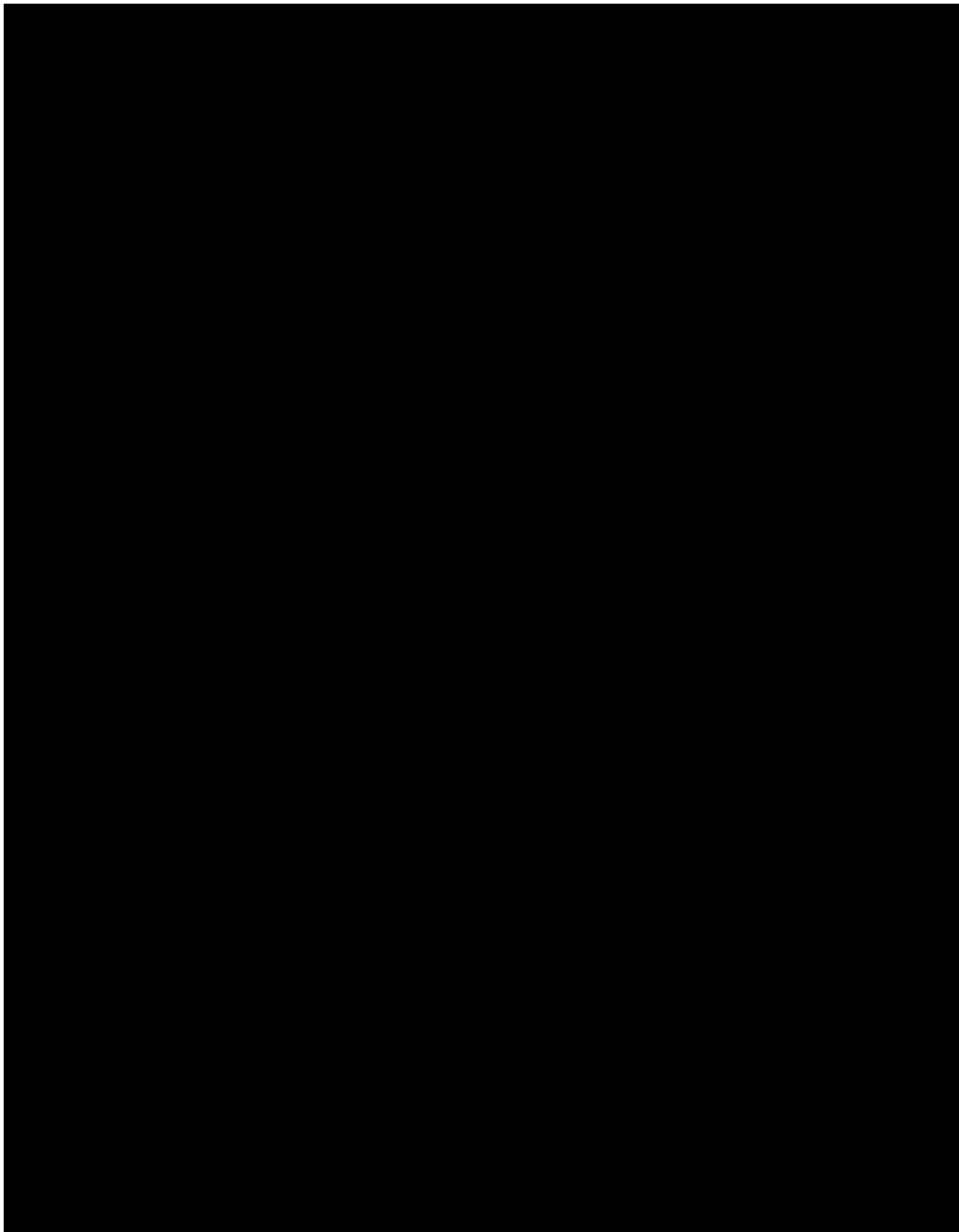


ATTACHMENT 3



**ATTACHMENT 4
EXHIBIT 1**





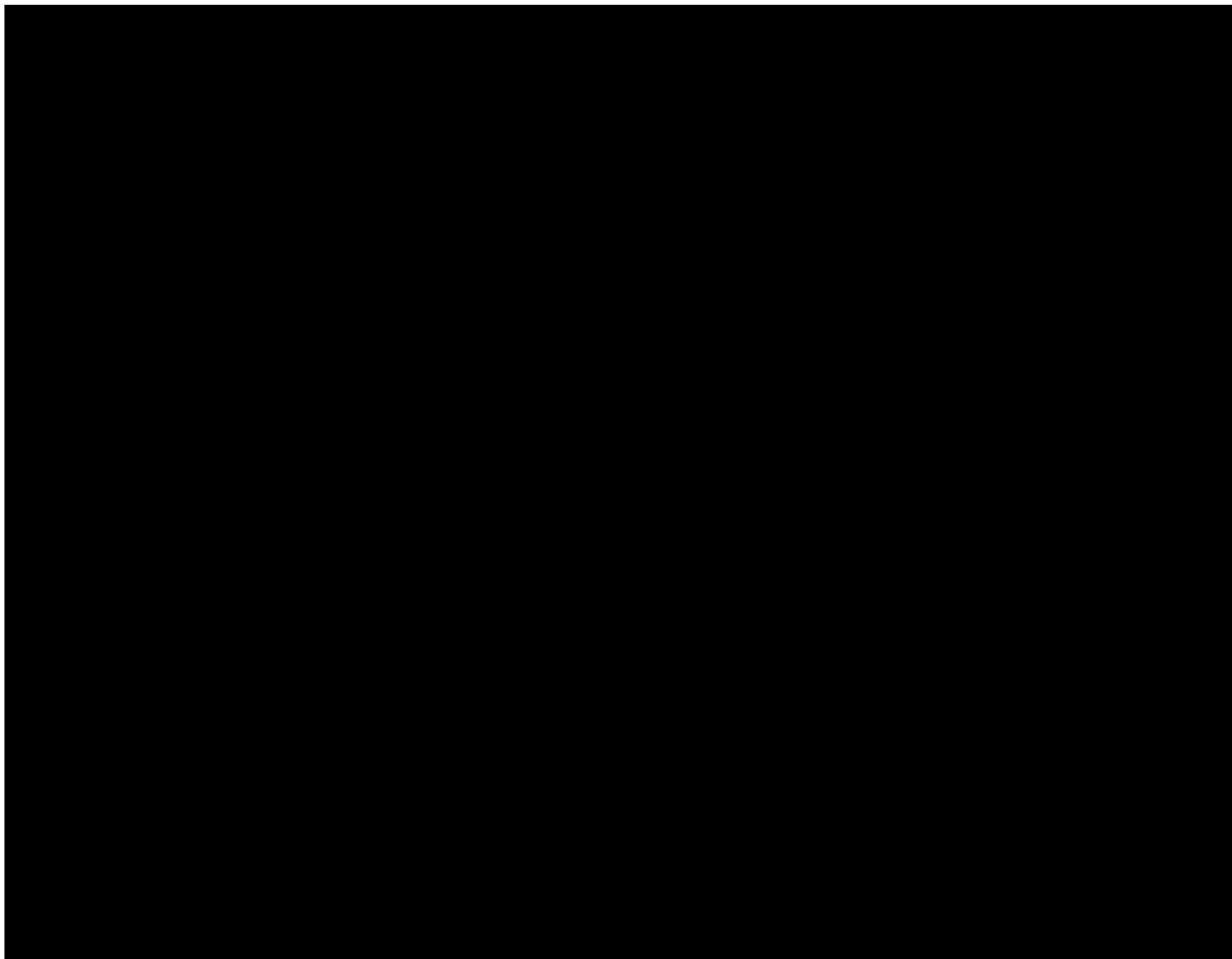


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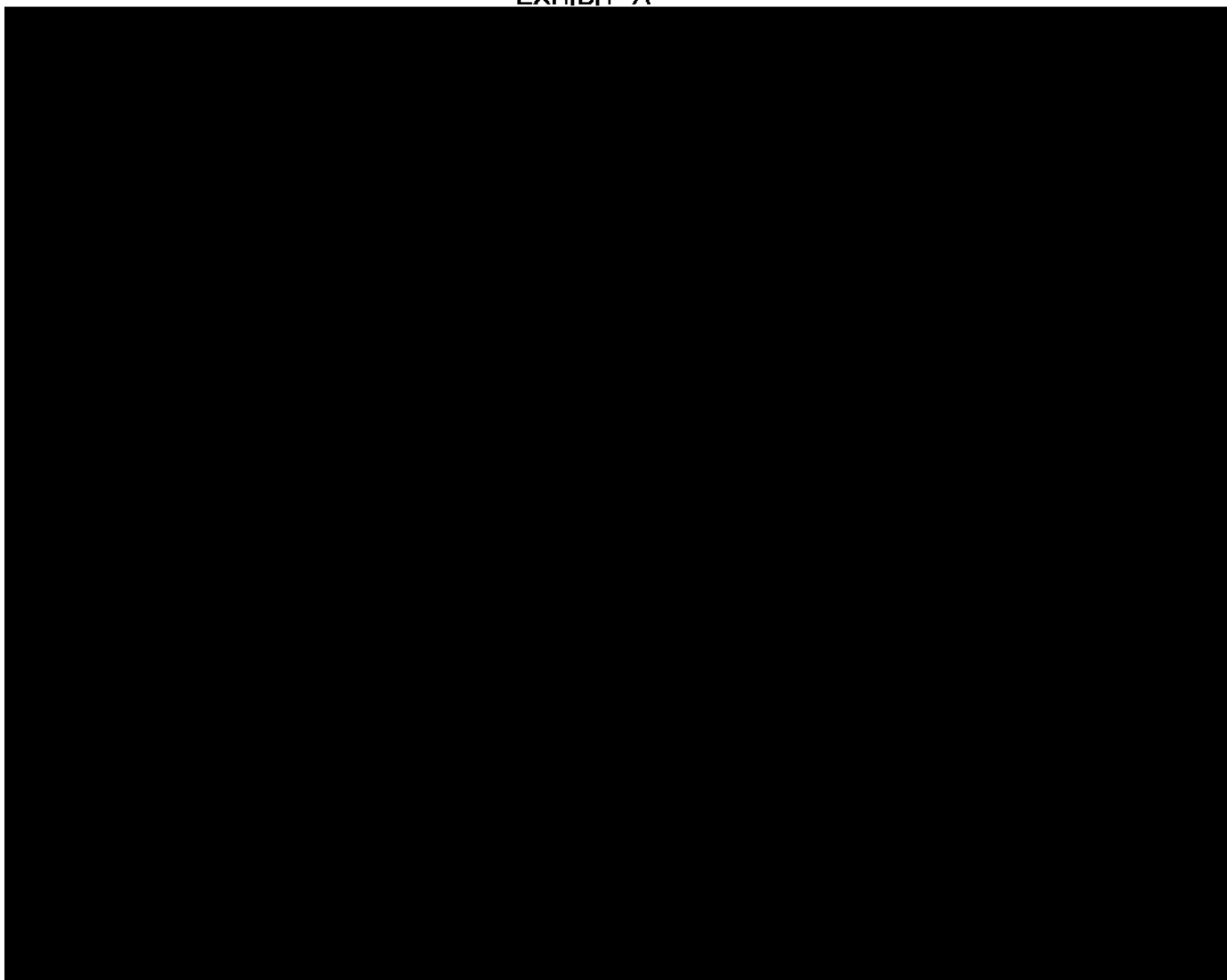
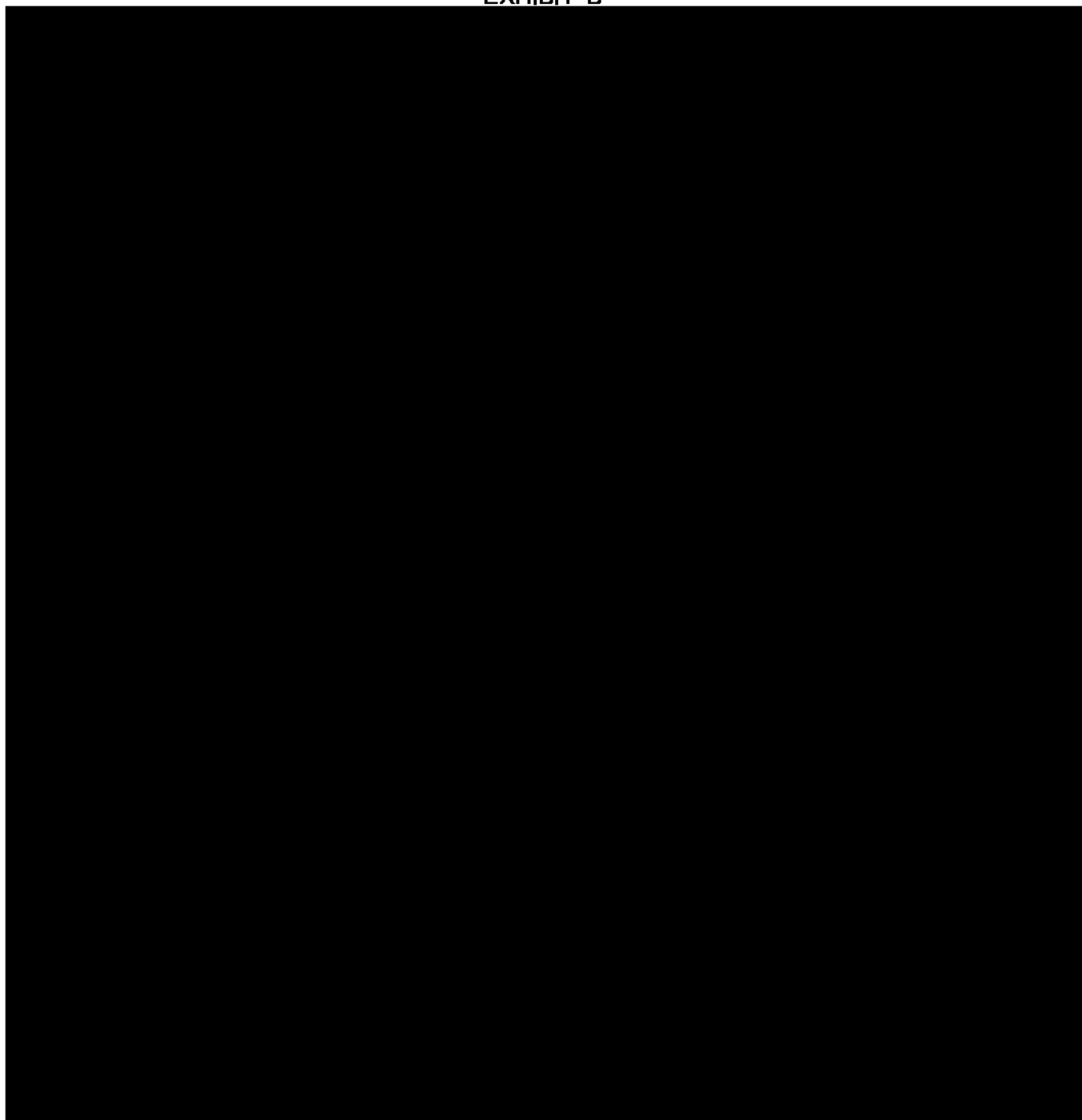
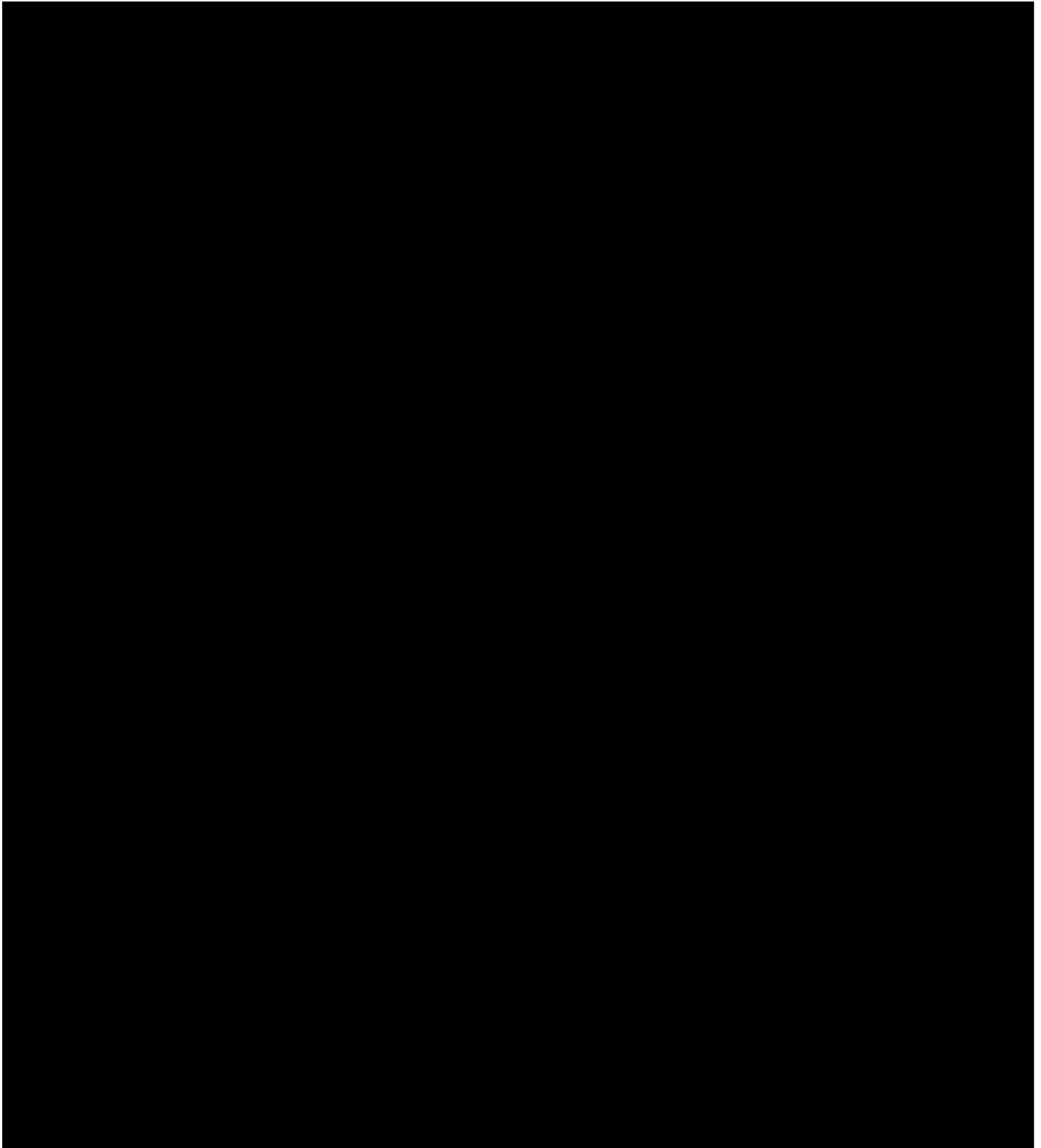
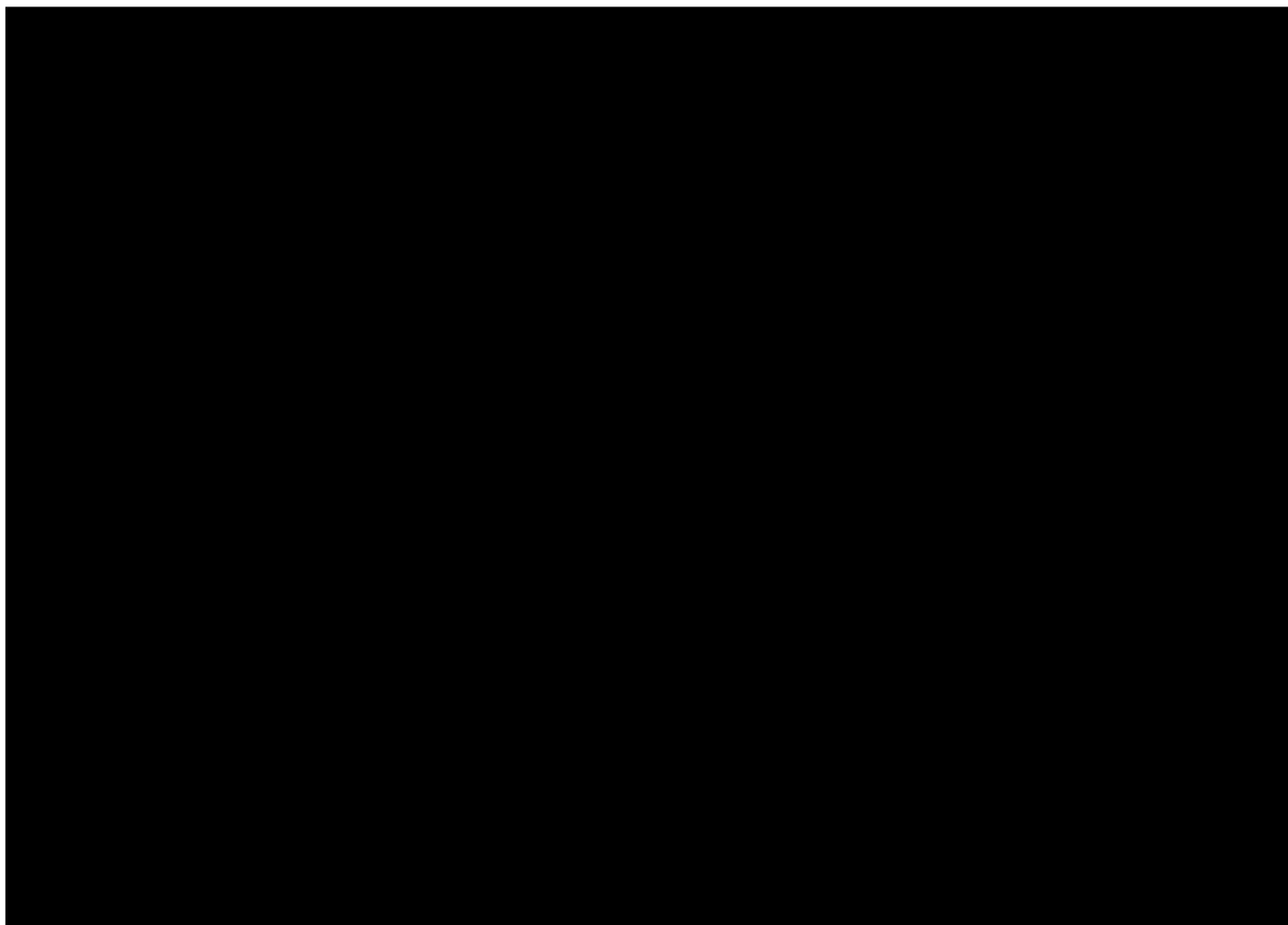


EXHIBIT 'B'

