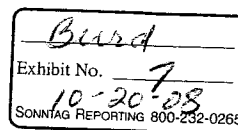


# EXHIBIT E



**Lang, Kim**

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**From:** Reed, Joel  
**Sent:** Wednesday, January 10, 2007 7:27 AM  
**To:** Jansen, Alexander; Lang, Kim  
**Subject:** FW: Yorkville-Recapture Agreement and Raymond Outfall Agreement - Sent of behalf of Joel S. Reed  
**Attachments:** Comparison - Raymond Outfall Agreement - 12-28-06 to 01-08-07.doc; Agreement between Centex & Yorkville re Stormwater Management Facility (Raymond Outfall) - 01-08-2007.DOC; Recapture Agreement with Yorkville Sanitary Sewer District - Draft 01-09-2007.DOC; Recapture Agreement with Yorkville Sanitary Sewer District - Draft 01-09-2007 compared to 12-28-06.doc

FYI...

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**From:** Schaeffbauer, Suzanne  
**Sent:** Tuesday, January 09, 2007 2:30 PM  
**To:** Berry, Jim; ffeinstein@mwe.com  
**Cc:** Reed, Joel  
**Subject:** Yorkville-Recapture Agreement and Raymond Outfall Agreement - Sent of behalf of Joel S. Reed

Fred and Jim,

*I have taken the liberty of substantially reworking both the Recapture Agreement and the Raymond Outfall Agreement. I am attaching the revised draft of these documents both in clean and as a comparison to the last draft circulated.*

*With respect to the Raymond Outfall Agreement, I am confident that my changes serve to clarify the agreement, without changing its substance. I am hopeful that Jim will be able to "sweet talk" the city attorney to consider all or some of these changes as a clarification of the document that was previously voted upon by the city council. If he is unwilling to do that, then we should talk about the key changes that we really need to have.*

*With respect to the Recapture Agreement...I know, Fred, that you were trying not to stray far from the recapture agreement agreed to with the annexation agreement. However, it seems to me that the 12-28-06 draft already strayed quite a ways, and yet left (in my view) a substantial amount of ambiguity regarding the amount that may be recaptured, the source of the recaptured funds, and how this unusual recapture process is going to work. It seems to me that ambiguity is not in our favor on this. As a result, I have substantially overhauled paragraphs 3, 4, and 5. Fred, I hope you will not take offense to this. I know that in making these changes, we will likely receive some resistance. I hope that we can overcome that resistance by showing that the resulting document more clearly reflects the intent of the parties.*

*I am traveling this week returning on Friday, but will be checking email and voicemail periodically.*

Joel

Suzanne Schaeffbauer  
 Centex Homes  
 12701 Whitewater Drive, Suite 300  
 Minnetonka, MN 55343  
 952-960-2011 phone  
 952-960-2001 fax

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1/26/2007

CNT000743

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~~AGREEMENT") dated \_\_\_\_\_, 2006 agree to the following terms and conditions:

**WITNESSETH**

WHEREAS, the 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~~ CITY, various property owners, and an adjoining service area on a regionalized basis; and

WHEREAS, ~~CITY has agreed to facilitate construction of the FACILITY, CITY intends to acquire rights to certain real property described in the attached Exhibit "A" and any necessary easements appurtenant thereto for purposes of the construction of said Facility~~(hereinafter "PROPERTY"); and

WHEREAS, the CITY will also construct the 'Raymond Outfall' (hereinafter "OUTFALL") from the FACILITY to the OUTFALL'S terminus, all as depicted on Exhibit "B"; and<sup>1</sup>

<sup>1</sup> Let's be sure that Exhibit "B" depicts the Outfall clearly. It seems to me that Exhibit "E" could be relabeled as Exhibit "B" and then used to show both the location of the Outfall, as well as the location of the "temporary storm water conveyance route".

