

**CITY OF GAUTIER
BUSINESS ITEM #15
Fact Sheet**

Council Meeting:

February 5, 2013

Title:

Professional services agreement with Thompson Engineering

Introduced by:

Contact Person/Telephone

Chad Jordan 251-209-6292

Summary Explanation: Approval of professional services agreement with Thompson Engineering for Ward 5 drainage improvements. Professional services will be paid from Ward 5 remaining bond funds

EXHIBITS FOR REVIEW

Resolution	<input type="checkbox"/>
Ordinance	<input type="checkbox"/>
Contract	<input type="checkbox"/>
Minutes	<input type="checkbox"/>
Plan Maps	<input type="checkbox"/>
Order	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>
Submittal Authorization	City Manager

Staff Recommendation:

Approval

Motion Made by:

Fortenberry	<input type="checkbox"/>	Martin	<input type="checkbox"/>	Jones	<input type="checkbox"/>	Guillotte	<input type="checkbox"/>	Gollott	<input type="checkbox"/>	Macfarland	<input type="checkbox"/>	Colledge	<input type="checkbox"/>
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Second Made by:

Fortenberry	<input type="checkbox"/>	Martin	<input type="checkbox"/>	Jones	<input type="checkbox"/>	Guillotte	<input type="checkbox"/>	Gollott	<input type="checkbox"/>	Macfarland	<input type="checkbox"/>	Colledge	<input type="checkbox"/>
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Voted as follows:		AYES	NAYS	Abstained	Absent
Mayor	Fortenberry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
At Large	Martin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ward 1	Jones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ward 2	Guillotte	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ward 3	Gollott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ward 4	Macfarland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ward 5	Colledge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Action Taken:

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi the following:

ORDER NUMBER 000-2013

IT IS HEREBY ORDERED by the Mayor and Member of the Council of the City of Gautier, Mississippi that the professional services agreement with Thompson Engineering for Ward 5 drainage improvements is hereby approved. Professional services will be paid from Ward 5 remaining bond funds.

IT IS FURTHER ORDERED that the City Manager or City Clerk is authorized to execute any and all documents necessary.

Motion was made by BLANK, seconded by BLANK and the following vote was recorded:

AYES:

NAYS:

MAYOR

ATTEST:

CITY CLERK

BLANK by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of February 5, 2013.



**Single Project Agreement
General Terms and Conditions**

Exhibit A

ACKNOWLEDGMENT OF ORDER

7/31/2012

Revised: 1/21/13

Proposal No. 12-2111-8101

City of Gautier
3330 Highway 90
Gautier, MS 39553

Chad Jordan, PE
Project Manager
ClearWater Solutions, LLC
251.209.6292

SERVICES REQUIRED:

Perform survey services within the Hickory Hills development and develop survey drawings from the field data for the City of Gautier.

Project deliverables shall be survey drawings showing elevation contours and existing drainage structures within the Hickory Hills development.

Once the survey drawings have been developed and submitted to the City, an engineering design fee shall be submitted, upon the City's request.

Additional scope changes shall be at the direction of the City as mutually agreed.

FEE:

All work to be performed on a time and material basis as per the included fee estimate (Exhibit B). Rates shown on Exhibit fee are taken from the Thompson Engineering standard fee schedule. Invoiced amount for the above referenced services shall not exceed the total amount shown on Exhibit B.

The fee estimate has been broken into segments, based on four preliminary drainage improvement phases as designated on the Exhibit C, Project Limits and Preliminary Phasing.

Single Project Agreement General Terms and Conditions

This Agreement is made by and between Thompson Engineering, Inc. (hereinafter **Thompson Engineering**) and the undersigned Client ("referred to herein as the "Client"). In consideration of the mutual covenants to be performed by the parties pursuant to this Agreement, each party hereby represents, warrants and agrees as follows:

1. SCOPE OF WORK

Thompson Engineering shall perform such services as are described in this contract and as described in **Exhibit A** (the "Work").

2. INVOICES

The Client shall pay **Thompson Engineering** for the Work performed under this Agreement a sum to be calculated as described on **Exhibit A** or, if no such description is provided or any portion of the Work is not specifically provided for in said description, at the rates shown on **Thompson Engineering's** standard fee schedules which are in effect as of the time of execution hereof, or as may be otherwise specifically described herein. **Thompson Engineering** will submit invoices to Client no more than monthly and a final bill upon completion of the Work. Invoice will show charges for different personnel and expense classifications. A more detailed separation of charges and back-up data will be provided at Client's request. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. Client shall pay a finance charge of one and one-half percent (1 ½ %) per month, or the maximum rate allowed by law, on past due accounts.