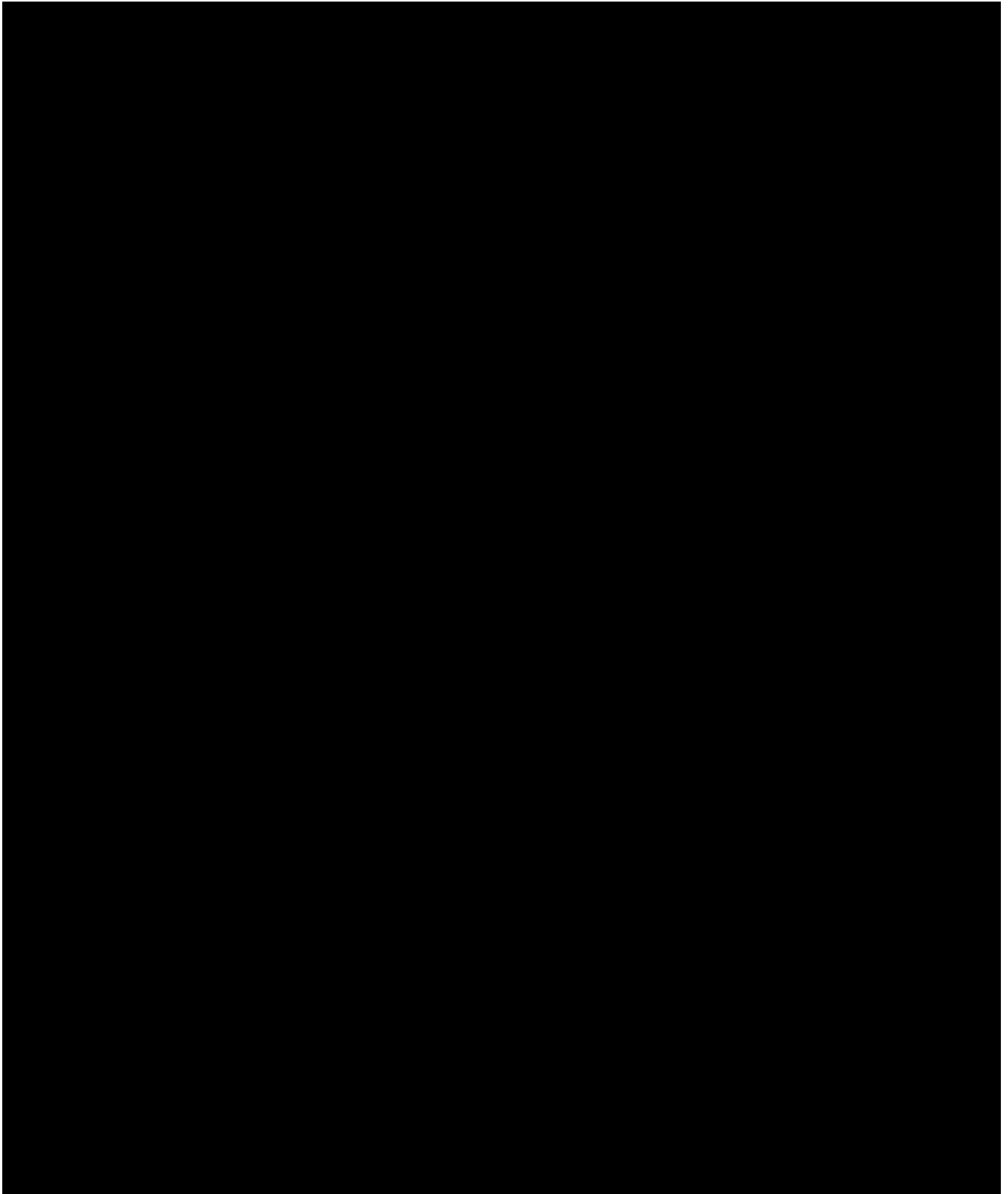


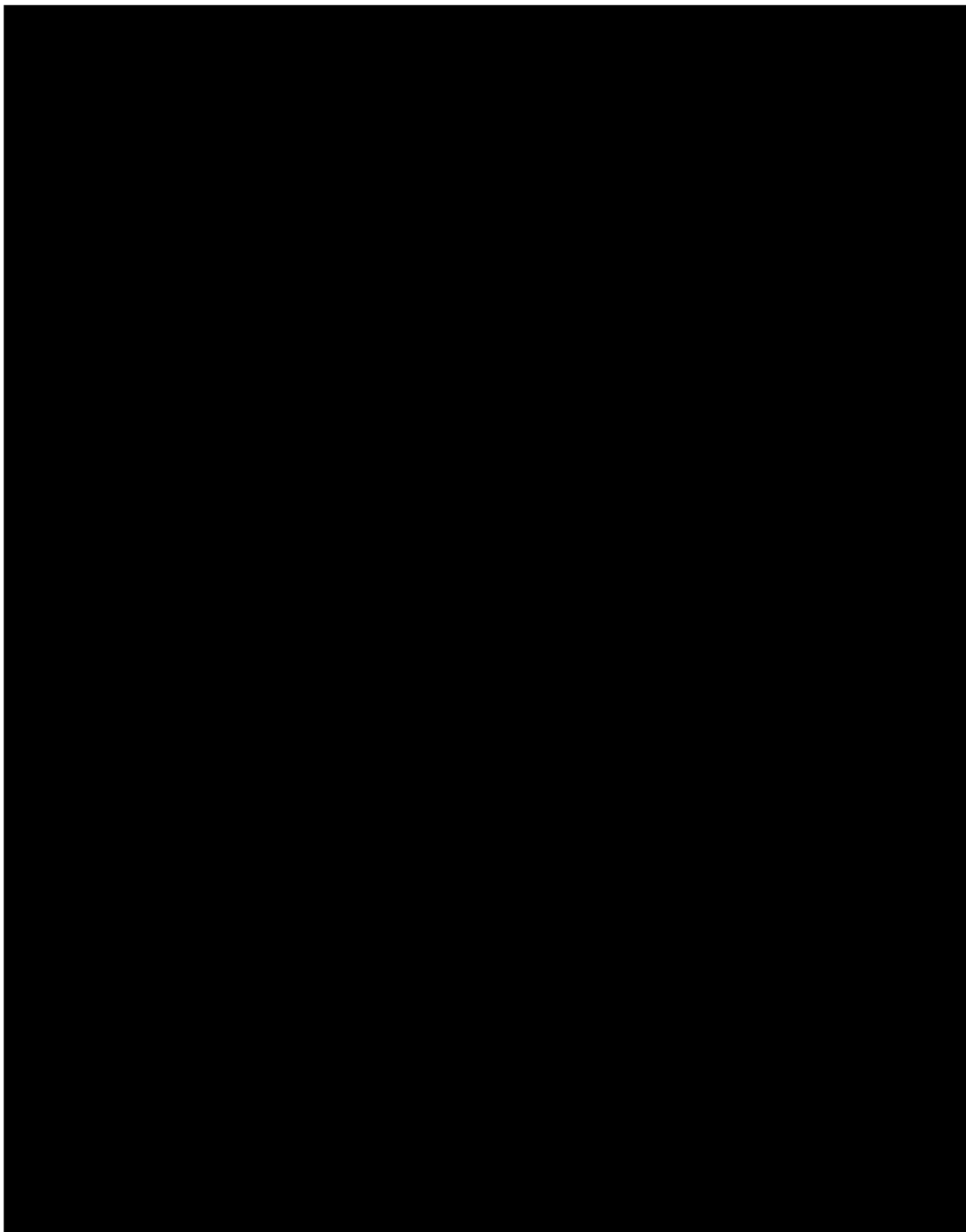
**ATTACHMENT 4
EXHIBIT 1
(Continued)**

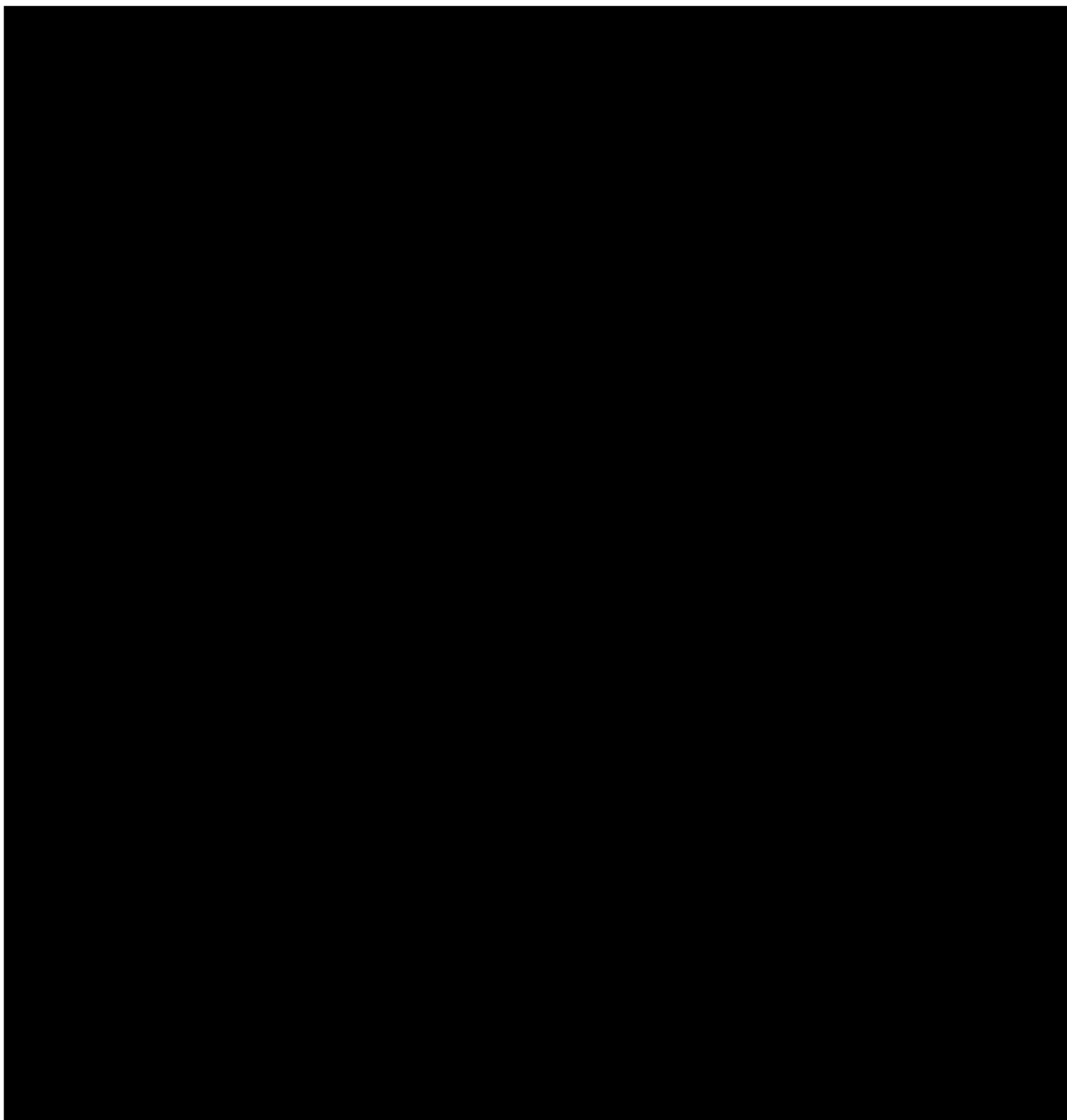




ATTACHMENT 5







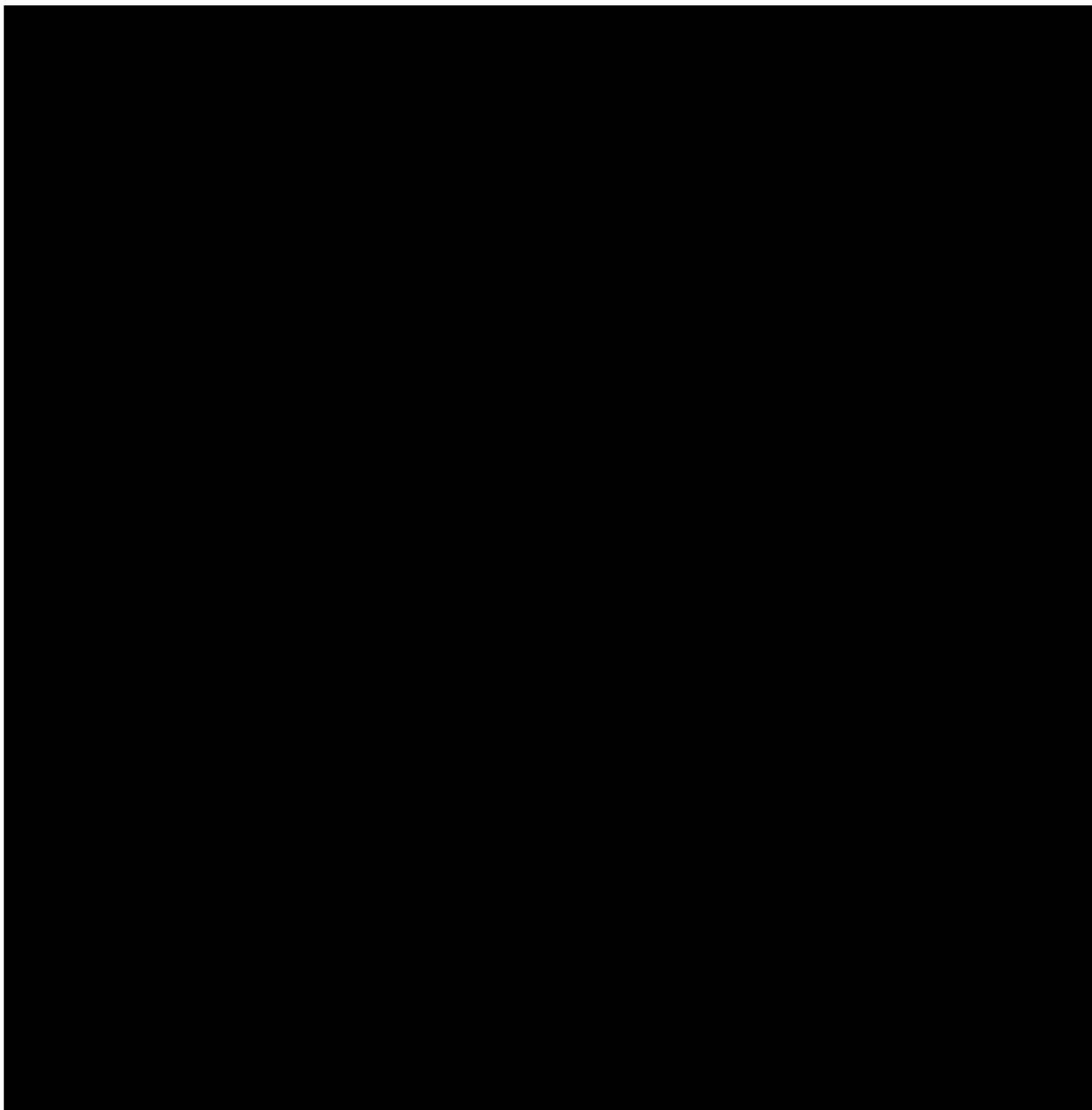
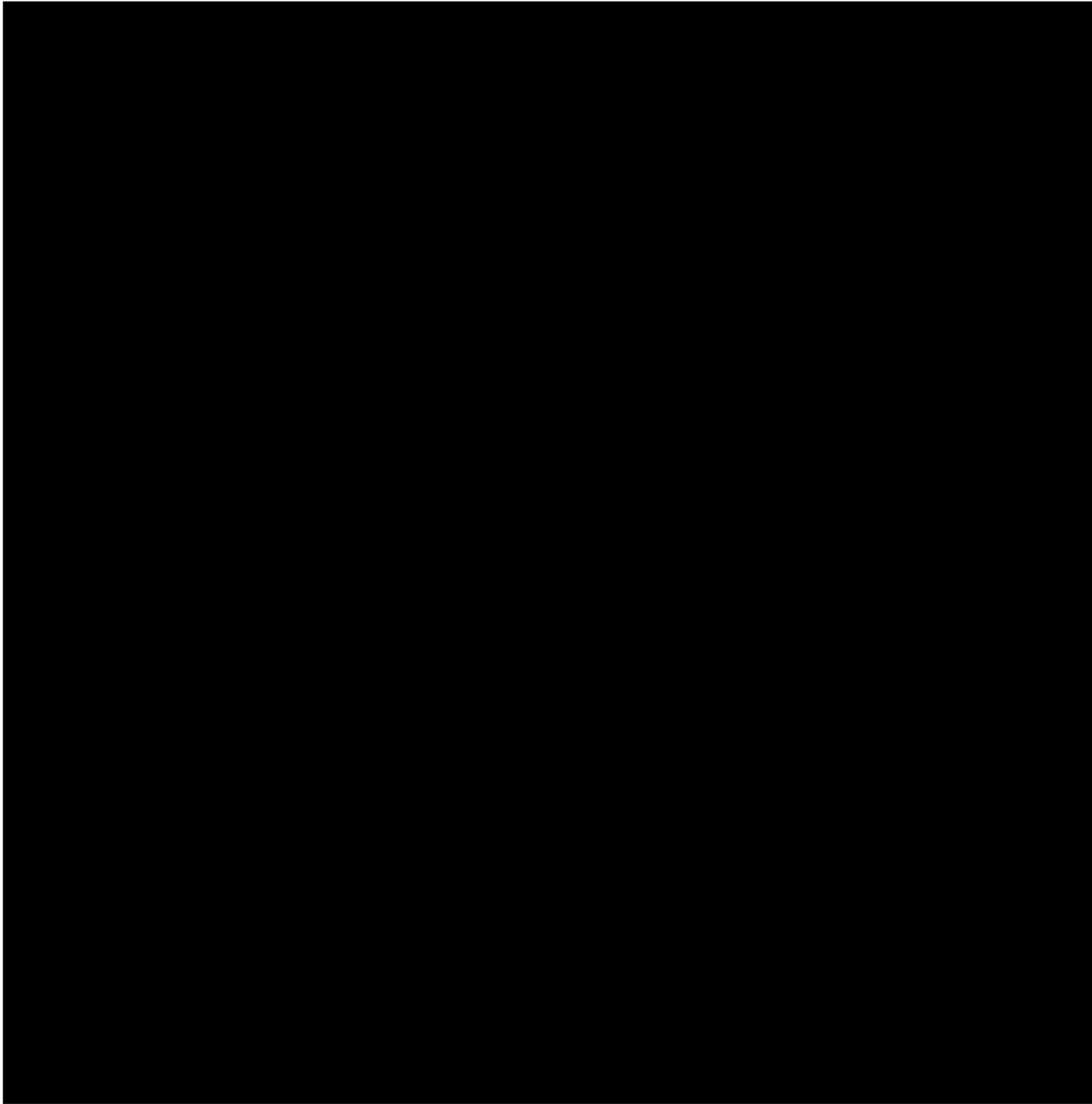
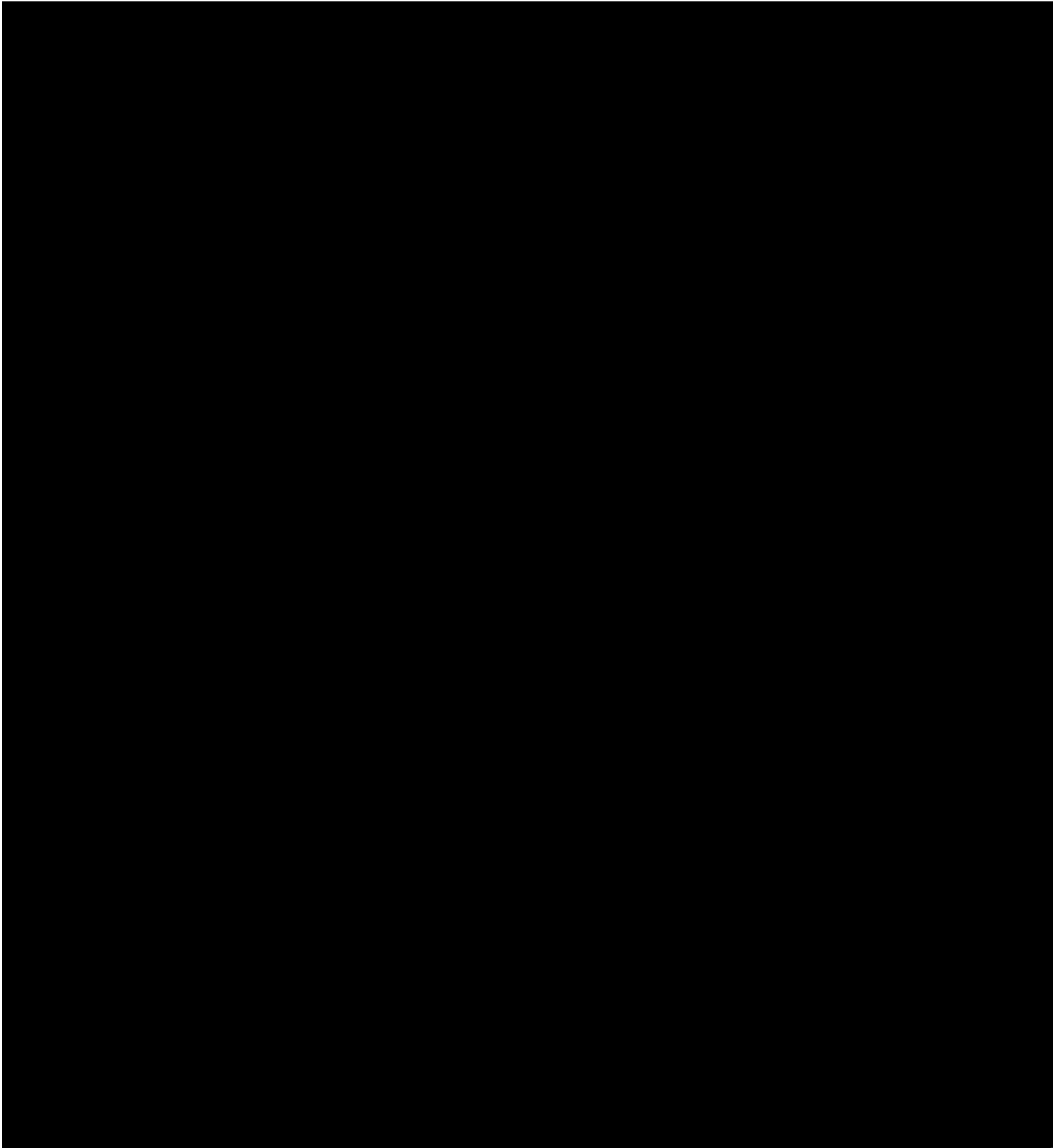


EXHIBIT J





UPS CampusShip: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialogue box that appears. Note: If your browser does not support this function, select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**

Customers without a Daily Pickup

Ground, 3 Day Select, and Standard to Canada shipments must be dropped off at an authorized UPS location, or handed to a UPS driver. Pickup service is not available for these services. To find the nearest UPS location, select the Drop-off icon from the UPS tool bar.

To schedule a pickup, or to find a UPS location, click on Shipping from the main toolbar and select the Schedule a Pickup or Find Drop-off Locations.

