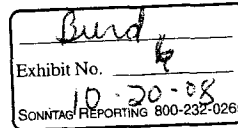


# EXHIBIT D



**Lang, Kim**

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**From:** Berry, Jim  
**Sent:** Thursday, December 28, 2006 9:40 AM  
**To:** Reed, Joel  
**Cc:** Jansen, Alexander; Lang, Kim  
**Subject:** Bristol Bay - SWMF agreement  
**Attachments:** raymond outfall centex agreement\_execution copy.DOC

Joel,

Attached is a copy of the proposed agreement between the City and Centex to accept the payment of \$325,000 in lieu of the easement from Lay-Com [Joe Popp]. City staff pushed this through over the holidays and it was approved by the Council on the 26<sup>th</sup>. I am waiting for Exhibit B from the City. We will be submitting a recapture agreement next week and an annexation amendment incorporating the recaptures and the school fee agreement shortly thereafter.

Fred should be circulating a draft of the recapture agreement by Friday and of the annexation agreement amendment by next week. The recapture deals principally with insuring our ability to recapture funds advanced for construction of the interceptor sewer and our commitment to a payment schedule on sewer hook-up fees that allowed the City to issue the GO bonds to finance construction of the balance of interceptor. Our potential recapture of these items is a total of +/- \$2,000,000. Our goal is to tie up all of these matters prior to the Yorkville Municipal election in March.

Let me know any comments or suggestions that you have regarding the outfall agreement at your earliest convenience.

Thanks,

Jim

James W. Berry  
Director of Planning & Acquisition - Infill  
Centex Homes  
847-783-6429 phone  
847-783-6303 fax  
847-812-4163 mobile  
jwberry@centexhomes.com

1/26/2007

CNT000758

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF KENDALL    )

**RAYMOND STORMWATER MANAGEMENT AND STORM SEWER  
OUTFALL IMPROVEMENT AGREEMENT**

NOW COMES the United City of Yorkville, hereinafter referred to as "CITY" and Centex Homes hereinafter referred to as "CENTEX", who in consideration of entering into this RAYMOND STORMWATER MANAGEMENT AND STORM SEWER OUTFALL IMPROVEMENT AGREEMENT ("Agreement") dated \_\_\_\_\_, 2006 agree to the following terms and conditions:

**WITNESSETH**

WHEREAS, CITY is desirous of having constructed, on land that it owns or will acquire, the Raymond Regional Stormwater Management Facility (hereinafter "FACILITY") to serve the United City of Yorkville, various property owners, and an adjoining service area on a regionalized basis; and

WHEREAS, CITY has agreed to acquire certain real property described in the attached Exhibit "A" and any necessary easements appurtenant thereto for purposes of the construction of said Facility; and

WHEREAS, CITY will also construct the 'Raymond Outfall' (hereinafter "OUTFALL") from the FACILITY to the OUTFALL'S terminus as depicted on Exhibit "B"; and

WHEREAS, it is estimated that the cost of said OUTFALL and related appurtenances will be in excess of one million two-hundred thousand dollars and the CITY does not have financing in place to construct the same; and

WHEREAS, CENTEX owns real property which will benefit from the construction of the OUTFALL; and

WHEREAS the CITY has requested CENTEX pay \$325,000 for the construction and installation of the OUTFALL.

WHEREAS the CITY approved Ordinance 2005-36 Annexing Property and Approved an Annexation Agreement with CENTEX as "DEVELOPER" which, among other provisions, requires the DEVELOPER to contribute certain lands to the CITY at the time DEVELOPER becomes the owner of that land and to provide an easement for construction and operation of the FACILITY prior to the time the DEVELOPER becomes the owner at the CITY's request all as described in the Annexation Agreement filed for record in the office of the Kendall County Recorder on December 1, 2006, as document # 200500037333, which is included herein by this reference as if attached hereto.

WHEREAS the CITY has requested and CENTEX has provided the easements to a portion of the land requested by the CITY, which are the easements necessary to complete Phase One of the FACILITY as described in Exhibit "C" and CENTEX has offered to make the contribution to the construction of the FACILITY and Outfall requested by the CITY in lieu of providing the easement as described in attached Exhibit "D."