If **Thompson Engineering** personnel are called or subpoenaed for depositions, examinations, or court appearances in any dispute arising out of any project on which Work was performed, **Thompson Engineering** shall be reimbursed on a time and material basis in accordance with **Thompson Engineering's** then current, standard billing rates for such matters, including all out-of-pocket costs incurred in connection with such matters.

3. RIGHT OF ENTRY

The Client will provide for right of entry of **Thompson Engineering** personnel and all necessary equipment, in order to complete the Work.

While **Thompson Engineering** will take all reasonable precautions to minimize any damage to Client's property, it is understood by the Client that in the normal course of Work some damage may occur, the correction of which shall not be **Thompson Engineering's** responsibility.

4. UTILITIES

In the execution of its Work, **Thompson Engineering** will take all reasonable precautions to avoid damage or injury to subterranean structures or utilities. The Client agrees to hold **Thompson Engineering** harmless for any damages to subterranean structures or utilities which are not called to **Thompson Engineering's** attention and correctly shown on the plans furnished by the Client.

5. SAMPLES

Thompson Engineering will retain all samples for thirty (30) days. Further storage or transfer of samples can be made at Client's expense upon written request.

6. OWNERSHIP OF DOCUMENTS

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by **Thompson Engineering**, as instruments of service, shall remain the property of **Thompson Engineering**. Client agrees that all reports and other work furnished to the Client or his

agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose whatsoever.

Thompson Engineering will retain all pertinent records relating to the services performed for a period of five (5) years following submission of the report, during which period the records will be made available to the Client at all reasonable times.

All documents are for the exclusive use and benefit of the Client only. Others who use the documents do so at their own peril. **Thompson Engineering** consents that its information and reports may be furnished to and used by others participating in the financing and/or development of the project (and for reports involving real property transactions, other parties of the transaction), but only in the same manner and extent as if such others were the addressee and the Client. The terms, conditions, and limitations of liability contained in the Agreement shall apply to others to whom Client furnishes such information and reports. No one other than the Client is authorized to rely, in any way, on any information or reports issued pursuant to this Agreement.

7. DISPUTES

In the event that a dispute should arise relating to the obligations of the parties under this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred in connection with such dispute, including staff time, court costs, attorney's fees and other related expenses.

8. PROFESSIONAL RESPONSIBILITY

Thompson Engineering represents that the Work shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other professionals under similar circumstances at the time services are performed. No other representation to the Client, expressed or implied, and no warranty or guarantee is included or intended hereunder, or in any work performed under this Agreement.

Client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by **Thompson Engineering** and that the data interpretations and recommendations of **Thompson Engineering's** personnel are based solely on the information available to them. **Thompson Engineering** will be responsible for those data interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

9. LIMITATION OF LIABILITY

A. This Agreement shall exclude all losses of all types including but not limited to property damage, bodily injury, third party liability or any other claim, cost or expense directly or indirectly arising out of, resulting from, or relating to mold, mildew, fungus, spores or other microorganisms of any type, nature, or description or any by-product thereof including but not limited to any substance whose presence poses an actual or potential threat to human health.

B. For claims not excluded by Paragraph A, the Client agrees to limit **Thompson Engineering's** liability to the Client for any and all claims, losses, costs, or damages whatsoever on any project arising from this Agreement and/or performance of the work by **Thompson Engineering**, such that the total aggregate liability of **Thompson Engineering** to the Client shall not exceed \$50,000 or **Thompson Engineering's** total fee for the services rendered on the project, whichever is less. The Client further agrees to require of any contractor and subcontractors an identical limitation of liability to **Thompson Engineering**, which liability may arise on account of **Thompson Engineering's** performance of services or its acts, errors and omissions.

As used in this article 9, the term **Thompson Engineering** shall mean to include any parent, subsidiary or affiliated companies of **Thompson Engineering** and any directors, officers and employees of any of the same.