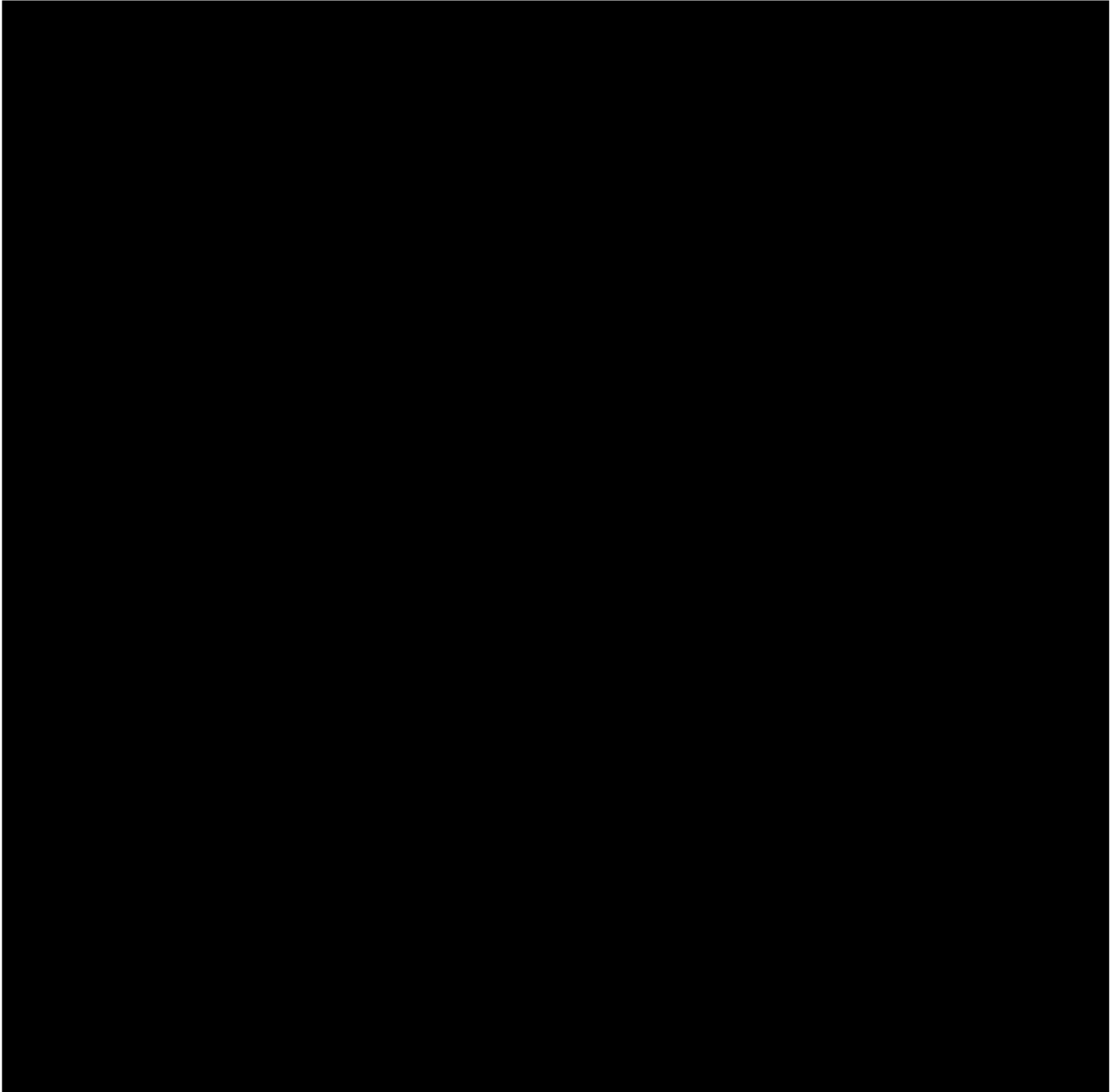
Customers with a Daily Pickup:

Your driver will pickup your shipment(s) as usual.