NOW THEREFORE, in consideration of the mutual covenants, recitals and the mutual and reciprocal obligations hereinafter set forth the parties agree as follows:

1. The recitals herein contained are adopted herein and made an enforceable part of this Agreement.

2. That CENTEX shall deposit \$325,000 ("OUTFALL FUNDS") in an escrow account to be established by the OWNERS/DEVELOPERS within Thirty (30) days of the demand by the CITY which OUTFALL FUNDS shall be used solely for the costs of engineering, constructing, and installing the OUTFALL pursuant to the OUTFALL CONSTRUCTION DESIGNS. Any amounts remaining after design, construction and installation of the OUTFALL by the CITY shall be returned to CENTEX.
3. CITY agrees to enter into written agreements for recapture of CENTEX's contribution of OUTFALL FUNDS from any property owner purchasing use of the FACILITY, or connecting to the OUTFALL, with the exception of the Suen Property, pursuant to a written recapture agreement acceptable to the CITY and CENTEX and approved by the City Council.
4. The CITY agrees to consider as satisfied, the requirements of Paragraph 10 of the Centex Annexation Agreement (Ordinance #2005-36) for CENTEX to provide easements on the parcels described in Exhibits C & D. Nothing contained herein shall be construed to modify the obligations of the DEVELOPER to convey title to the land designated for the FACILITY to the CITY pursuant to the terms of the Centex Annexation Agreement (Ordinance #2005-36) at the time that DEVELOPER becomes the owner of that land.
5. CENTEX agrees to construct, at CENTEX's sole cost, a temporary storm water conveyance route between the existing storm water culvert crossing at Galena Road to the western portion of the Regional Detention Basin identified as 'Phase I' on the attached Exhibit "E", across the land for which Easements have been

provided to the CITY by CENTEX and executed by current owners of the property, pursuant to the plans provided to and approved by the CITY.

6. INTEGRATION: This Agreement shall not be claimed enforceable by or to any party thereto unless completed in writing and executed by representatives of each party hereto.

7. Severability Clause:  
In the event any portion of this Agreement is deemed to be unenforceable by any court of competent jurisdiction, the remaining portions thereof shall be enforceable between the parties hereto.

8.. This Agreement shall be binding upon the successor, heirs and assigns of each party hereto.

IN WITNESS WHEREOF the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

UNITED CITY OF YORKVILLE

CENTEX HOMES

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_

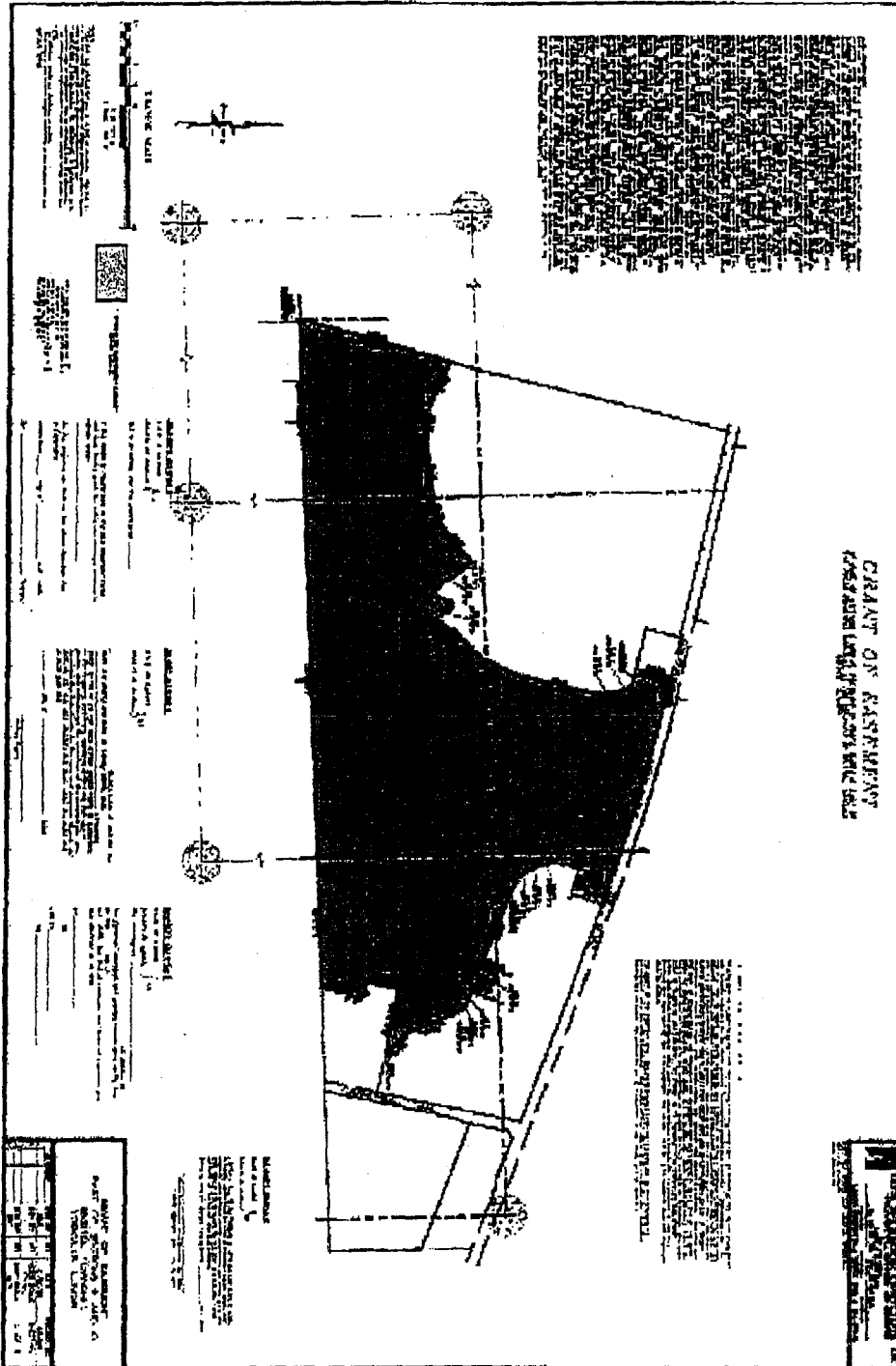
ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_