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 \$1,200,000~~, but the CITY does not have financing in place to construct the same; and

WHEREAS, CENTEX owns real property located north of Galena Road (which is north of the Property) (hereinafter "CENTEX-OWNED 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; and

WHEREAS, the CITY approved Ordinance 2005-36 Annexing Property and ~~Approved an Annexation Agreement~~ [Approving?] an Annexation Agreement<sup>2</sup>, pursuant to which it entered into an Annexation Agreement dated April 26, 2005, filed for record in the office of the Kendall County Recorder on December 1, 2005, as document # 200500037333 (hereinafter, "ANNEXATION AGREEMENT"), with CENTEX as "DEVELOPER" ~~which and other parties as "OWNERS"~~ (the ANNEXATION AGREEMENT is included in this AGREEMENT by this reference as if attached hereto); and

WHEREAS, the ANNEXATION AGREEMENT requires, among other provisions, requires that the DEVELOPER to contribute certain lands the PROPERTY to the CITY at the time DEVELOPER becomes the owner of that land the PROPERTY and, at the CITY'S request, to provide an easement for construction and operation of the FACILITY prior to the time the DEVELOPER becomes the owner at of the CITY's request Property, all as described in the Annexation Agreement filed for record in the

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<sup>2</sup> Is this the right Ordinance reference? I show an Ordinance No. 2005-34, which is captioned "An Ordinance Authorizing the Execution of an Annexation Agreement of Bristol Bay."

office of the Kendall County Recorder on December 1, 2006, as document # 200500037333, which is included herein by this reference as if attached hereto. ANNEXATION AGREEMENT; and

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 obtained and delivered to the CITY an easement over the portion of the Property described in attached Exhibit "C" (hereinafter, "MESIROW EASEMENT"), which is the portion of the Property necessary to complete "Phase One" of the FACILITY as described in ("Phase One" is depicted on Exhibit "~~C~~" "B"); and

WHEREAS, CENTEX has offered to make the contribution to the construction of the FACILITY and ~~Outfall~~ OUTFALL requested by the CITY in lieu of providing to the CITY an casement as over the portion of the Property 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 AGREEMENT.
2. ~~That~~ Within 30 days of demand by the CITY, 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 CITY. The 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 (or otherwise using) the FACILITY; or connecting to the OUTFALL, with the exception of the "Suen Property, pursuant to a written" (which is the property located at \_\_\_\_\_). The recapture agreement must be in form and substance 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)~~ ANNEXATION AGREEMENT, which called for CENTEX to provide easements ~~enover~~ the parcels described in Exhibits ~~C & D~~ "C" and "D". ~~Nothing However, 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)~~ ANNEXATION AGREEMENT if 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 "Phase One", such route to be in the approximate location shown Exhibit

"B".<sup>3</sup> The CITY hereby grants to CENTEX the right to construct the temporary storm water conveyance route within the area covered by the MESIROW EASEMENT, pursuant to the plans provided to and approved by the CITY.

6. INTEGRATION: This Agreement 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 AGREEMENT is deemed to be unenforceable by any court of competent jurisdiction, the remaining portions thereof shall be enforceable between the parties hereto.

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

IN WITNESS WHEREOF the parties have executed this Agreement AGREEMENT this \_\_\_ day of \_\_\_\_\_, 2006-2007.

UNITED CITY OF YORKVILLE

CENTEX HOMES,  
a Nevada general partnership  
By: Centex Real Estate Corporation,  
a Nevada corporation,  
its managing general partner