EXHIBIT K

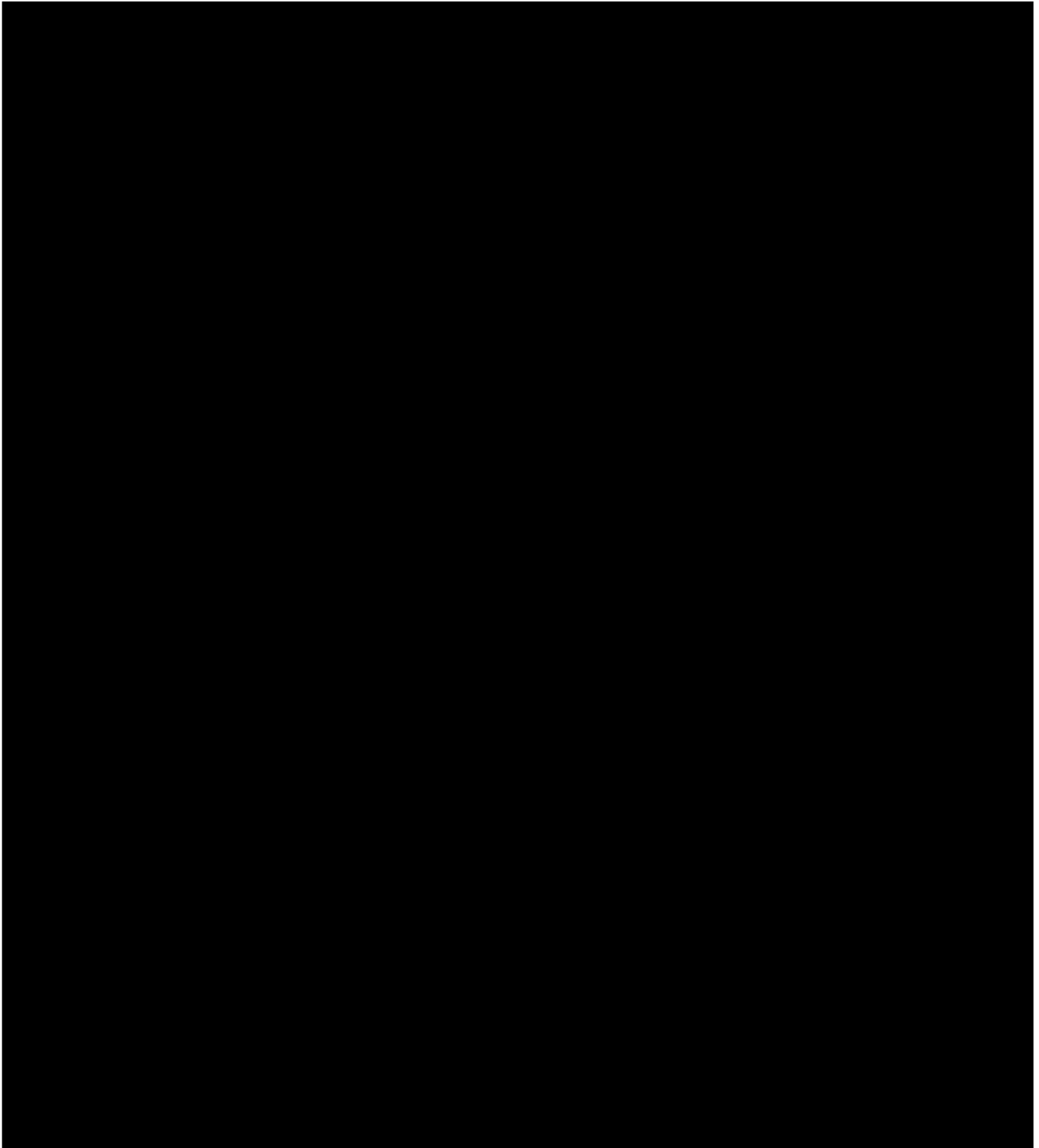


BNP PARIBAS
CORPORATE & INSTITUTIONAL BANKING



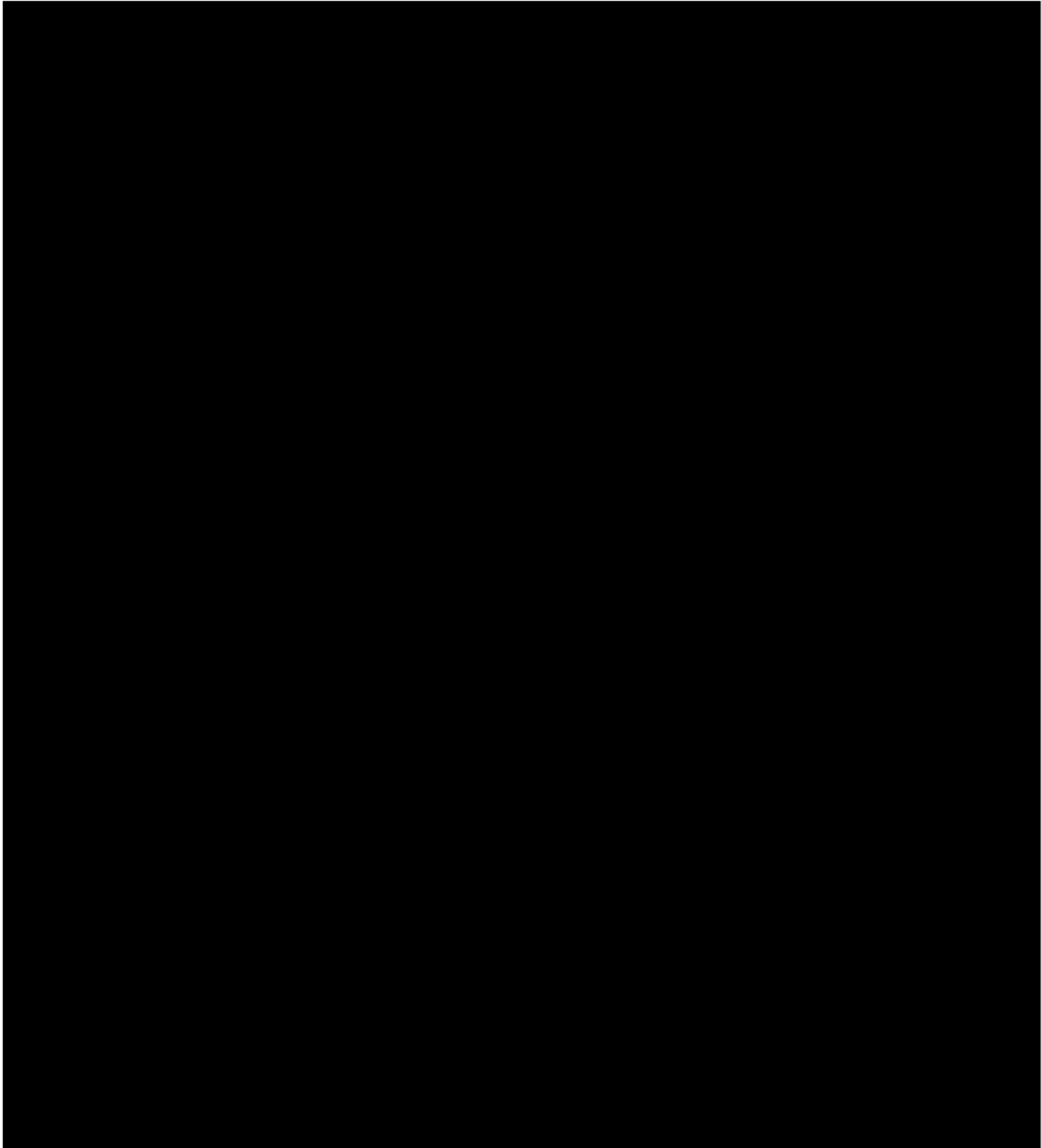


BNP PARIBAS
CORPORATE & INSTITUTIONAL BANKING



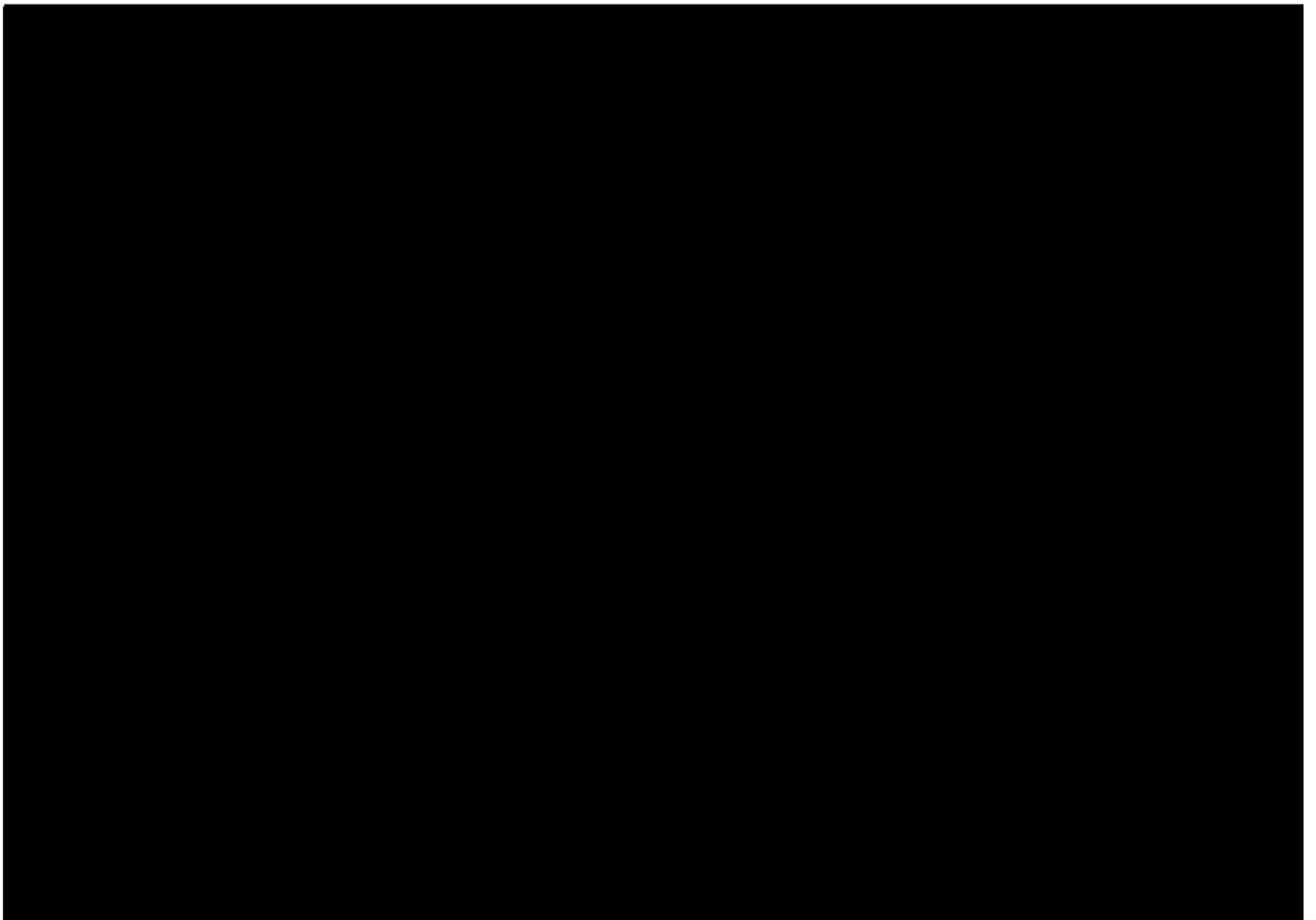


BNP PARIBAS
CORPORATE & INSTITUTIONAL BANKING



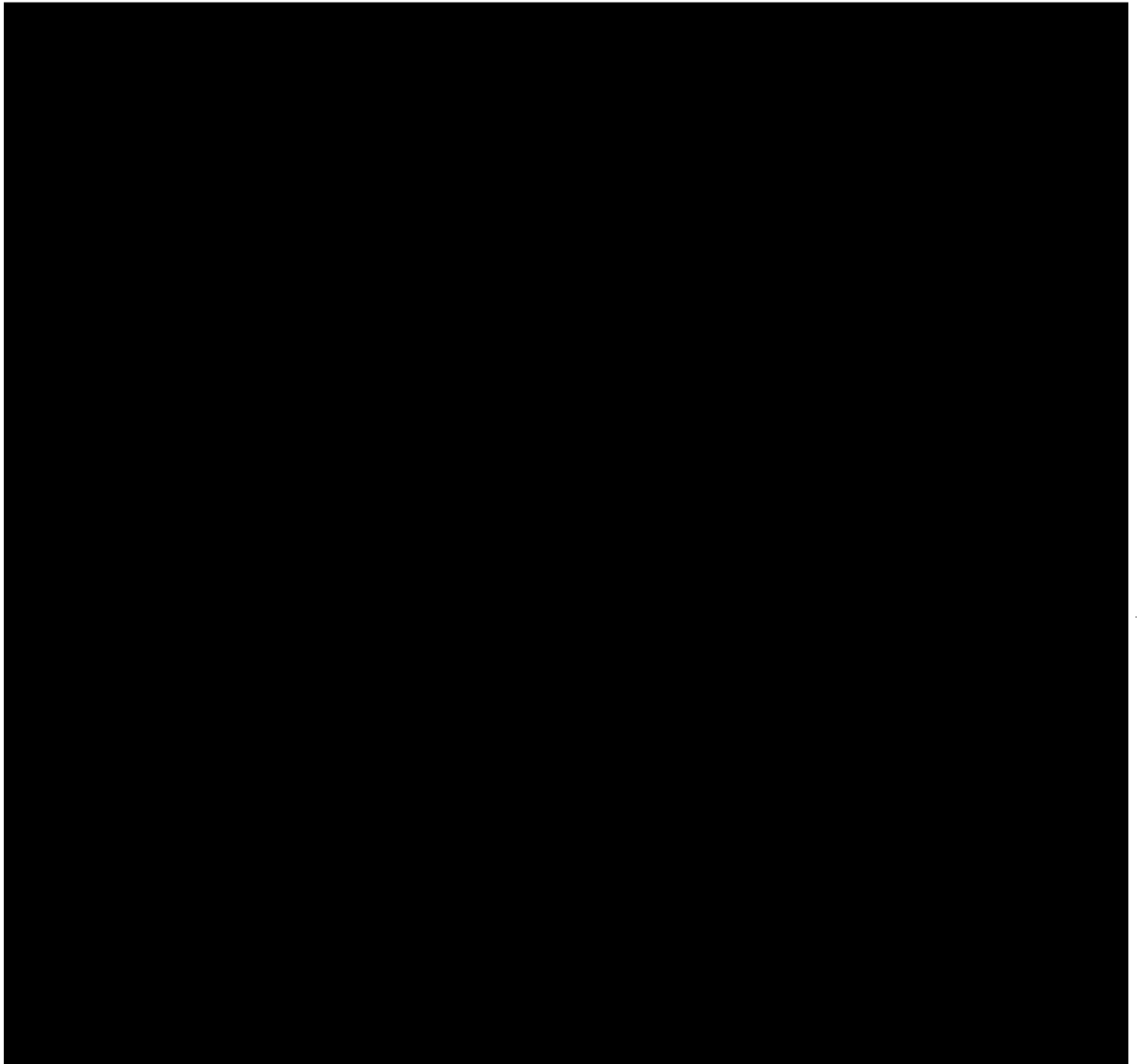


BNP PARIBAS
CORPORATE & INSTITUTIONAL BANKING



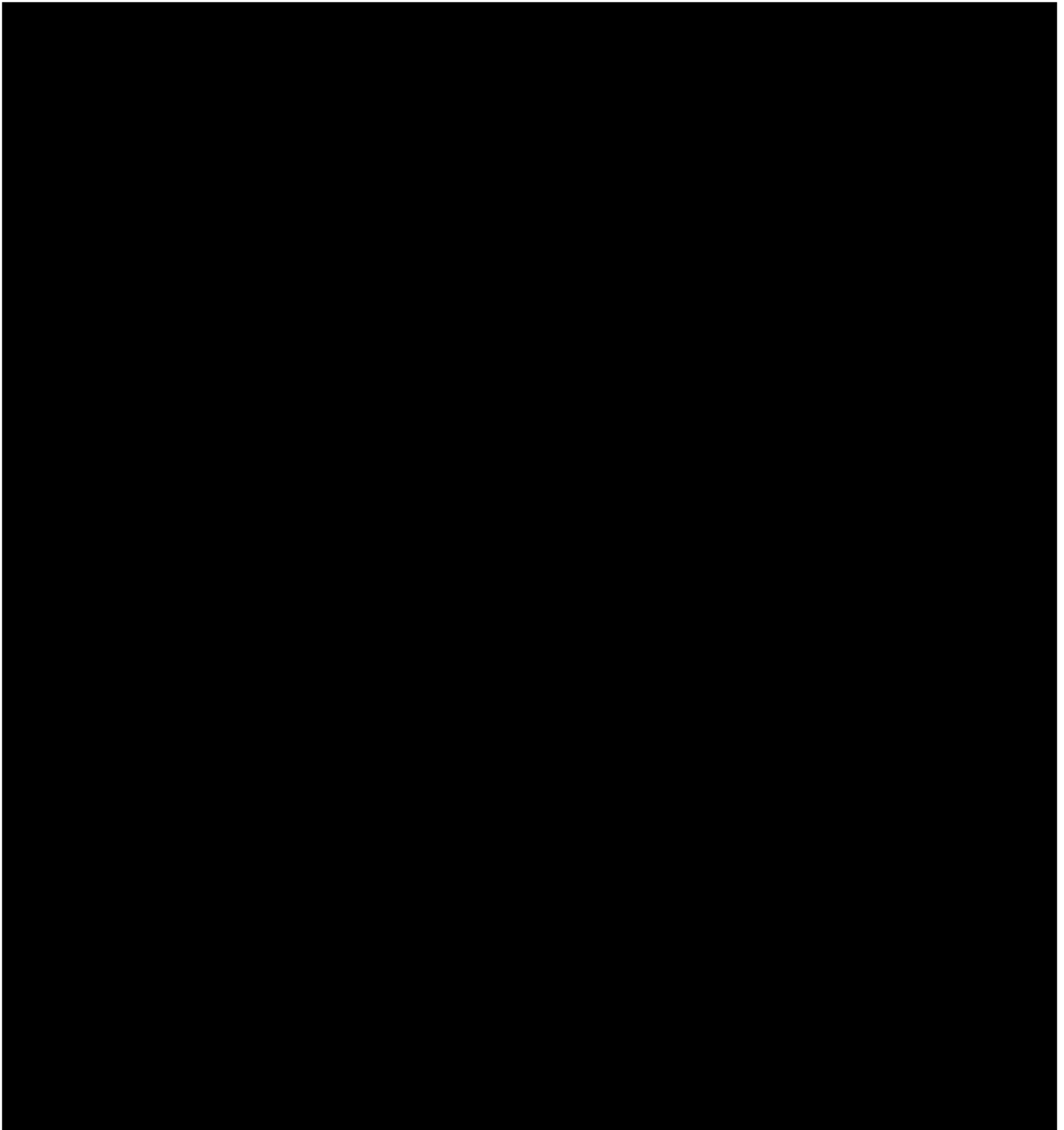


BNP PARIBAS
CORPORATE & INSTITUTIONAL BANKING



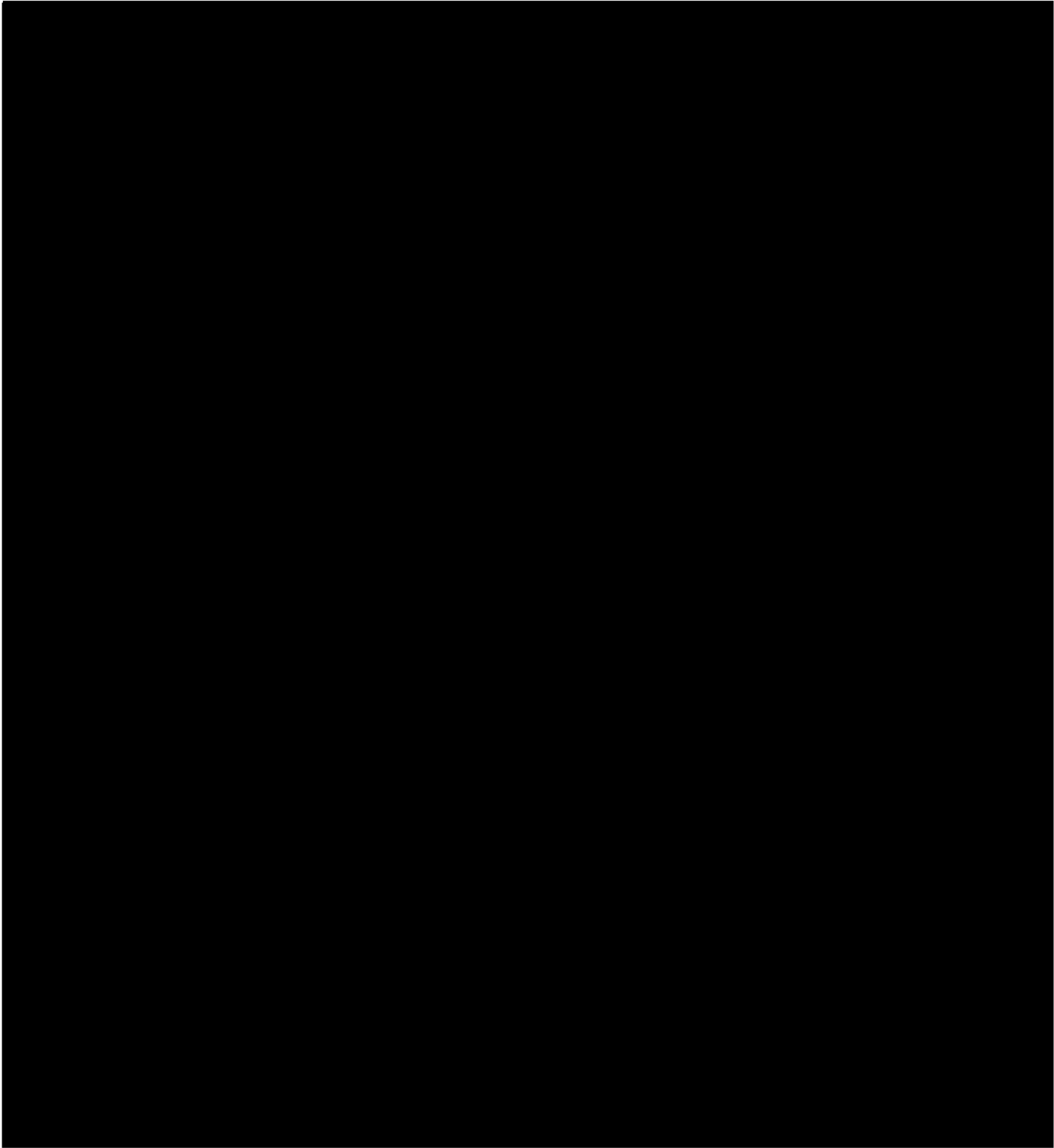


BNP PARIBAS
CORPORATE & INSTITUTIONAL BANKING



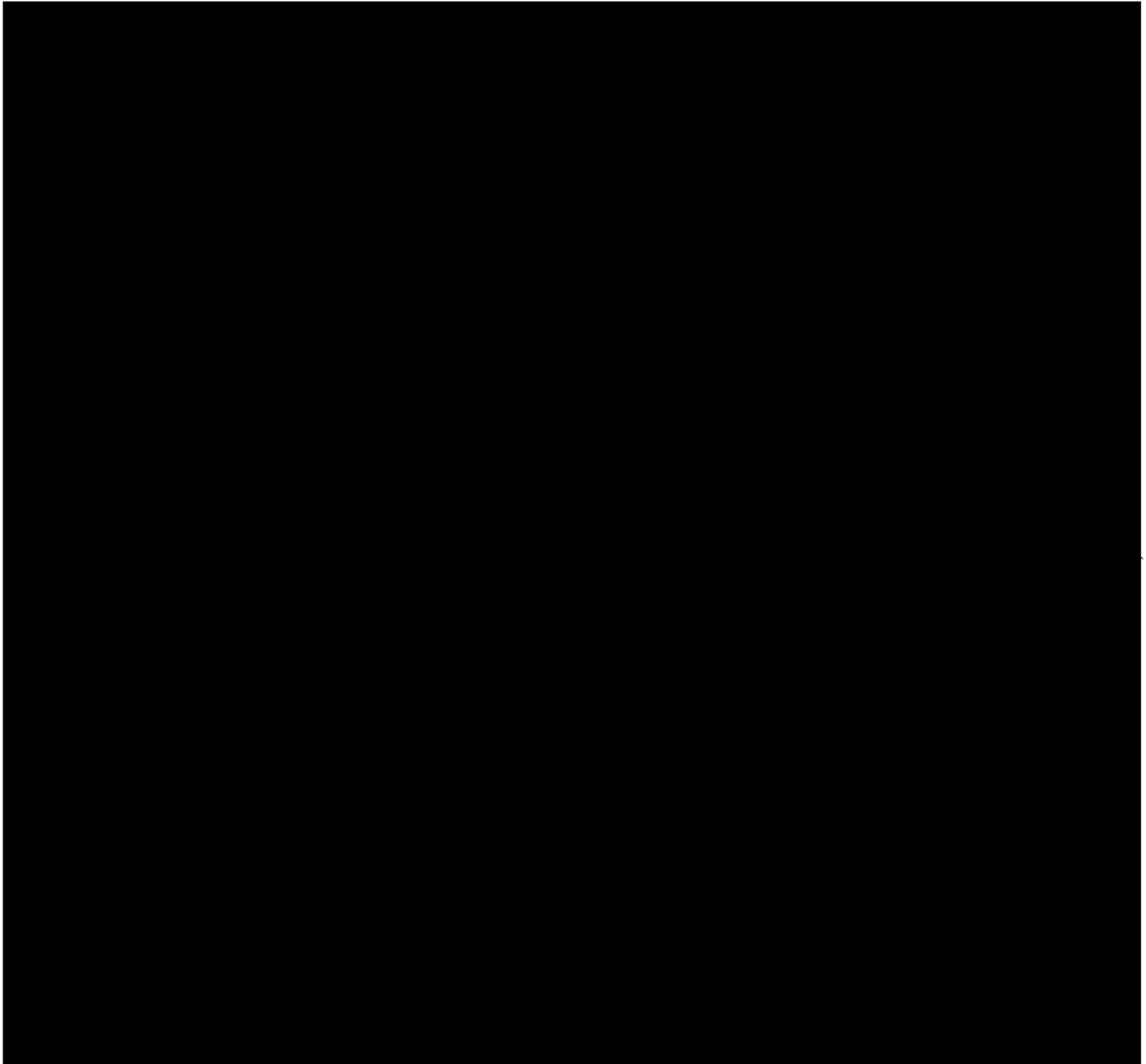


BNP PARIBAS
CORPORATE & INSTITUTIONAL BANKING





BNP PARIBAS
CORPORATE & INSTITUTIONAL BANKING



UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialogue box that appears. Note: If your browser does not support this function, select Print from the File menu to print the label.
2. Fold the printed label at the solid line below. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
Customers without a Daily Pickup
Ground, 3 Day Select, and Standard to Canada shipments must be dropped off at an authorized UPS location, or handed to a UPS driver. Pickup service is not available for these services. To find the nearest UPS location, select the Drop-off icon from the UPS tool bar.
To schedule a pickup, or to find a UPS location, click on Shipping from the main toolbar and select the Schedule a Pickup or Find Drop-off Locations.

Customers with a Daily Pickup:

Your driver will pickup your shipment(s) as usual.

FOLD HERE

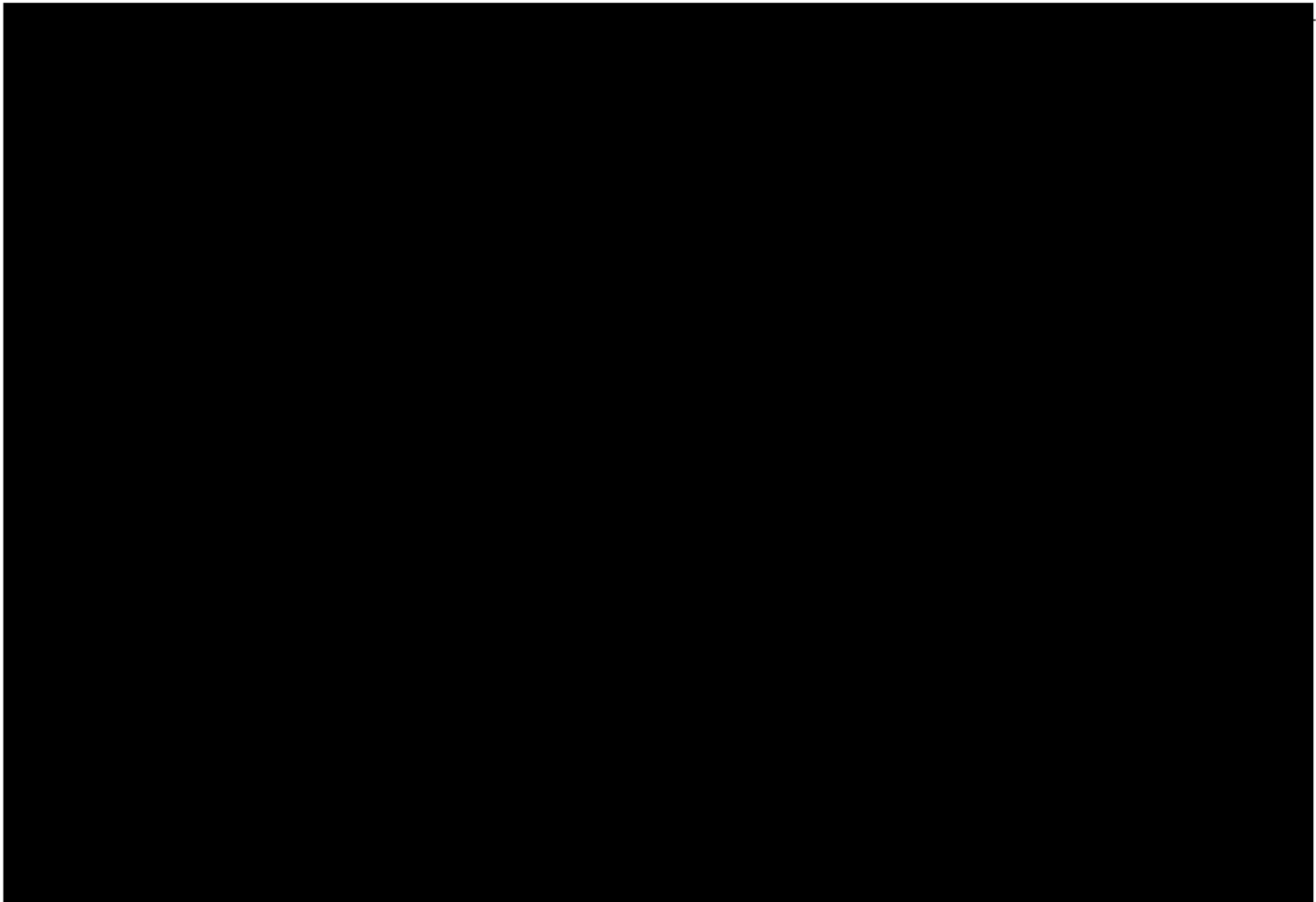
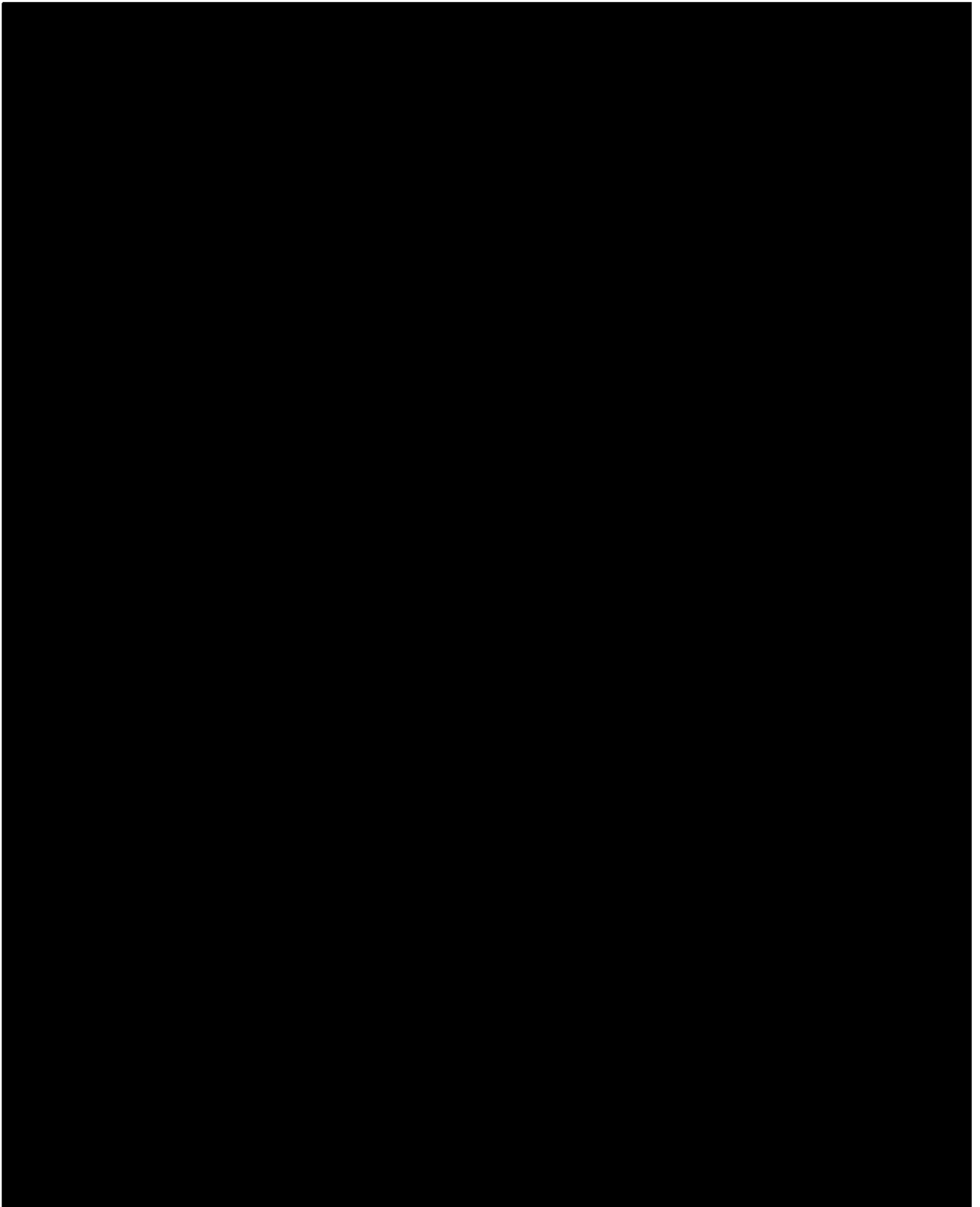
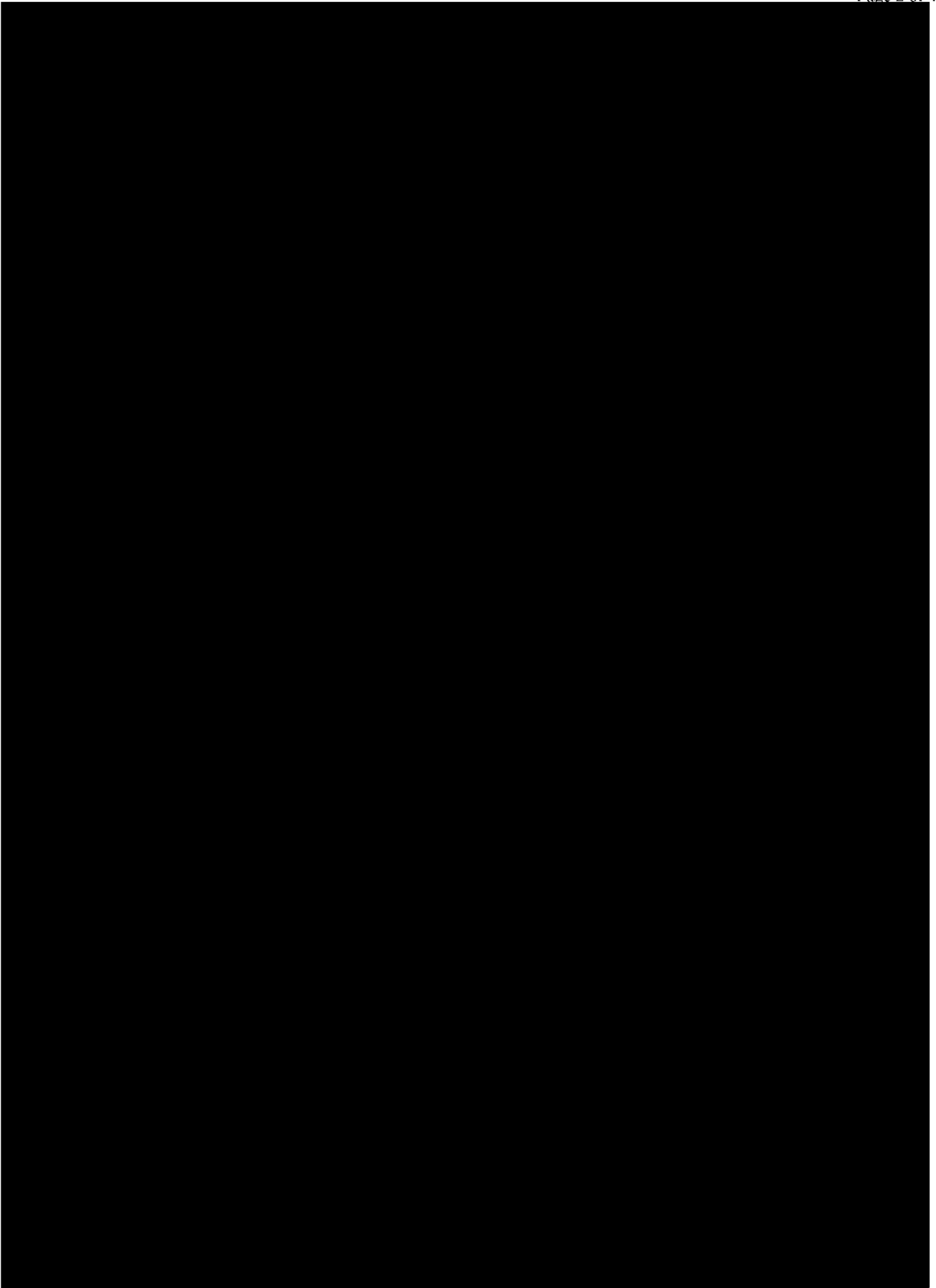
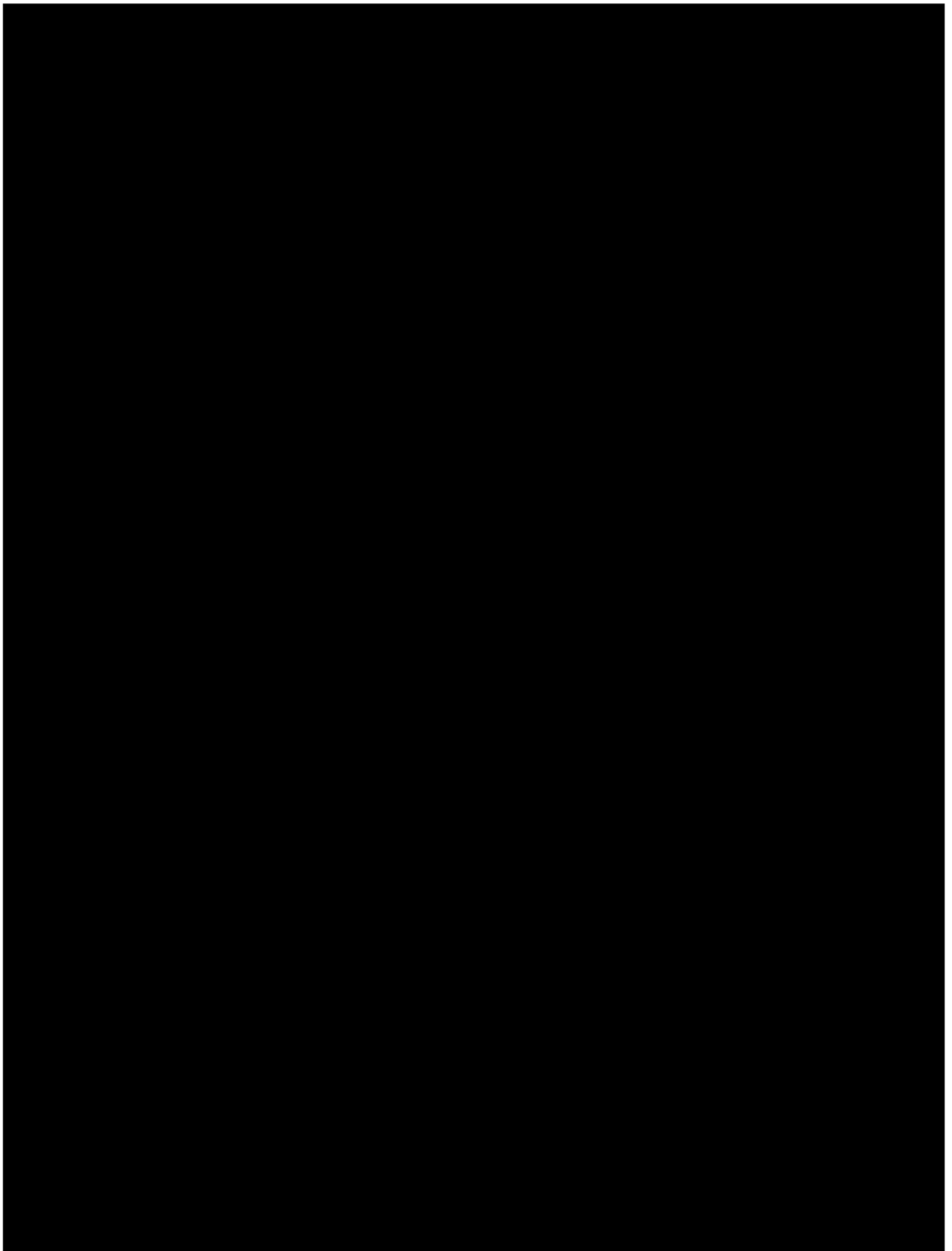