Single Project Agreement General Terms and Conditions

10. INSURANCE

Thompson Engineering represents and warrants that it and its agents, staff and consultants employed by it are protected by worker's compensation insurance and that it has such coverage under public liability and property damage insurance policies which **Thompson Engineering** deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. **Thompson Engineering** shall not be responsible for any loss, damage or liability arising from any acts by Client, its agents, staff or other consultants employed by Client.

11. INDEMNIFICATION

The Client shall indemnify and hold **Thompson Engineering** harmless from and against any and all losses, claims (including third party claims), damages, judgments, fees, fines, penalties and other amounts (including, without limitation, any with respect to sickness, bodily injury, wrongful death and property damage), including attorneys fees and court costs, arising directly or indirectly out of or alleged to have arisen out of the performance of Work under this Agreement or any breach by Client of its obligations hereunder, which indemnity shall not be limited by reason of the existence or nonexistence of any insurance.

As used in this paragraph, the term **Thompson Engineering** shall mean to include any parent, subsidiary or affiliated companies of **Thompson Engineering** and any directors, officers and employees of any of the same.

12. ASSIGNS

Neither the Client nor **Thompson Engineering** may delegate, assign sublet or transfer his duties or interest in this Agreement without the written consent of the other party.

13. SAMPLING OR TEST LOCATION

Client may be charged additional fees for costs associated with surveying of the site for the accurate horizontal and vertical locations of any tests. Field tests or boring locations described in **Thompson Engineering's** report or shown on sketches will be based upon information furnished by others or estimates made in the field by **Thompson Engineering's** representatives. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated. If the Client specifies a test or boring location, **Thompson Engineering** reserves the right to deviate a reasonable distance from the location specified. **Thompson Engineering** reserves the right to terminate its obligation to perform any Work if site conditions prevent drilling at or near the designated boring locations and these conditions were not revealed to **Thompson Engineering** prior to agreeing to perform the Work. If, in order to complete the borings to their designated depths, a re-drilling is necessitated by encountering impenetrable subsurface objects, this will be charged to Client at the appropriate rates contained in **Thompson Engineering's** standard fee schedule.

14. RIGHT TO STOP WORK

Stopping the construction work is an extreme action which should be taken only by the Client after giving serious consideration to the effects of such an order. Under no circumstances will **Thompson Engineering** take the initiative in issuing this order. **Thompson Engineering** will only provide data and recommendations.

15. ROOF CUTS

To obtain accurate information in a roof investigation, roof cuts may be necessary. It is the responsibility of our Client to make the appropriate repairs to these roof cuts using materials consistent with the roofing system and in accordance with any existing material manufacturer's warranties. A roofing contractor or maintenance personnel selected by Client should be on the roof to make repairs at the time the samples are obtained. **Thompson Engineering** can make temporary repairs at the time of **Thompson Engineering's**

inspections, but additional charges may be incurred. Although every attempt will be made to make these repaired areas water tight, **Thompson Engineering** will in no way be responsible for any water damage to the roofing system, building, or its contents resulting from **Thompson Engineering's** temporary repairs.

16. FIELD MONITORING AND TESTING

If the Scope of Work in Exhibit A includes construction field monitoring and/or testing, **Thompson Engineering** shall visit the project site at intervals appropriate to the stage of construction or as agreed to in writing by the Client and **Thompson Engineering**, in order to observe the progress and quality of the work completed by the contractor. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of the contractor's work but rather are to allow **Thompson Engineering** to become generally familiar with the work in progress and to determine in general if the work is proceeding in accordance with the contract documents.

Thompson Engineering shall not supervise, direct or have control over the Client's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the contractor nor for the contractor's safety precautions or programs in connection with the work. These rights and responsibilities are solely those of the contractor in accordance with the contract documents. **Thompson Engineering** shall not be responsible for any acts or omissions of the contractor, subcontractor, any entity performing any portion of the work, or any agents or employees of any of them. **Thompson Engineering** does not guarantee the performance of the contractor and shall not be responsible for the contractor's failure to perform its work in accordance with the contract documents or any applicable laws, codes, rules or regulations.

17. SAFETY

Should **Thompson Engineering** provide observations or monitoring services at the job site during construction, Client agrees that, in accordance with the generally accepted construction practice, the contractor will be solely and completely responsible for working conditions on the job site, including the safety of all persons and property during the performance of the work, and for compliance with OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. Any monitoring of the contractor's procedures conducted by **Thompson Engineering** does not include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site.