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

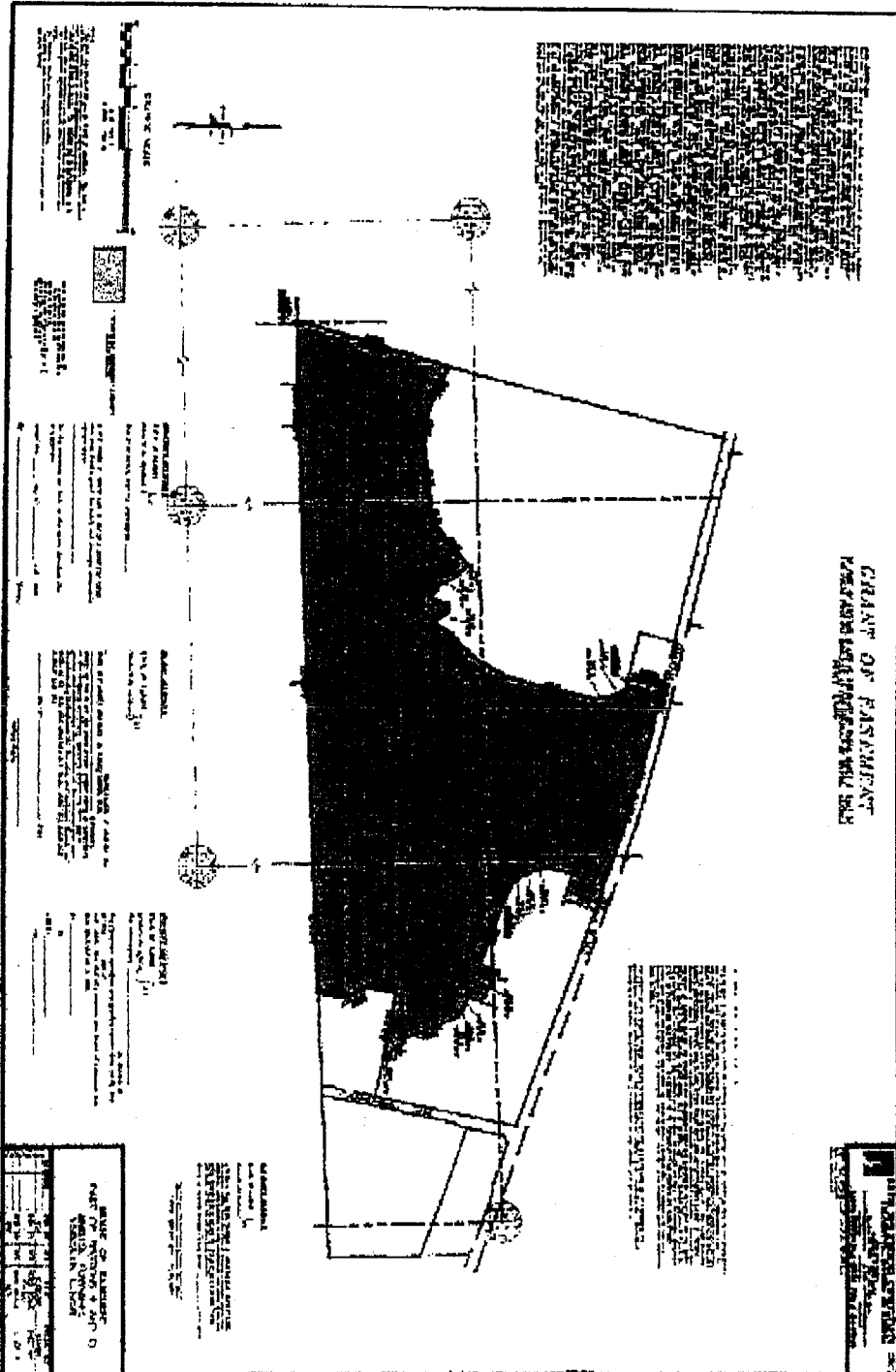
By: \_\_\_\_\_  
Daniel L. Star  
Illinois Division President

ATTEST:  
\_\_\_\_\_  
City Clerk

ATTEST:  
\_\_\_\_\_

<sup>3</sup> Move Exhibit "E" to become "Exhibit "B", and then add the required detail showing the Outfall (and its terminus), the temporary conveyance route, and "Phase One" of the Facility.

### Exhibit "A"



CNT000749



**Exhibit "B"**

**[Site Plan depicting Phase One of Facility,  
the Outfall ~~depiction~~(including its terminus), and  
the "temporary storm water conveyance route"]**

**CNT000750**

**Exhibit "C"**

**[Executed Legal Description of Property Covered  
by the Mesriow easements Easement]**

**Exhibit "D"**

**[Unexecuted Lay-com Legal Description of Property Not  
Covered By An Easement]**



CNT000754

Document comparison done by Workshare DeltaView on Monday, January 08, 2007 7:11:41 PM

<b>Input:</b>	
<b>Document 1</b>	file:///I:/Legal/IL-Real Estate/Yorkville-Bristol Bay/Yorkville-Bristol Bay-Regional Stormwater Facility & Raymond Outfall/Agreement between Centex & Yorkville re Stormwater Management Facility (Raymond Outfall) - 12-28-2006.DOC
<b>Document 2</b>	file:///I:/Legal/IL-Real Estate/Yorkville-Bristol Bay/Yorkville-Bristol Bay-Regional Stormwater Facility & Raymond Outfall/Agreement between Centex & Yorkville re Stormwater Management Facility (Raymond Outfall) - 01-08-2007.DOC
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<b>Format changed</b>	0
<b>Total changes</b>	138

2007-L-000081

9572300

Plaintiff

LAY COM INC  
800 GAME FARM ROAD  
YORKVILLE, IL 60560

Attorney

TIMOTHY D. ELLIOTT  
200 E. RANDOLPH DR.  
CHICAGO, IL 60601

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Change Due  
Balance Due .00

By: \_\_\_\_\_  
Deputy Clerk: LMH YLMH

Batch 12-101-002 Date 12/10/2008 Time 15:05:28