EXHIBIT L

ASSIGNMENT OF DISCRETIONARY SERVICE AGREEMENT







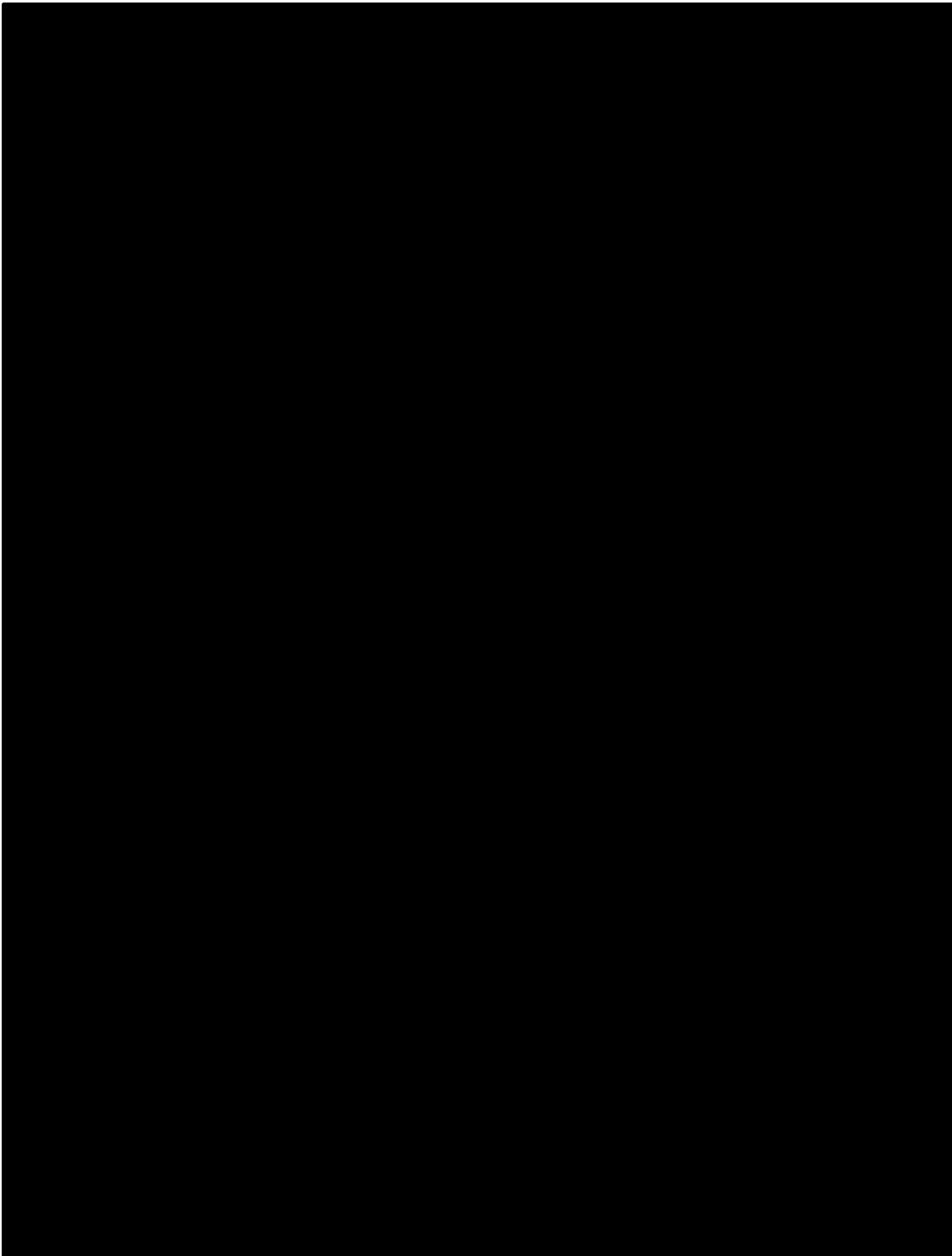
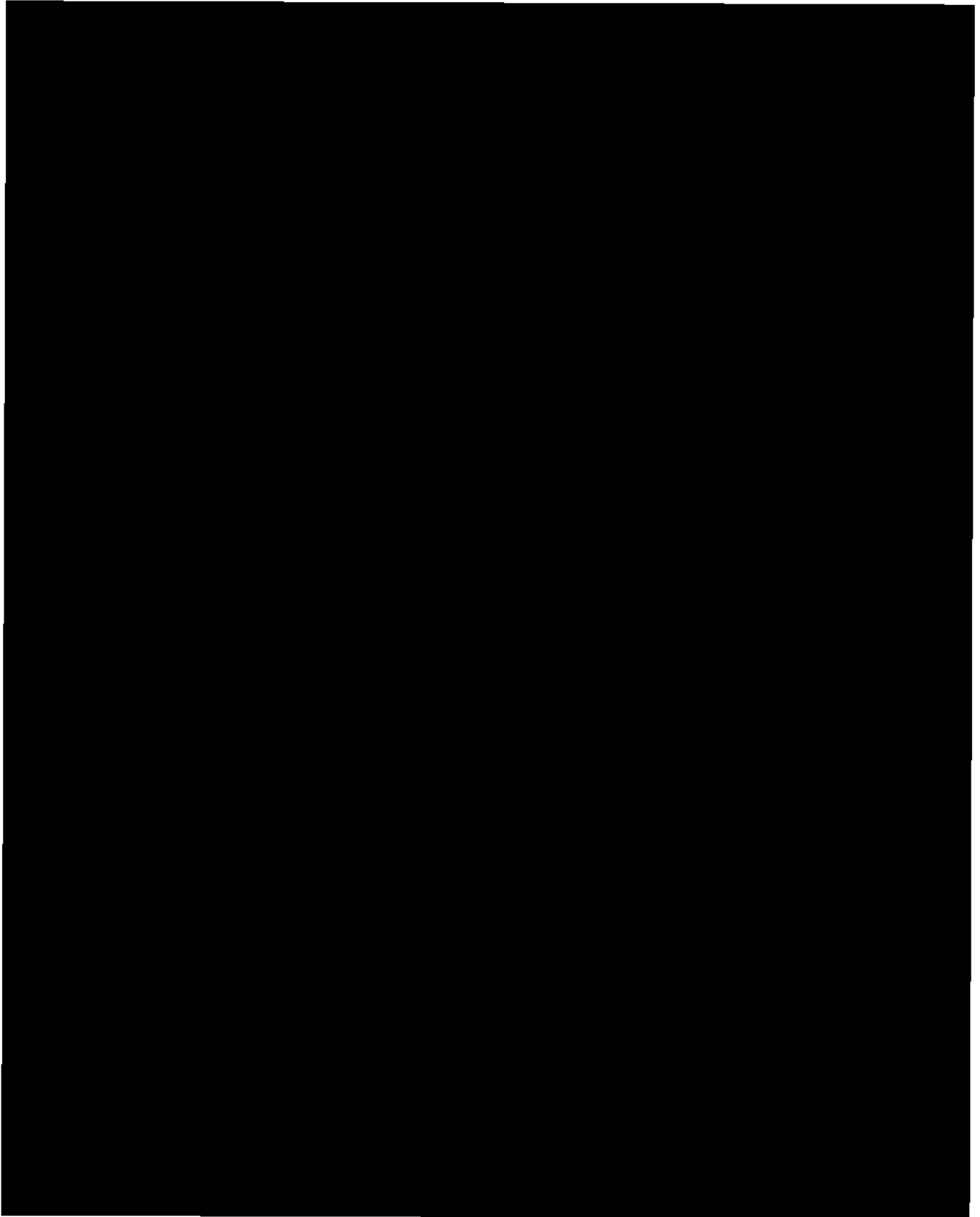


EXHIBIT M



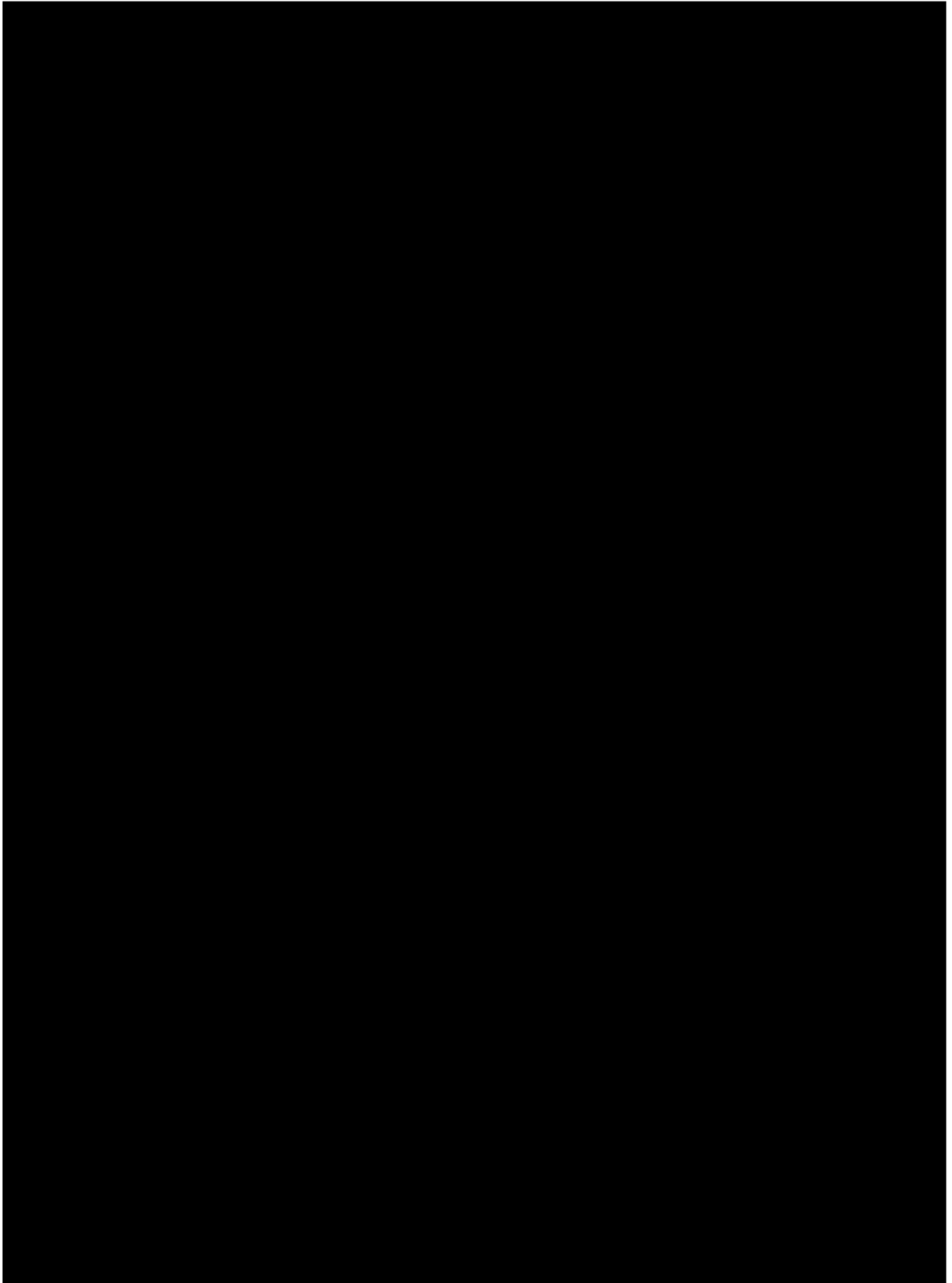
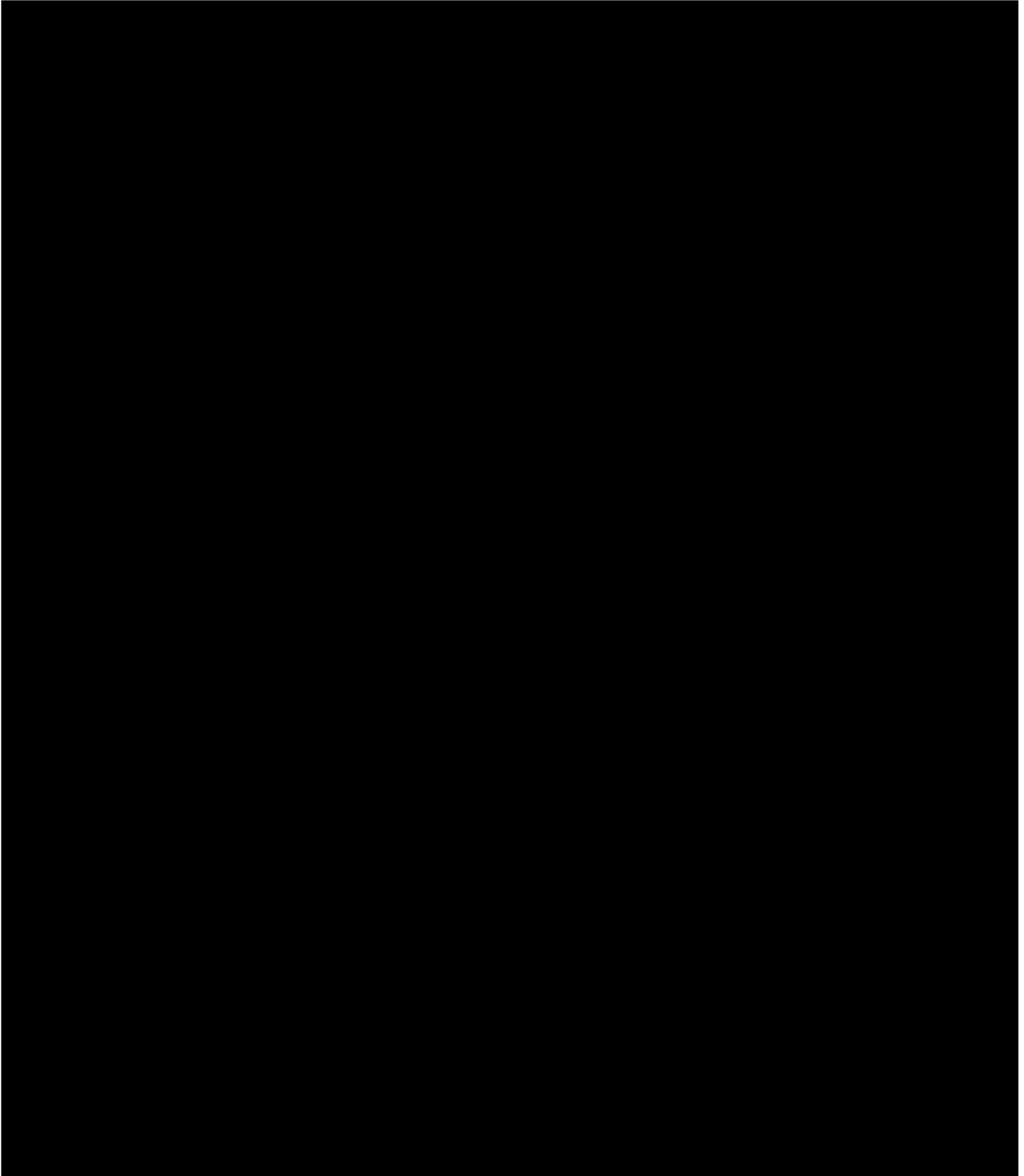


EXHIBIT N

**AMENDMENT NO. 1 TO
DISCRETIONARY SERVICE AGREEMENT
Provident Hicks Site**



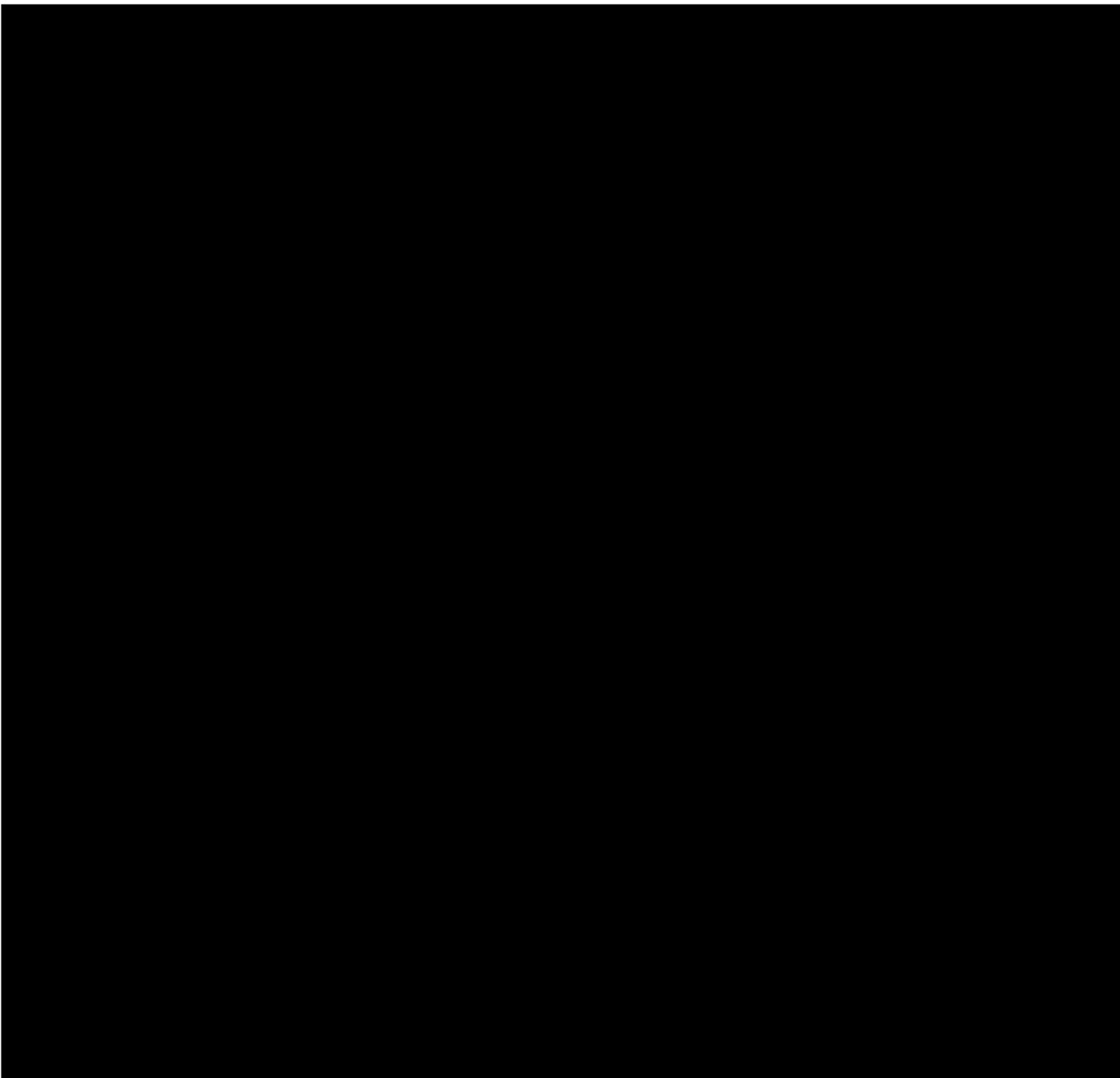
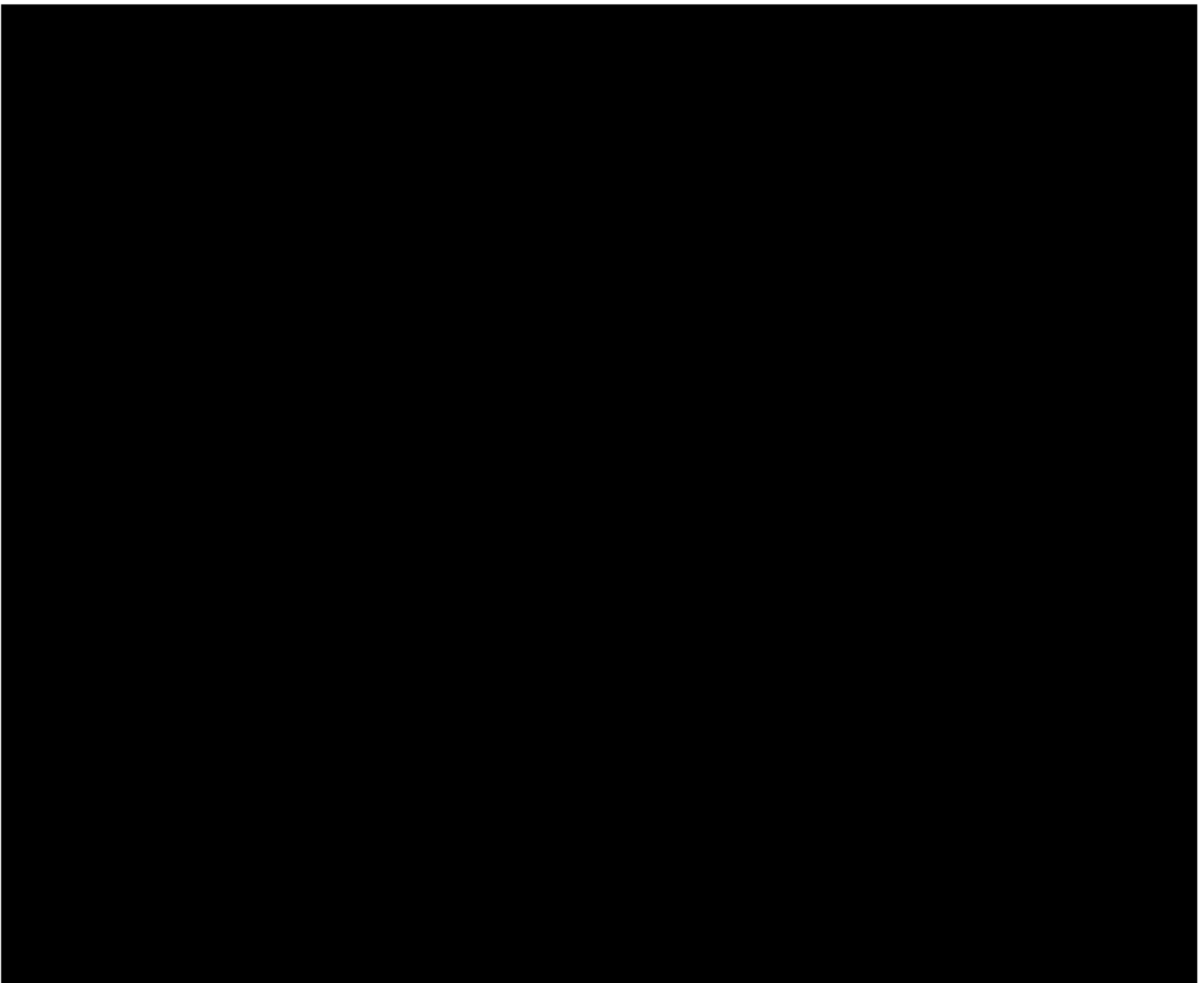
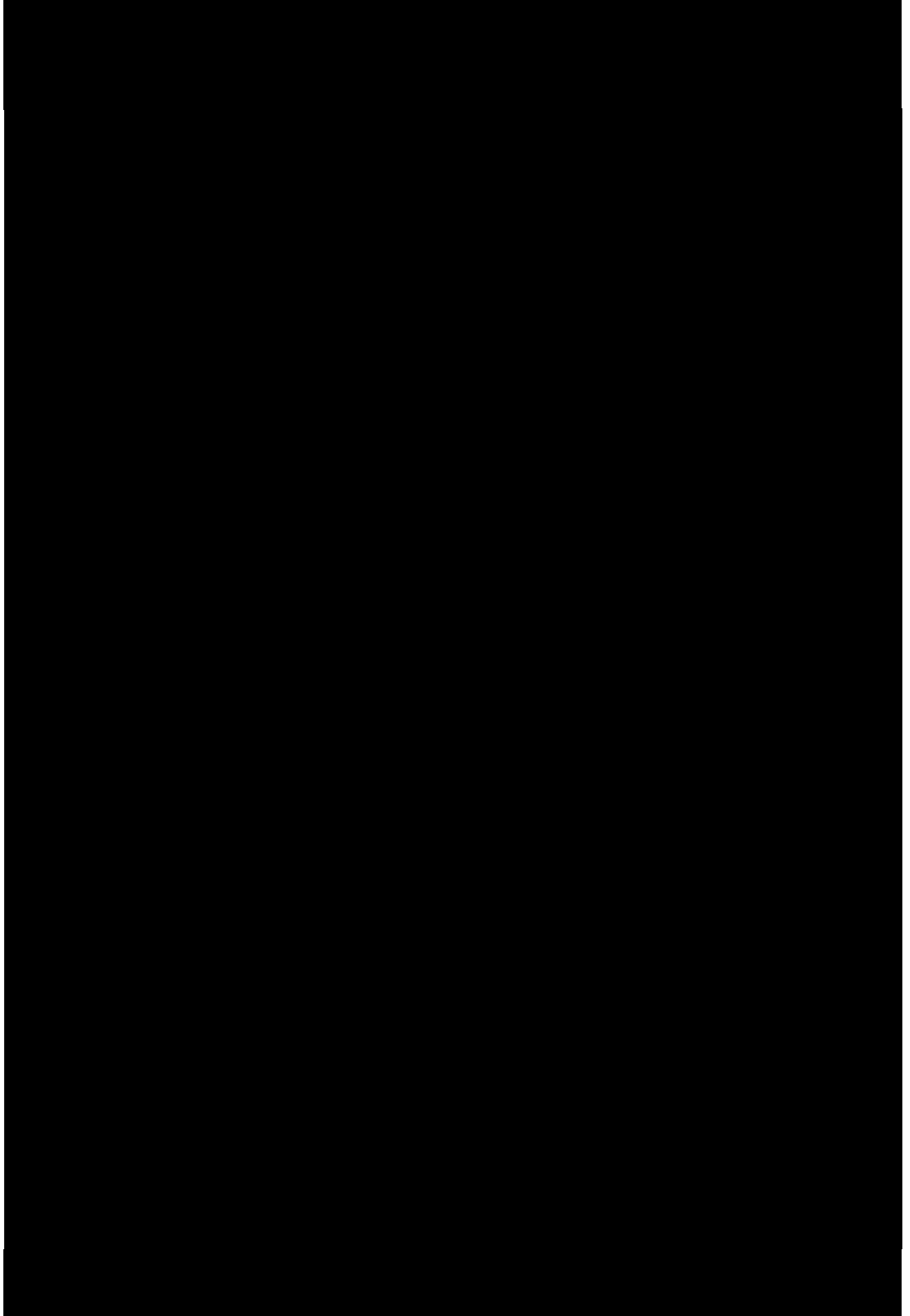