### Exhibit A



CNT000763

**Exhibit B**

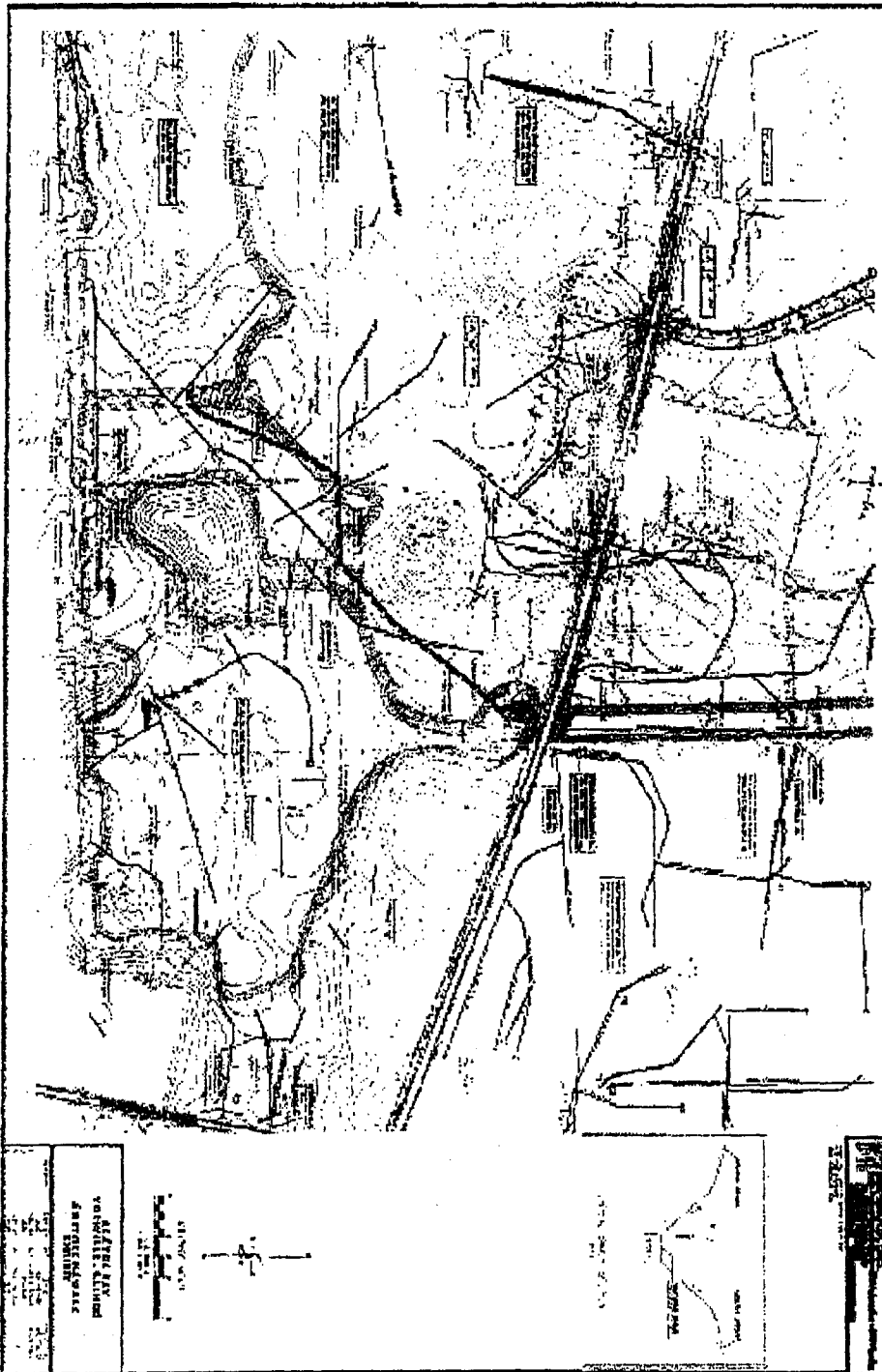
**[Outfall depiction]**



**Exhibit C**  
**[Executed Mesirow easements]**

**Exhibit D**  
**[Unexecuted Lay-com Easement]**

**Exhibit E**



CNT000767