18. HAZARDOUS SUBSTANCES

Client agrees to advise **Thompson Engineering**, prior to beginning work, of any hazardous substance on or near the site. In the event that test samples obtained during our work contain substances hazardous to health, safety or the environment, these samples remain the property of the Client. Likewise, any equipment contaminated as a result of the Work which cannot be reasonably decontaminated shall become the property and responsibility of the Client. Client agrees to pay transportation costs for samples and equipment and the fair market value of contaminated equipment.

19. REUSE OF DOCUMENTS AND ELECTRONIC MEDIA

Any and all documents and electronic media including Drawings, CADD files and Specifications prepared or furnished by **Thompson Engineering** (and **Thompson Engineering's** independent professional associates and consultants) pursuant to this Agreement are instruments of service of the Project and **Thompson Engineering** shall retain an ownership and property interest therein whether or not the Project is completed. Information contained in signed or sealed drawings should be deemed to be correct and superior to electronic information. Client may make and retain copies for information and reference in connection with use and occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for



**Single Project Agreement
General Terms and Conditions**

reuse by Client or others on extensions of the Project or on any other project. Any reuse without written authorization or adaptation by Thompson Engineering for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Thompson Engineering, or to Thompson Engineering's subsidiaries, holding company, independent professional associates or consultants, and Client shall indemnify and hold harmless Thompson Engineering and Thompson Engineering's subsidiaries, holding company, independent professional associates and consultants from any and all claims (third party or otherwise), damages, losses and expenses, including attorney's fees, arising out of or resulting therefrom.

and agreements, either oral or written. No modification to the terms hereof shall be made unless agreed to in writing by both parties.

22. SEVERABILITY

In the event any provision, or any portion of any provisions of this Agreement is held invalid, the other provisions of this Agreement and the remaining portion of said provision, shall not be affected thereby and shall continue in full force and effect.

20. GOVERNING LAW

This agreement shall be governed by the laws of the State of Alabama and the United States.

21. ENTIRE AGREEMENT

This Agreement represents the entire agreement between Client and Thompson Engineering and supersedes all prior negotiations, representations

Approved and Authorized by:

(Client)
By: _____
As its: _____
Date: _____

Address: _____

Thompson Engineering, Inc.
By: _____
As its: _____
Date: _____

Address: 4006 Kreole Avenue, Suite. B
Moss Point, MS 39563

Individual with authority and the company responsible for payment of Thompson Engineering's services.

Please return executed copy of these terms and conditions to the attention of:

Davis Sellers
(228) 509-7850
(251) 666-6422

EXHIBIT B: City of Gautier; Hickory Hills Drainage Improvements
(revised to include area 1b)



EXHIBIT B

TE Fee Services Estimate No. 12-2111-8101

Rev. 1/21/13

Description	Unit	Estimated Quantity	Unit Fees	Subtotal
SURVEY SERVICES - Phase 1				
Registered Professional Land Surveyor I	Hour	5	\$ 110.00	\$ 550.00
Survey Crew - Party Chief and Instrument Man	Hour	65	\$ 150.00	\$ 9,750.00
Designer Level IV	Hour	24	\$ 85.00	\$ 2,040.00
Phase 1 Survey Services Subtotal =				\$ 12,340.00
SURVEY SERVICES - Phase 1B				
Registered Professional Land Surveyor I	Hour	5	\$ 110.00	\$ 550.00
Survey Crew - Party Chief and Instrument Man	Hour	35	\$ 150.00	\$ 5,250.00
Designer Level IV	Hour	18	\$ 85.00	\$ 1,530.00
Phase 1 Survey Services Subtotal =				\$ 7,330.00
SURVEY SERVICES - Phase 2				
Registered Professional Land Surveyor I	Hour	5	\$ 110.00	\$ 550.00
Survey Crew - Party Chief and Instrument Man	Hour	25	\$ 150.00	\$ 3,750.00
Designer Level IV	Hour	16	\$ 85.00	\$ 1,360.00
Phase 2 Survey Services Subtotal =				\$ 5,660.00
SURVEY SERVICES - Phase 3				
Registered Professional Land Surveyor I	Hour	5	\$ 110.00	\$ 550.00
Survey Crew - Party Chief and Instrument Man	Hour	45	\$ 150.00	\$ 6,750.00
Designer Level IV	Hour	20	\$ 85.00	\$ 1,700.00
Phase 3 Survey Services Subtotal =				\$ 9,000.00
TOTAL FEE				\$ 34,330.00

Prepared by D. Sellers / Helen Adams-Morales, P.E.