EXHIBIT O





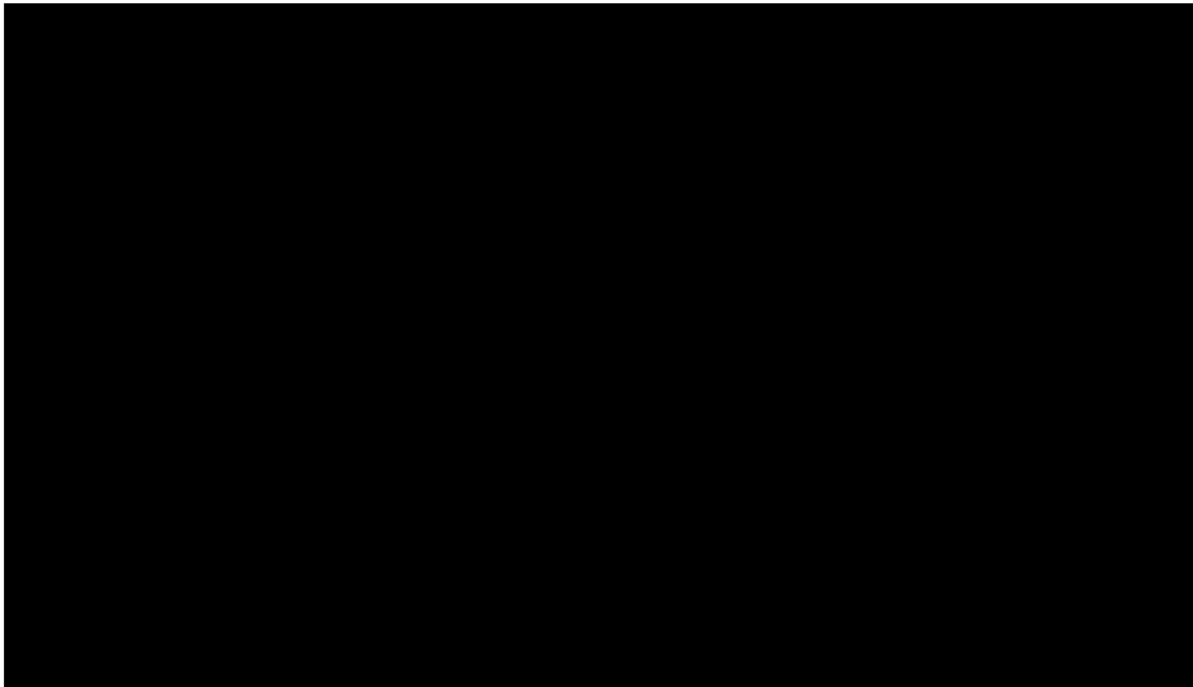
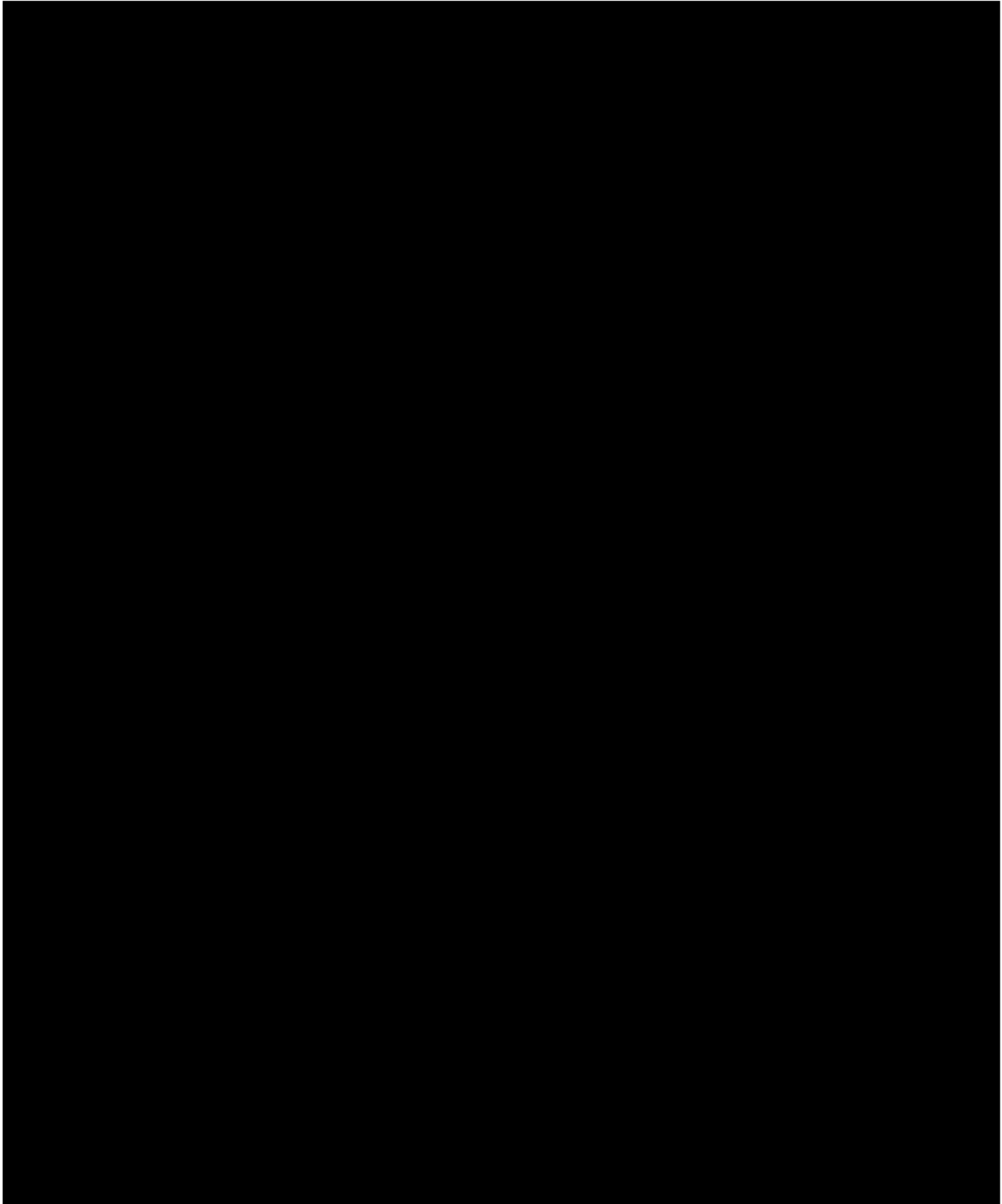


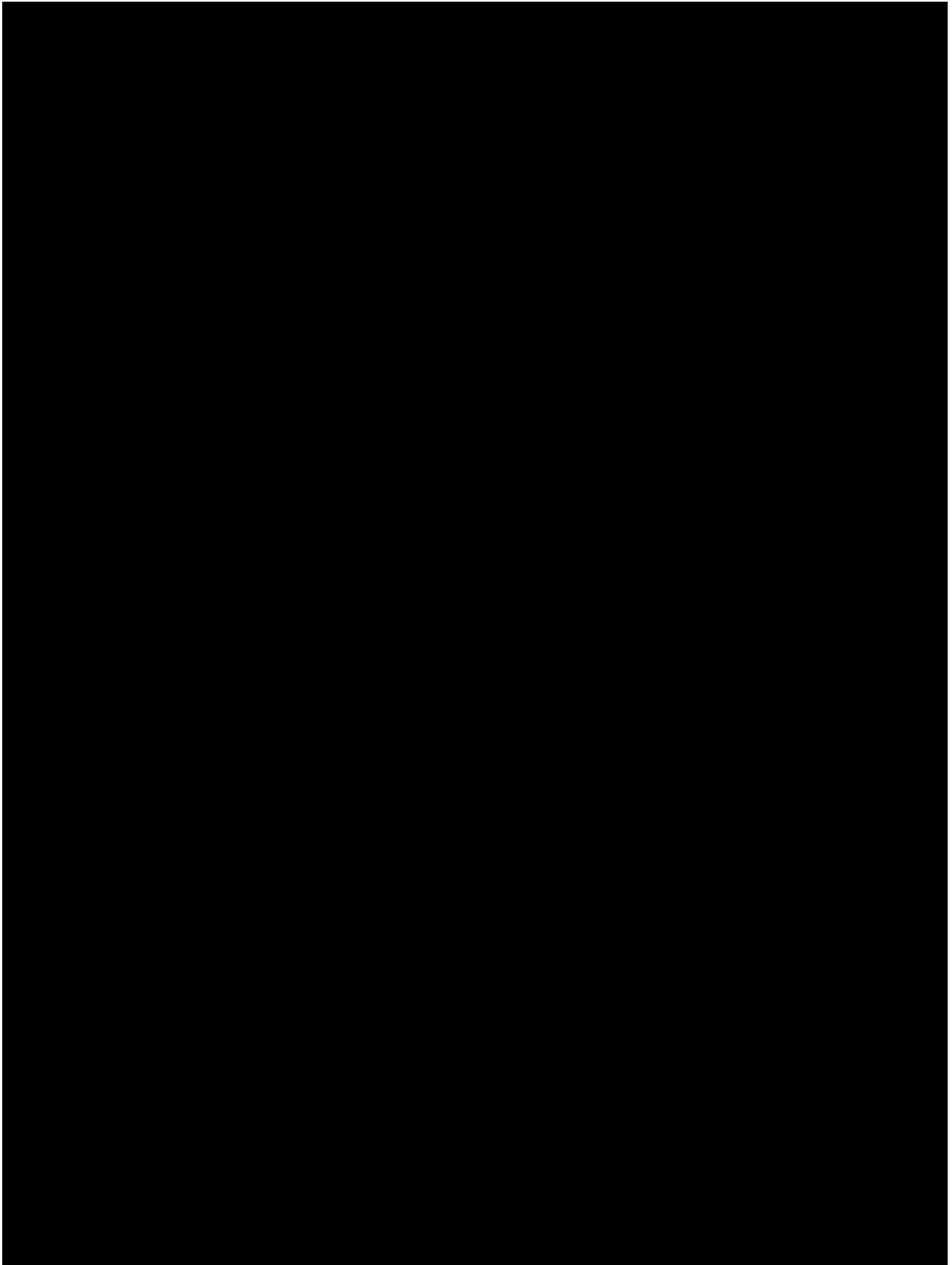
EXHIBIT P

Draft

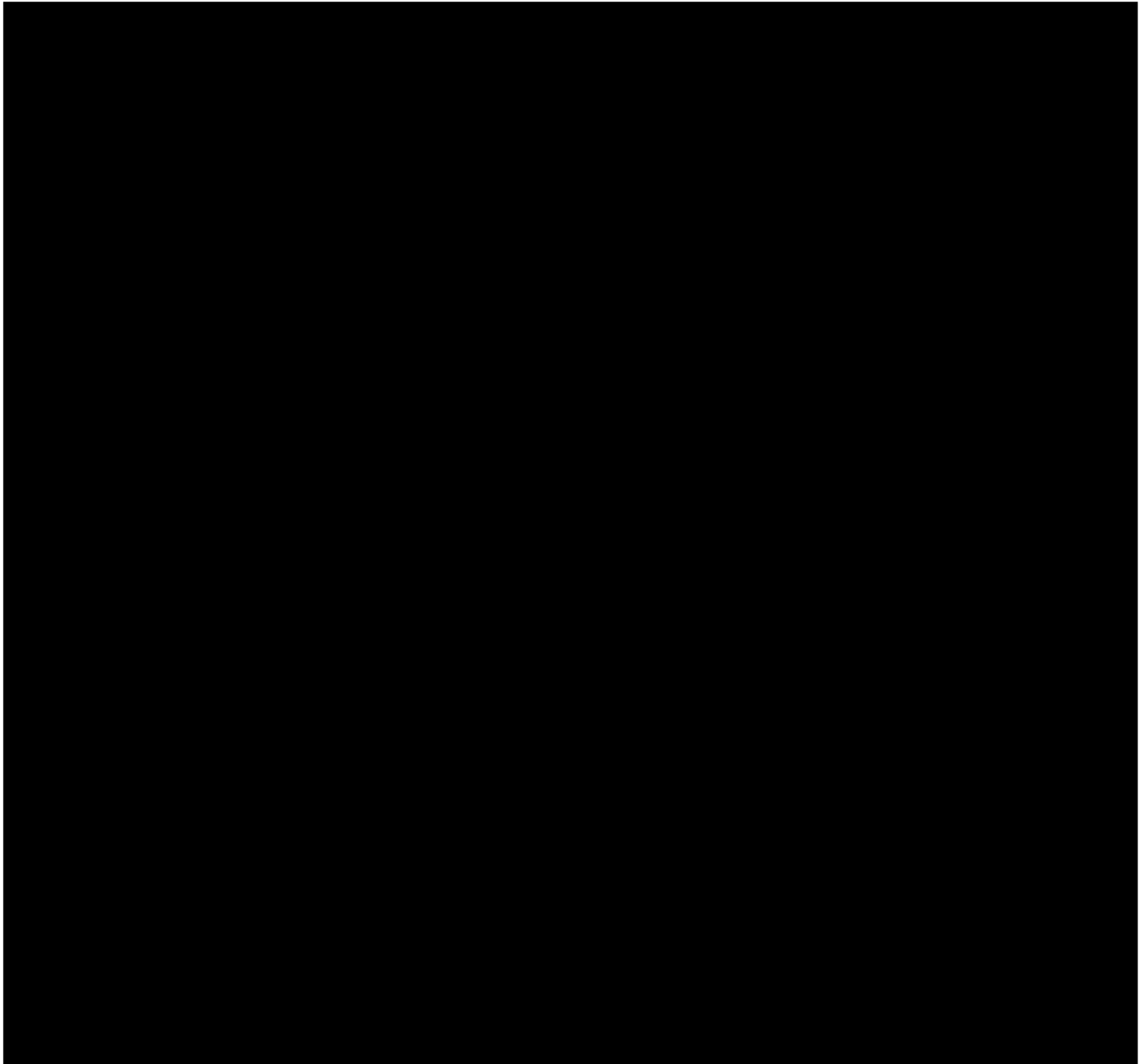
Discretionary Service Agreement
Provident Hicks Site

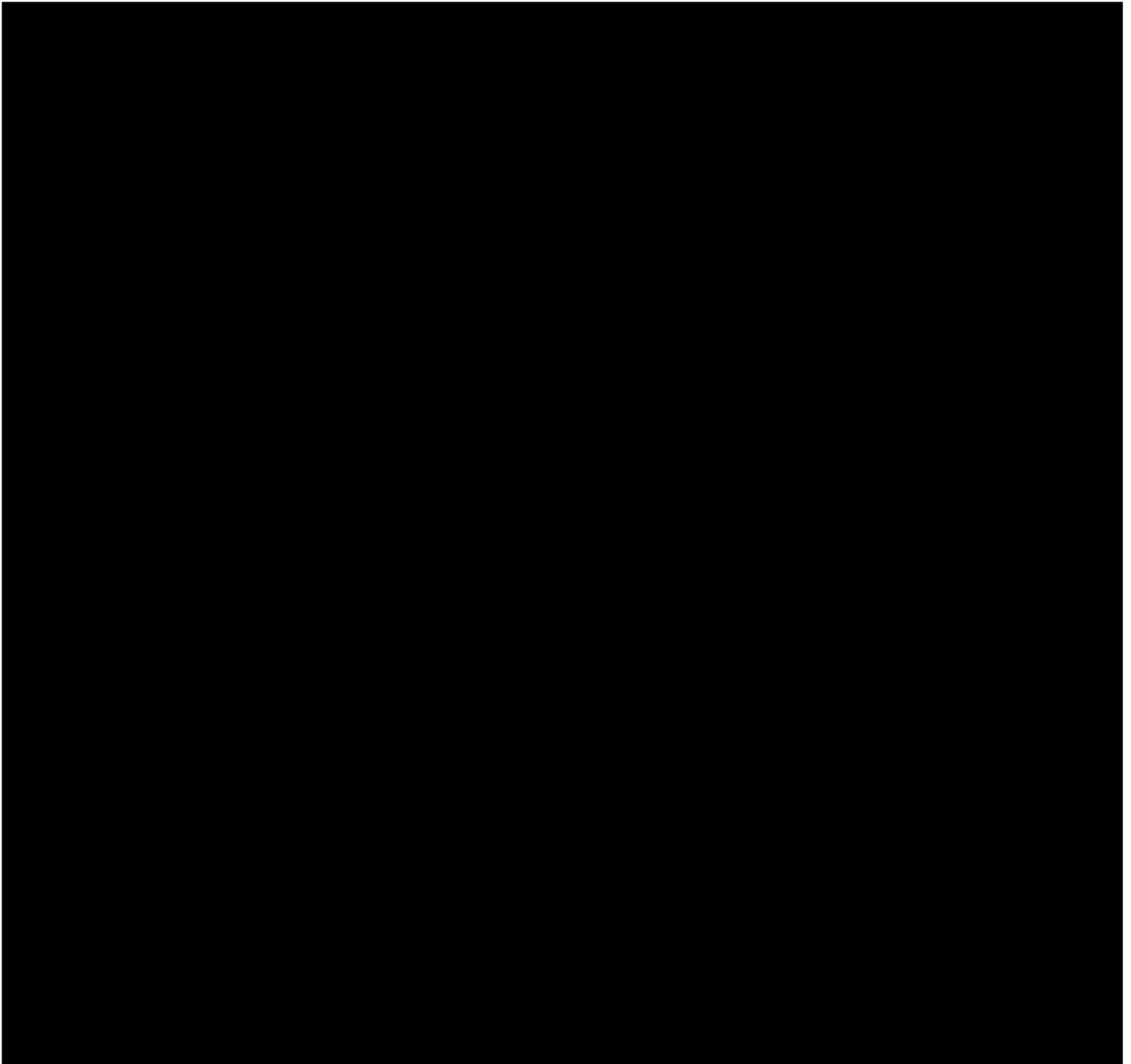


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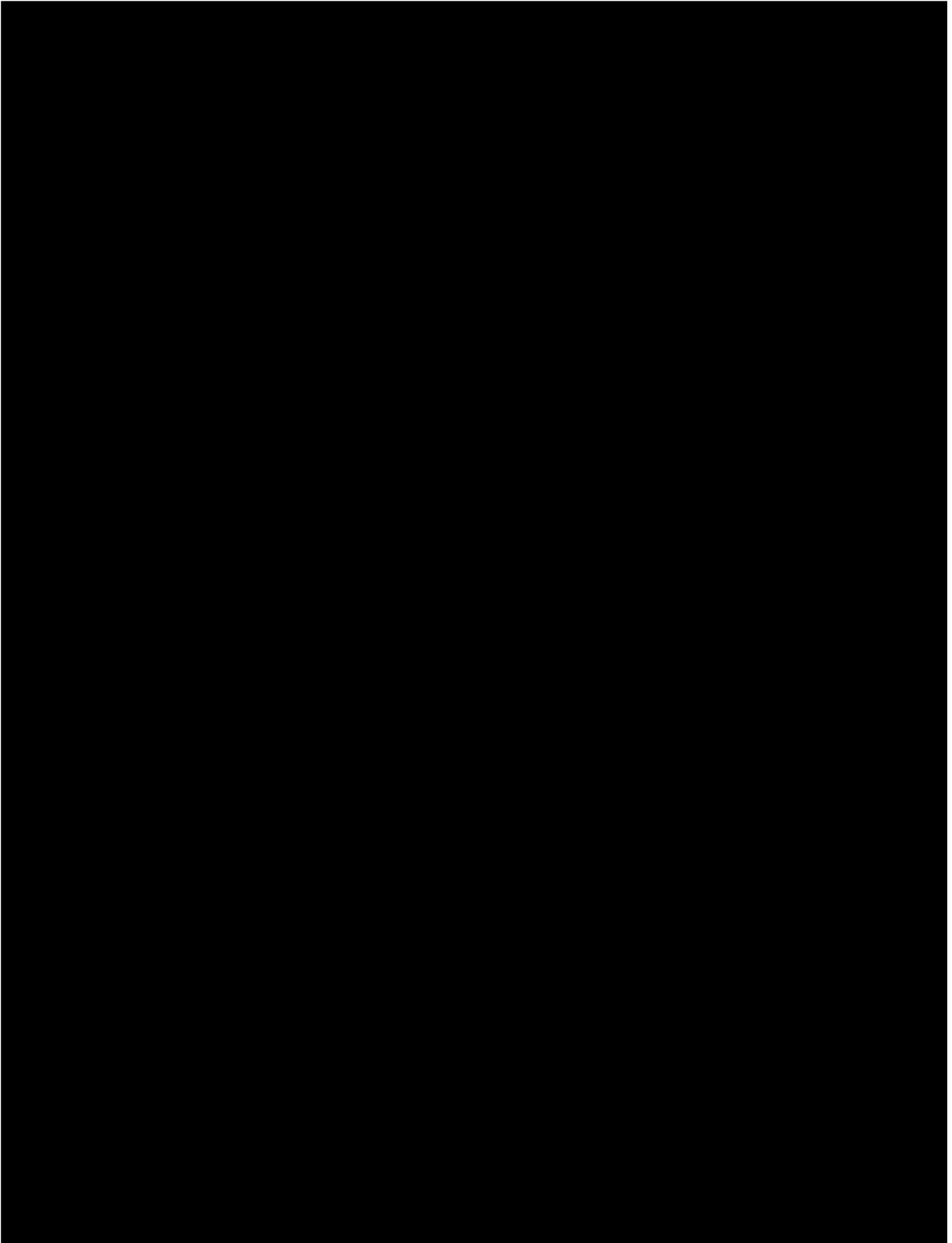