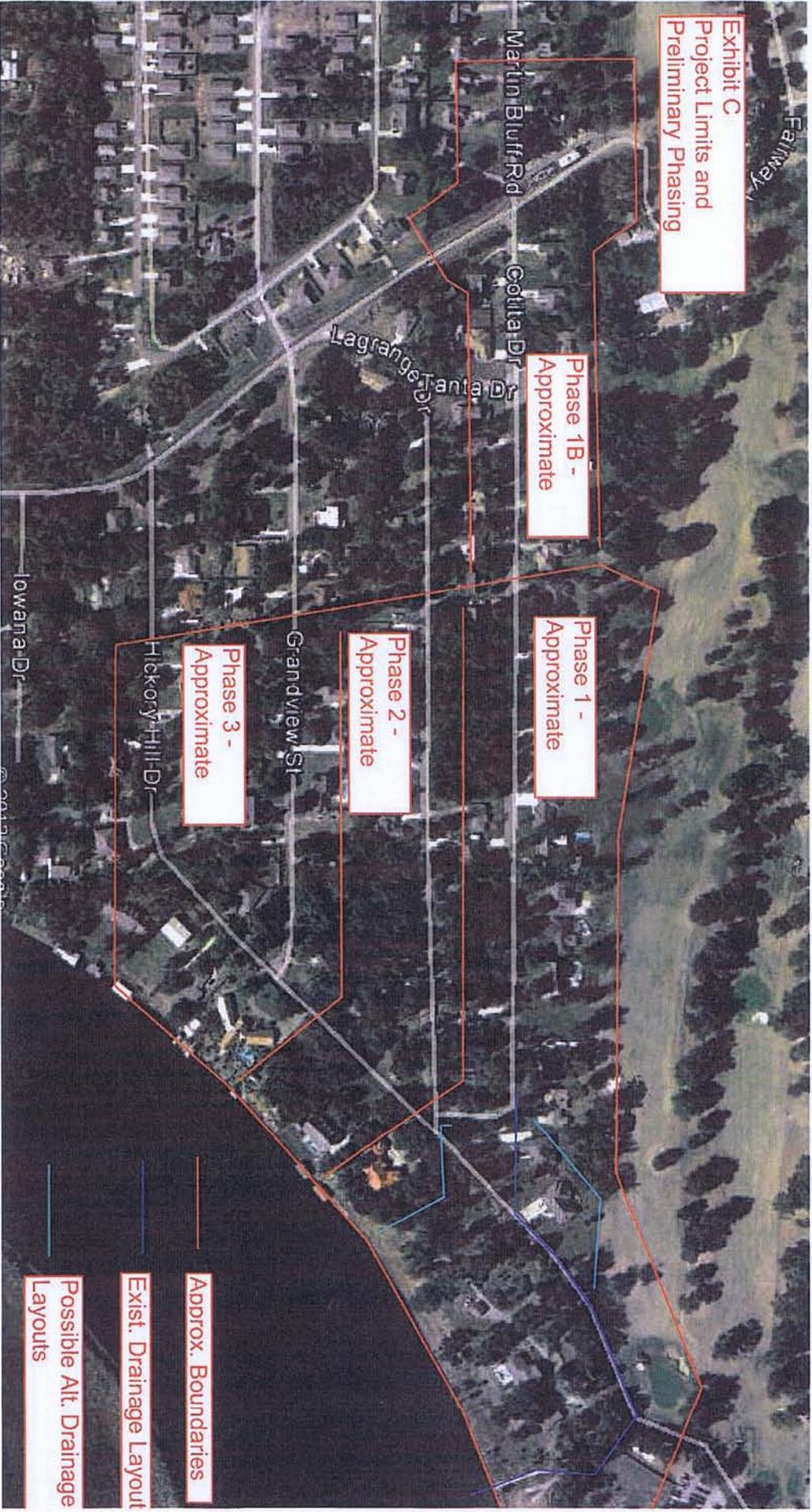
Exhibit C
Project Limits and
Preliminary Phasing

Phase 1B -
Approximate

Phase 1 -
Approximate

Phase 2 -
Approximate

Phase 3 -
Approximate



- Approx. Boundaries
- Exist. Drainage Layout
- Possible Alt. Drainage Layouts