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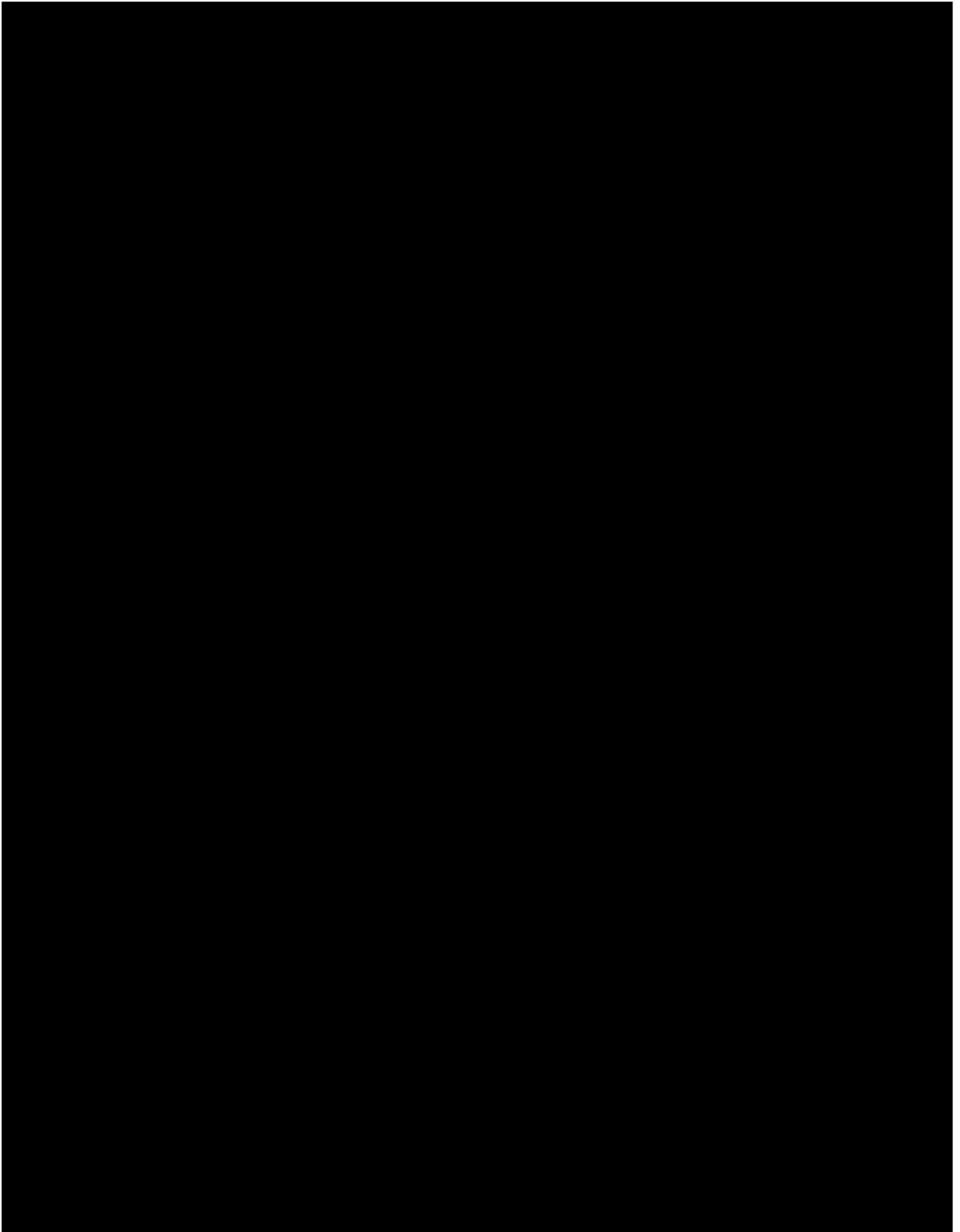




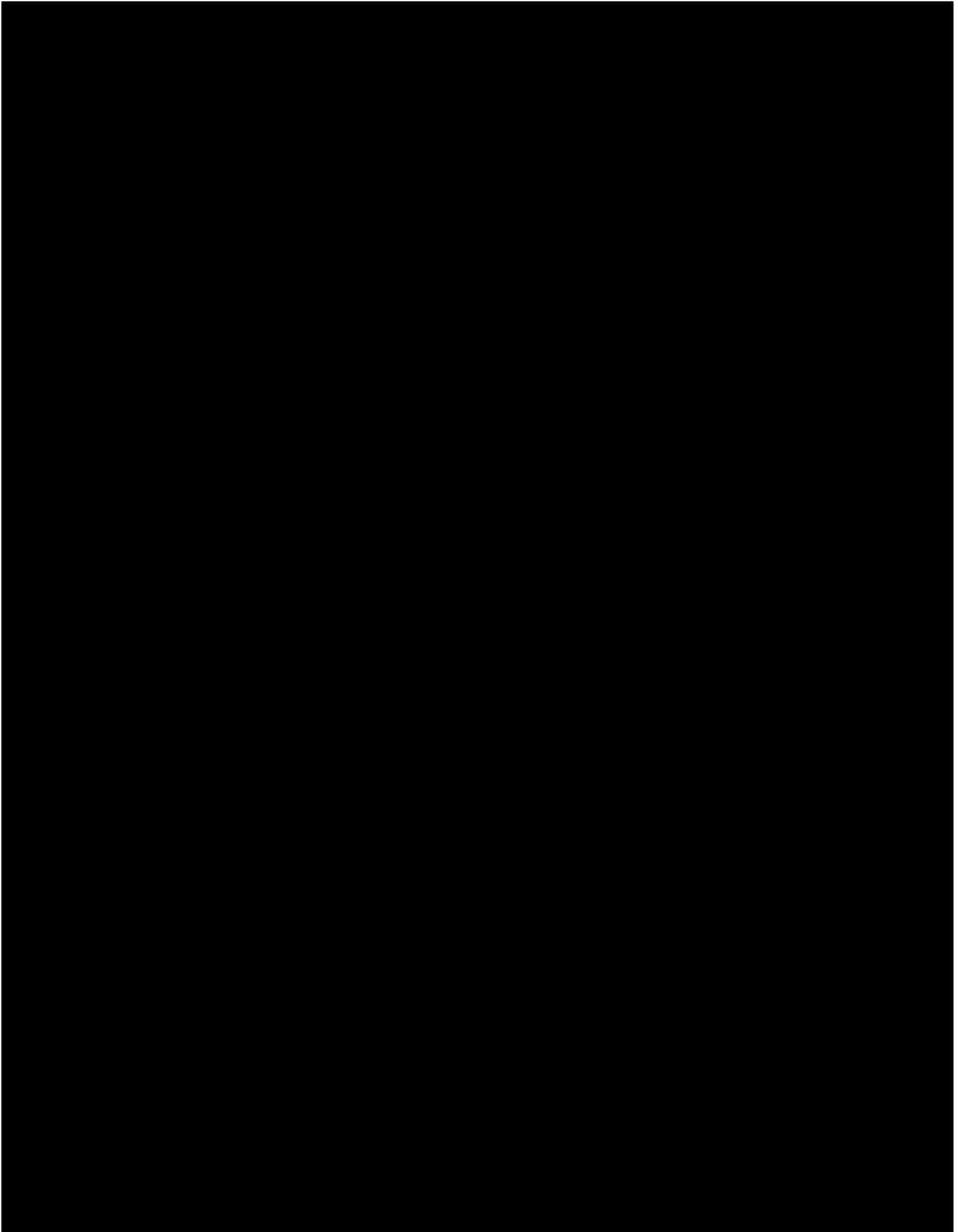
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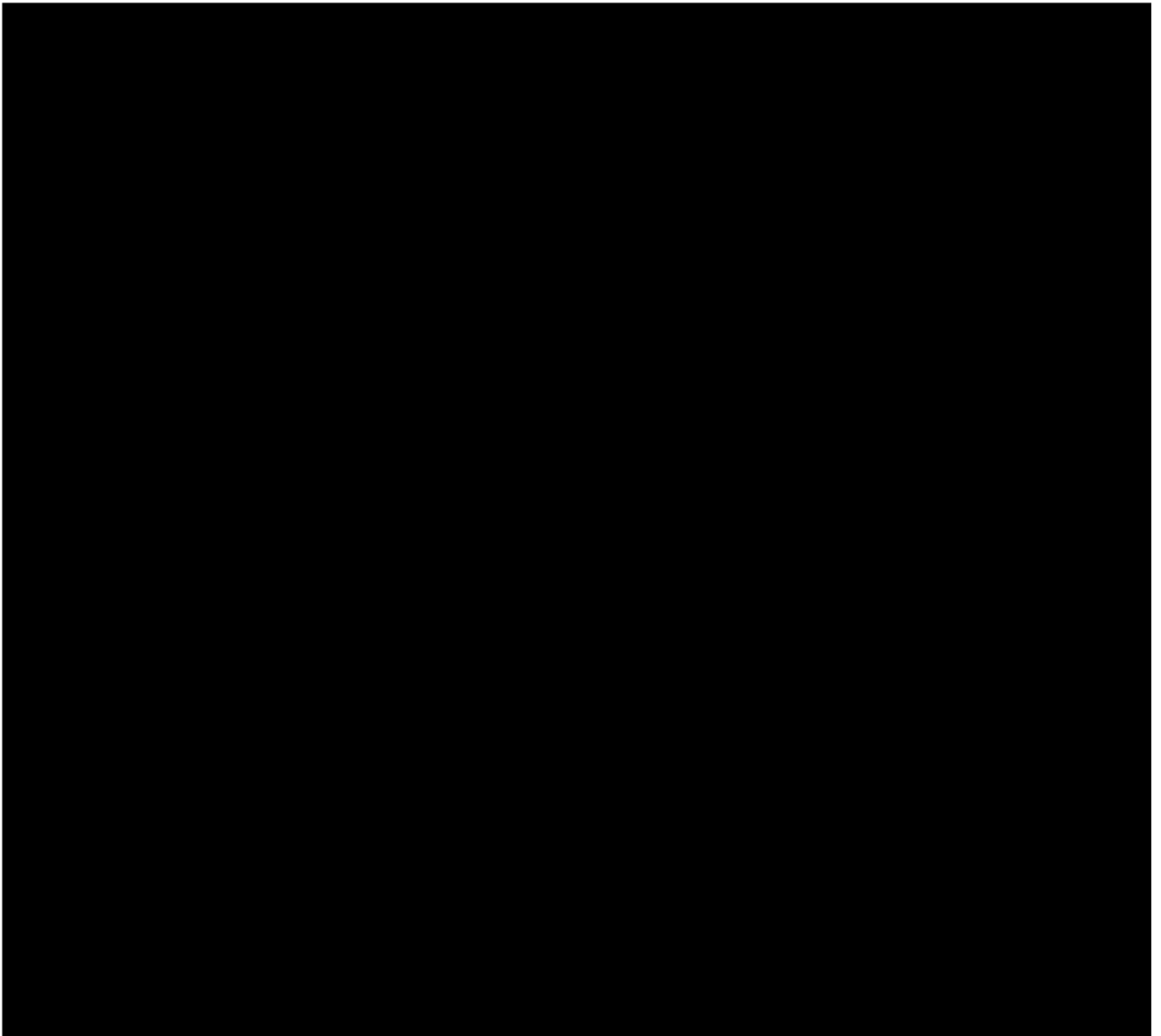
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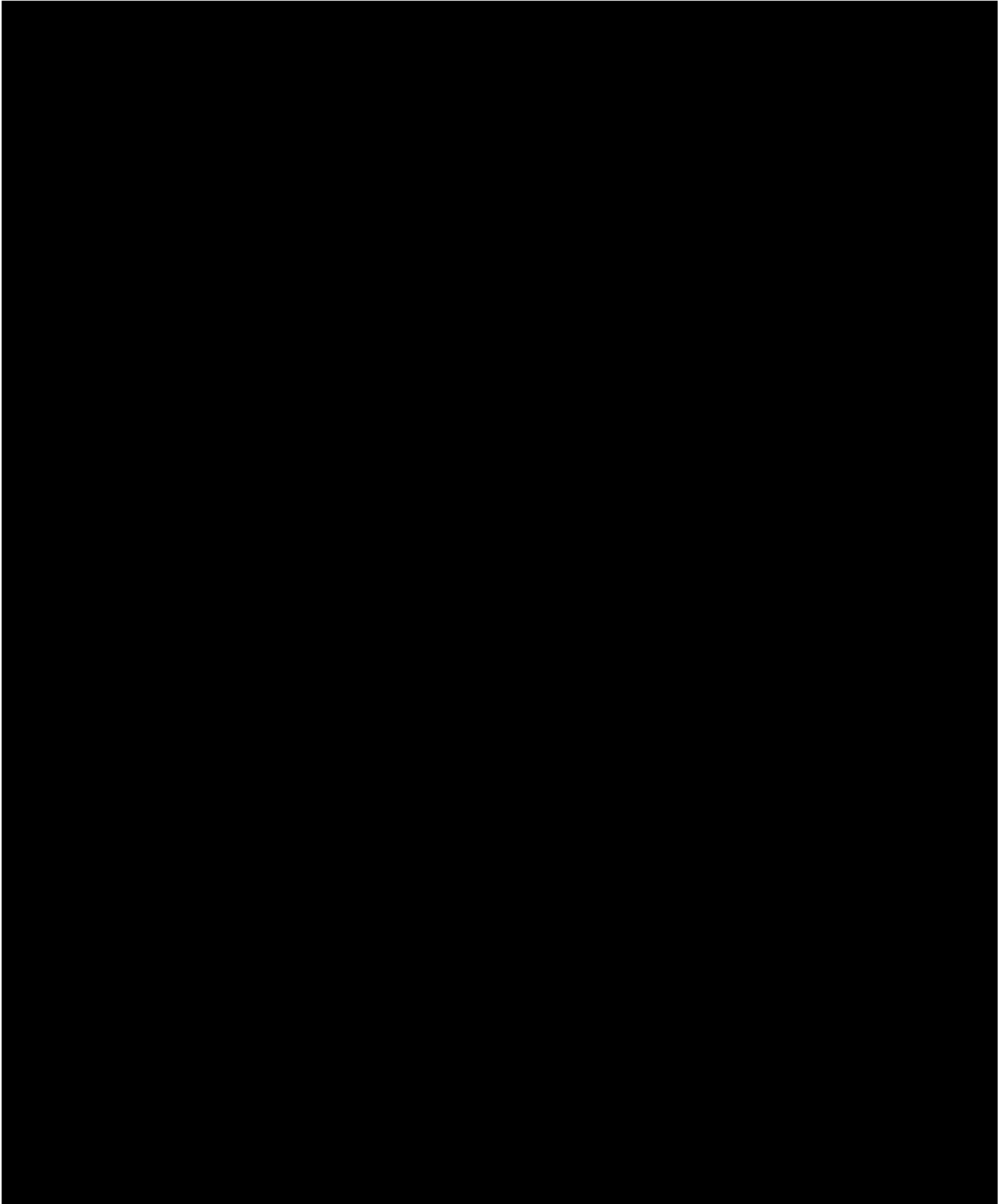


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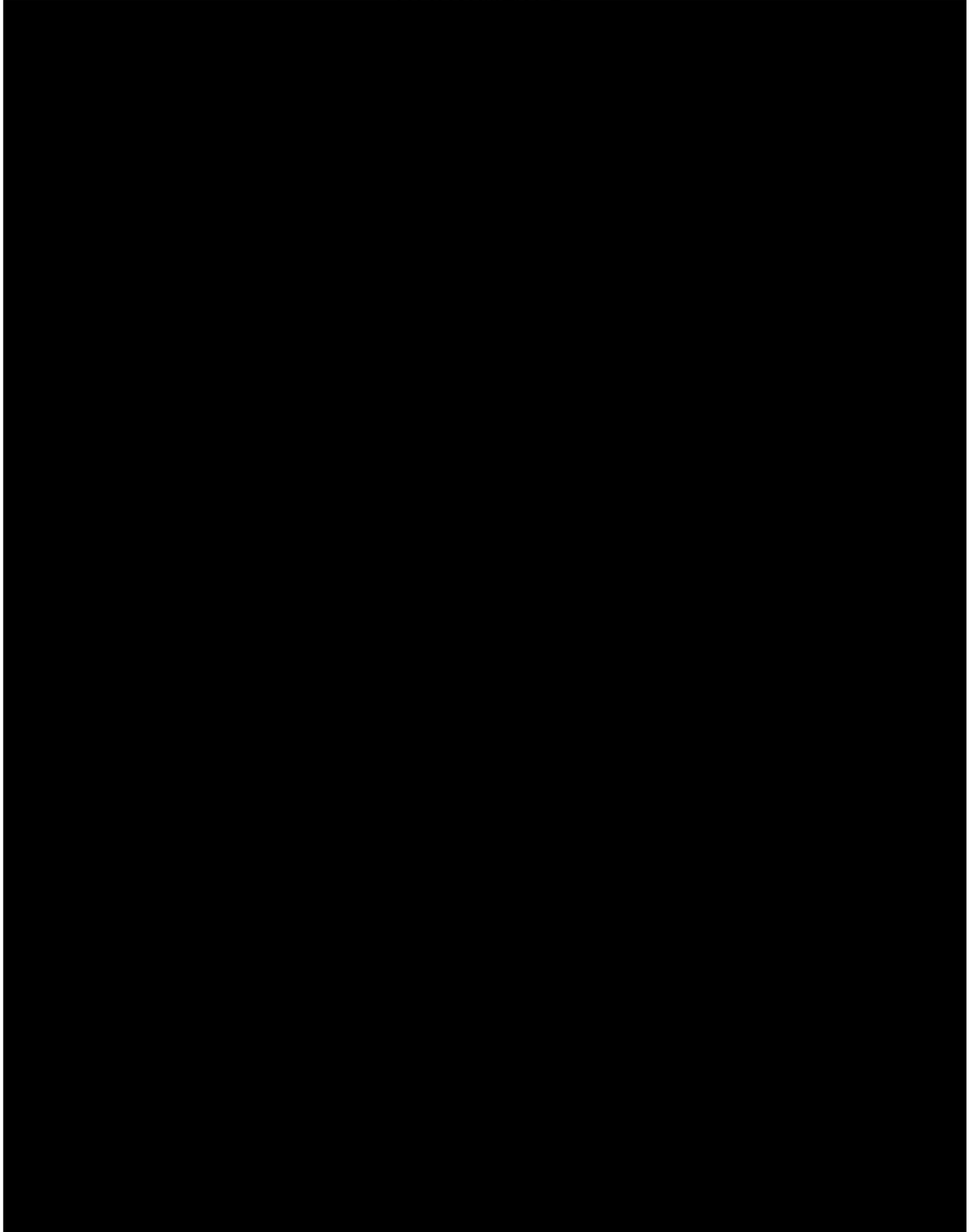
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ATTACHMENT 1

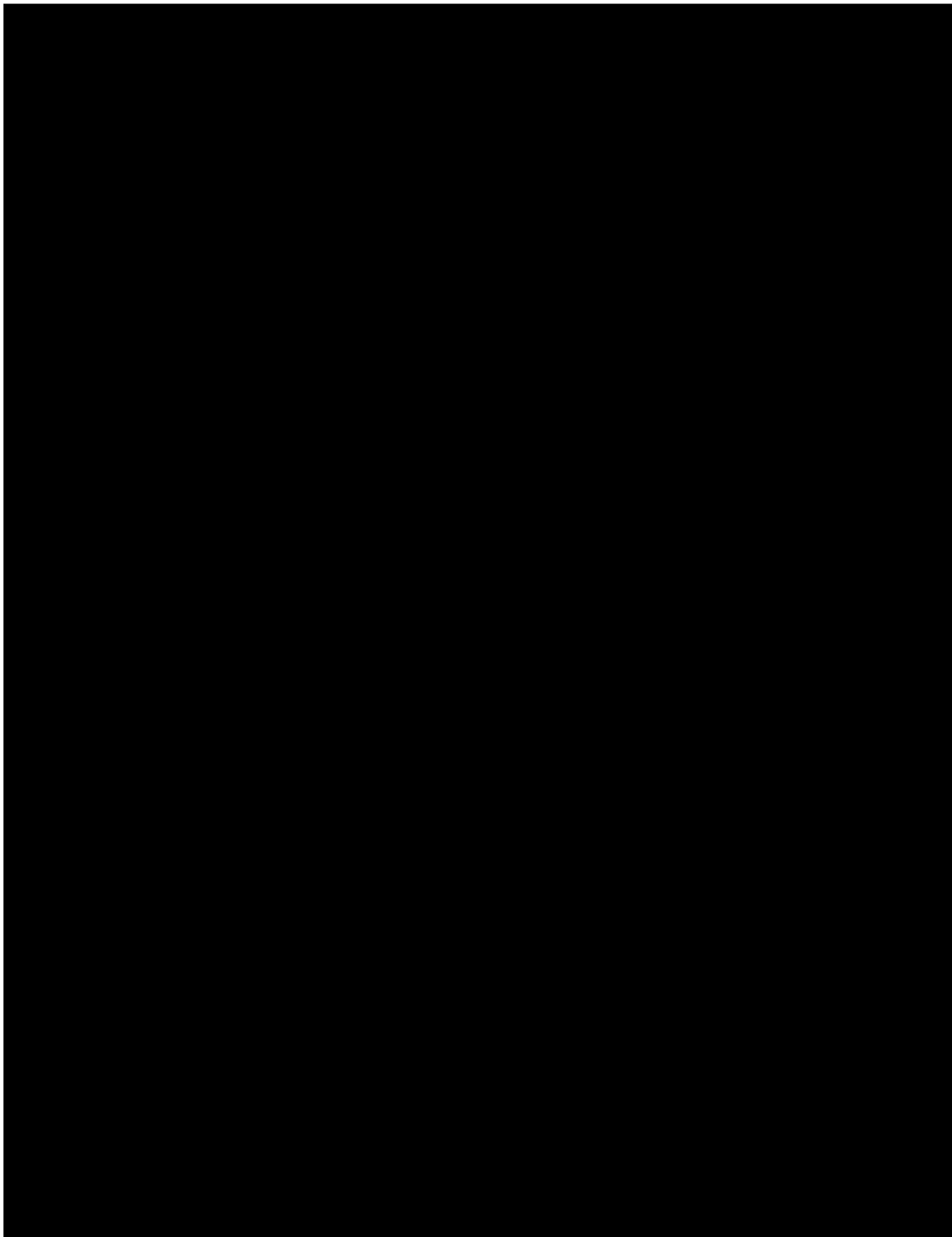


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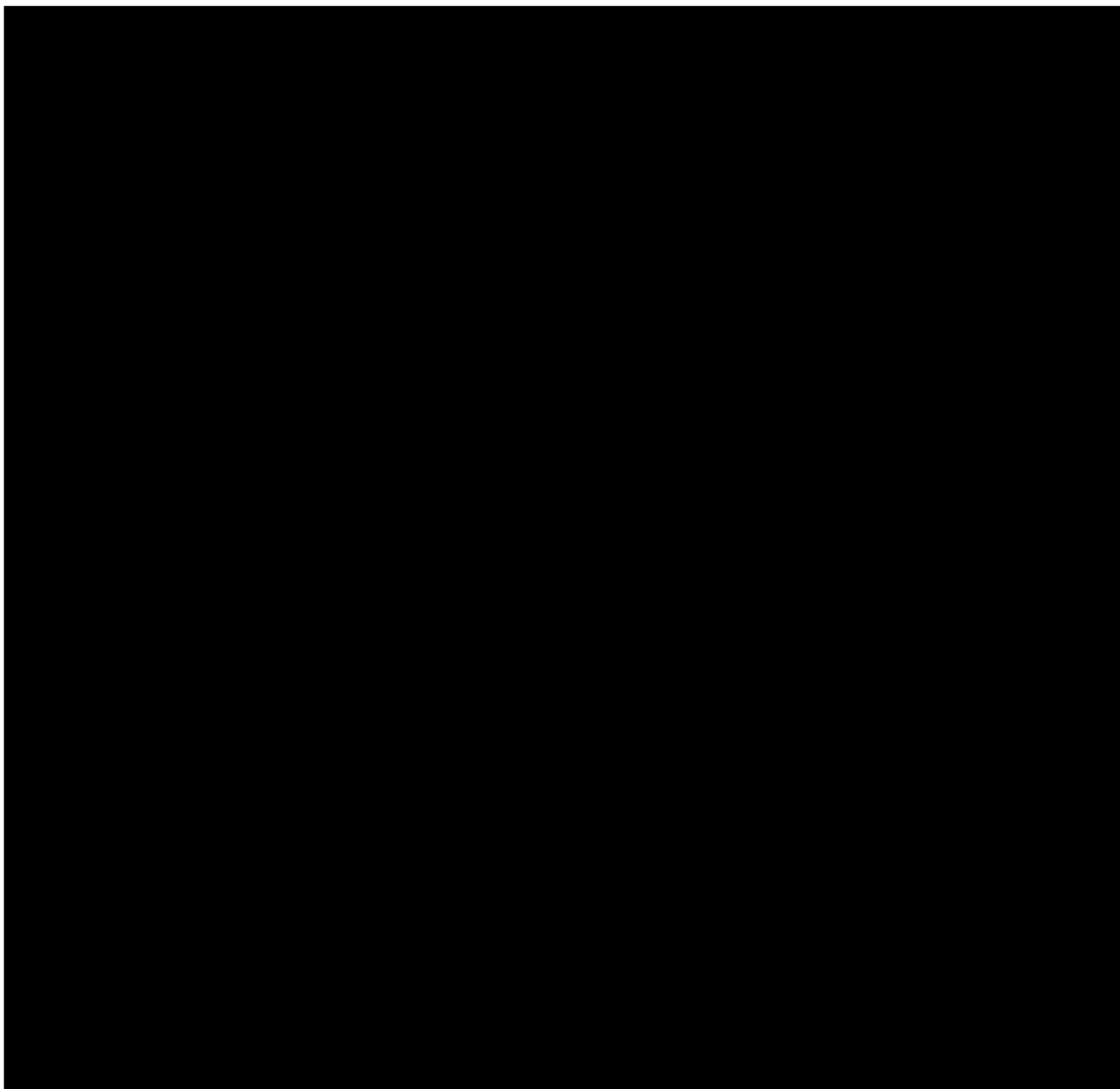
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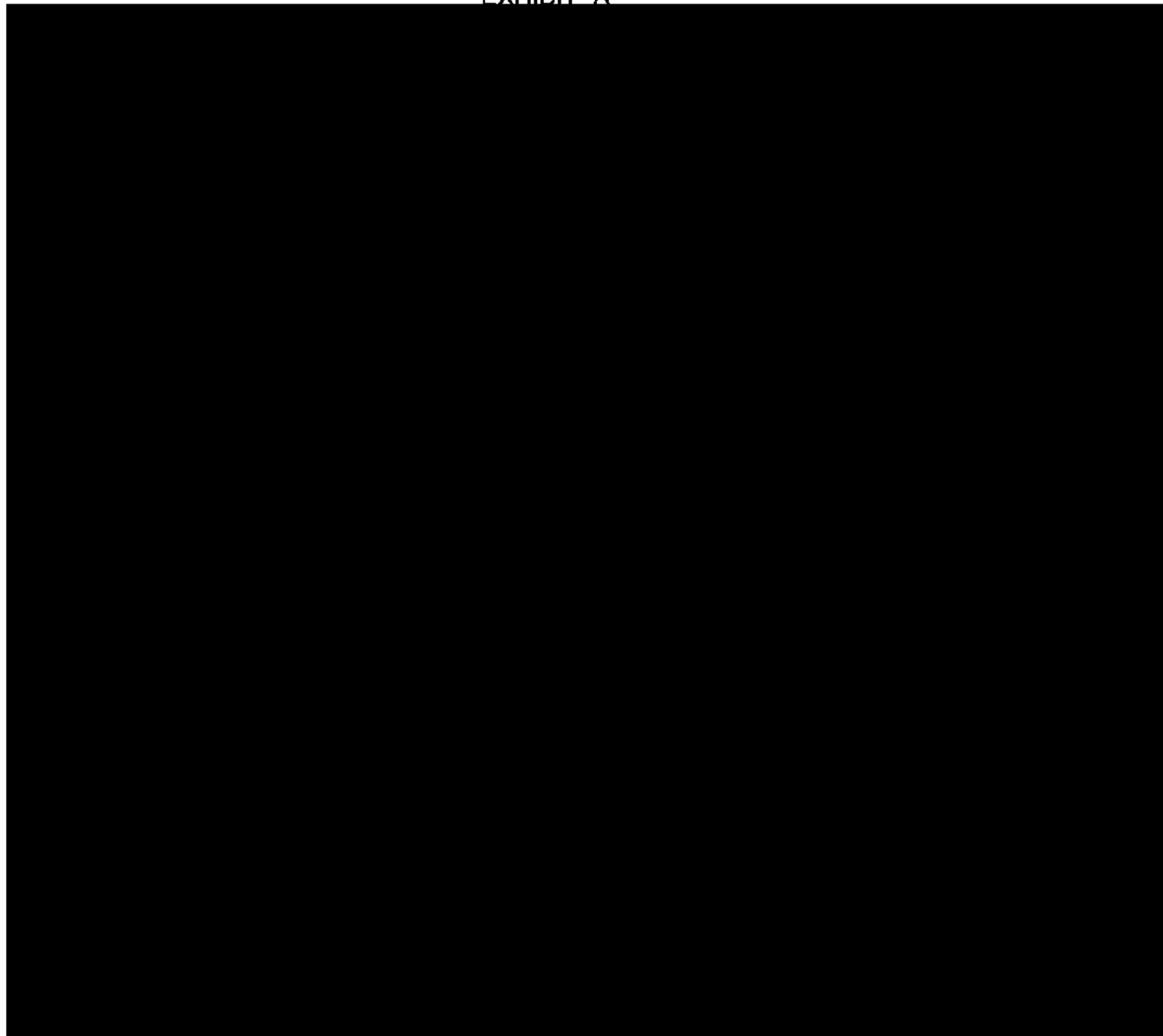


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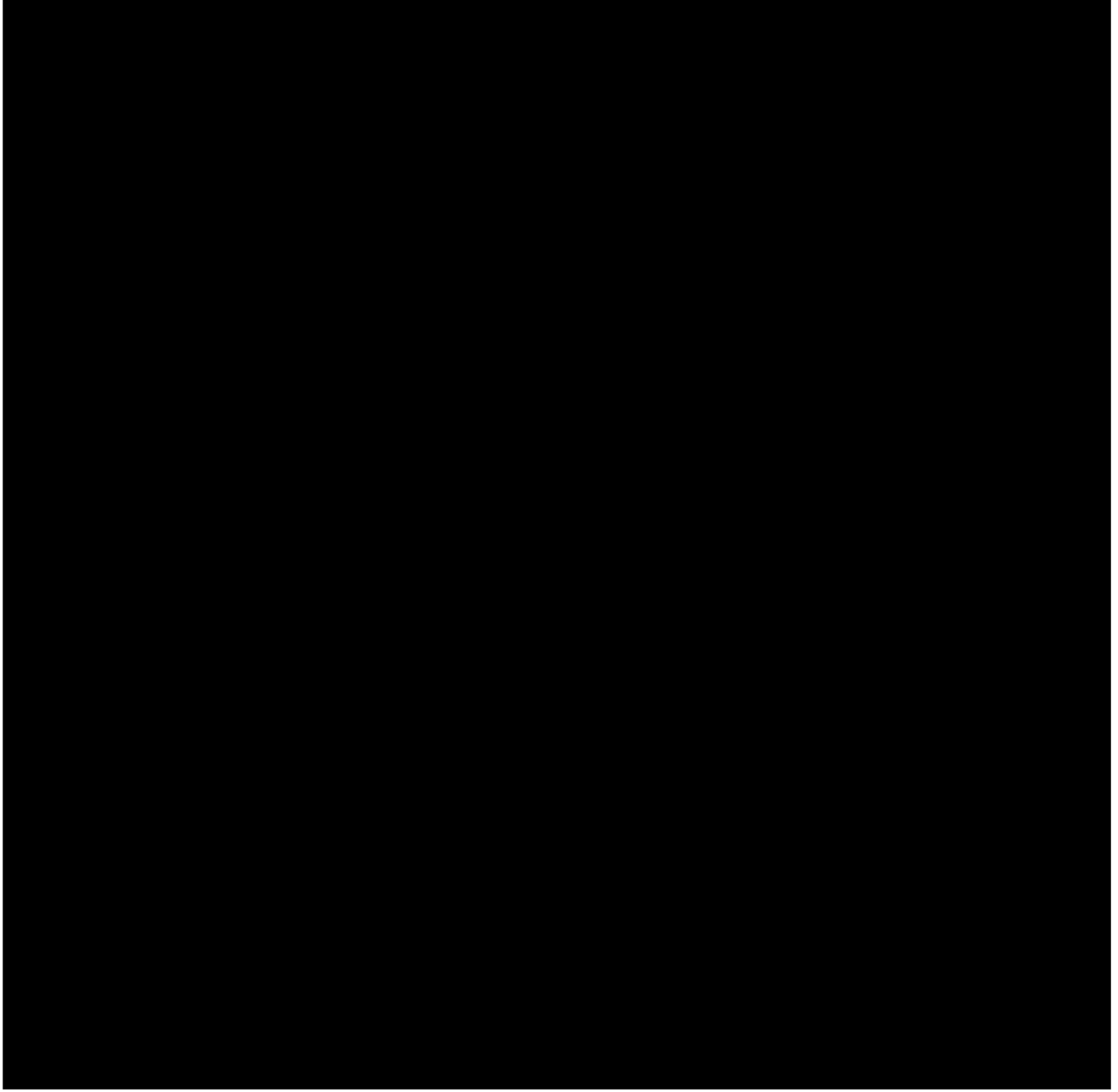
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EXHIBIT "A"



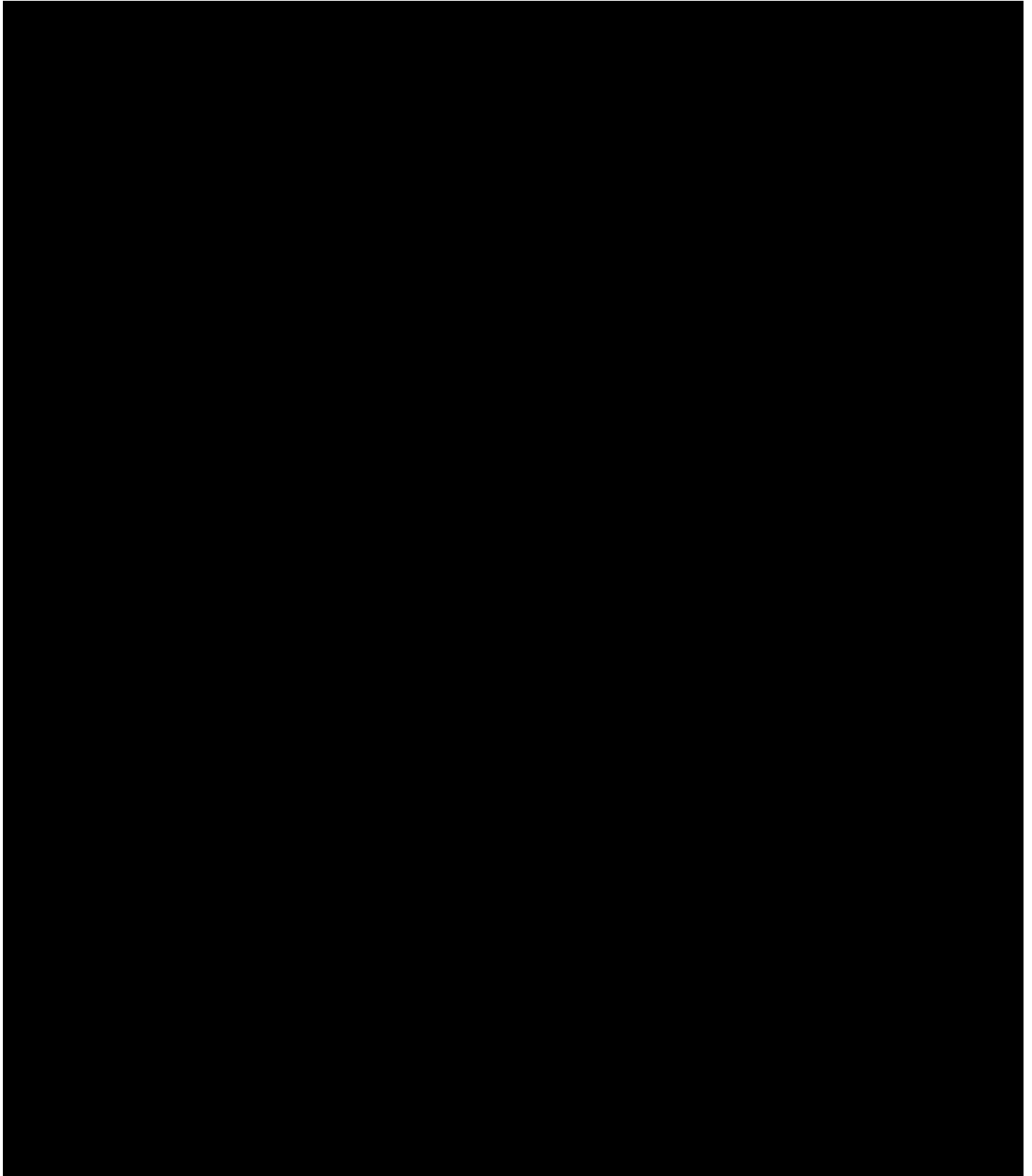
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EXHIBIT 'B'



Draft

EXHIBIT "C"



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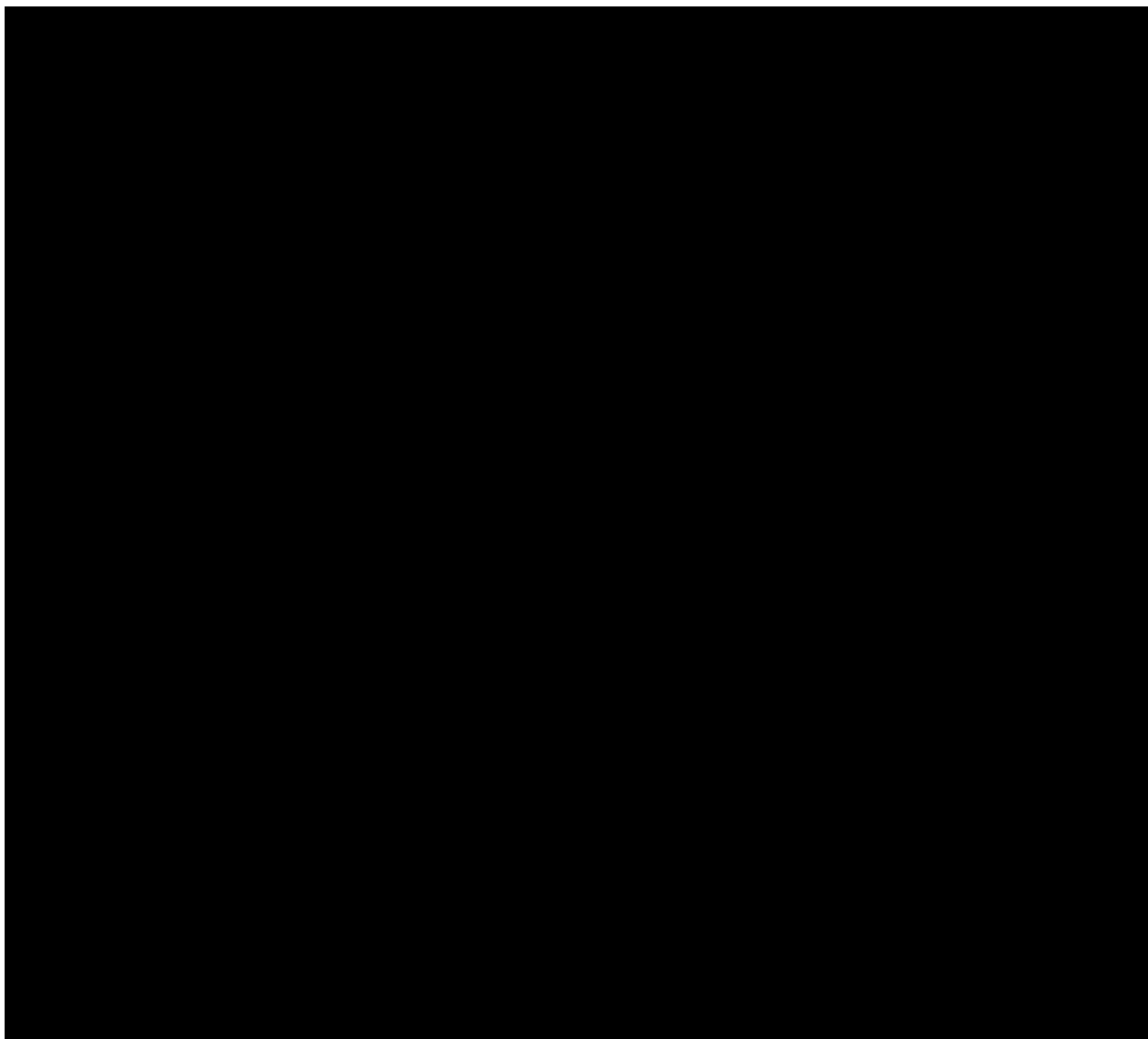


EXHIBIT Q

AFFIDAVIT

STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

BEFORE ME, the undersigned authority, on this day personally appeared Howard Boville, who, having been placed under oath by me did depose the following:

1. “My name is Howard Boville. I am of legal age and am competent to make the following statements on behalf of ACS DC Hicks Field Road, LLC.
2. I am the Chief Executive Officer of Coravel, the indirect parent company of ACS DC Hicks Field Road, LLC and have been employed in this capacity since June 2026.
3. I have reviewed ACS DC Hicks Field Road, LLC’s Complaint, including the Exhibits (Complaint), and the factual statements contained in the Complaint are true and correct to the best of my knowledge.
4. The foregoing statements are true and correct to the best of my knowledge and belief.”



Howard Boville (Oct 21, 2026 15:50:40 GMT+2)

Signature of the Affiant

Howard Boville

Type or Printed Name

SUBSCRIBED AND SWORN to before me on this 21st of October 2026.

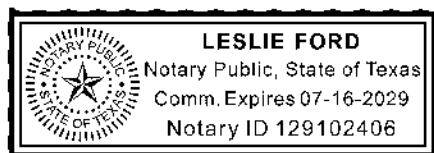
STATE OF TEXAS § § COUNTY OF TARRANT This instrument was acknowledged before me on the 21st day of October, 2026, by Howard Boville, CEO of Coravel, and an authorized representative of ACS DC Hicks Field Road, LLC, who appeared before me by means of an interactive two-way audio and video communication that meets the online notarization requirements under Subchapter C, Chapter 406, Texas Government Code. This notarial act was an online notarization, and the signature notarized was an electronic signature.

Leslie Ford

Notary Public, State of Texas Online Notary Public

Commission No.: 129102406

My Commission Expires: 07/16/29



[Electronic Seal]

Signature: *Leslie Ford*

Email: leslie@ofichito.com