Docket of Claims

Release date from 07/03/2012 thru 07/03/2012

SUMMARY OF ALL FUNDS

FUND 1 Claims	to	Checks	38 Total	422,608.06 Manual	Held	Total	422,608.06
FUND 12 Claims	to	Checks	2 Total	10,428.47 Manual	Held	Total	10,428.47
FUND 130 Claims	to	Checks	3 Total	41,937.44 Manual	Held	Total	41,937.44
FUND 157 Claims	to	Checks	1 Total	59.96 Manual	Held	Total	59.96
FUND 160 Claims	to	Checks	1 Total	304.50 Manual	Held	Total	304.50
FUND 166 Claims	to	Checks	1 Total	2,556.00 Manual	Held	Total	2,556.00
FUND 172 Claims	to	Checks	1 Total	3,385.19 Manual	Held	Total	3,385.19
FUND 400 Claims	to	Checks	27 Total	309,899.24 Manual	Held	Total	309,899.24
FUND 404 Claims	to	Checks	2 Total	646.50 Manual	Held	Total	646.50
Total for all Funds		Checks	76 Total	791,825.36 Manual	Held	Total	791,825.36

Motion was made by Councilman Colledge, seconded by Councilwoman Martin and unanimously carried to approve $1,500 engineering professional services agreement with Machado/Patano LLC for Veterans Tribute Tower Foundation design.

Tricia Thigpen

From:	Samantha Abell <sabell@gautier-ms.gov>
Sent:	Tuesday, July 03, 2012 9:28 AM
To:	'Adam Colledge'; 'Gordon Gollott'; 'Hurley Ray Guillotte'; 'Johnny Jones'; 'Mary Martin'; 'Mayor Fortenberry'; 'Scott Macfarland'
Cc:	dreeves@gautier-ms.gov; wmcclain@gautier-ms.gov; cbilbo@gautier-ms.gov; tthigpen@gautier-ms.gov
Subject:	FW: Veterans Tower Foundation Proposal
Attachments:	7.2.12_Proposal_City of Gautier Clock Foundation.pdf
Importance:	High

Council,
Due to the need to keep the veterans tribute tower on track for an August 30th ceremony, I am requesting an amendment to tonight's agenda to include a $1,500 professional services agreement with Machado Patano for construction drawings. Please see Dennis' email below and the attachment.

Thank you.

Samantha

From: Dennis Reeves [mailto:dreeves@gautier-ms.gov]
Sent: Tuesday, July 03, 2012 8:19 AM
To: sabell@gautier-ms.gov
Cc: robertgramsay@att.net
Subject: Veterans Tower Foundation Proposal

Sam,

Attached is the proposal from Machado Patano. I recommend approval. Understanding that this has a short fuse, is this something we want to add to the Agenda tonight? They have committed to having the design within 14 days from written acceptance, but they may be able to beat this.

Thanks.

Dennis W. Reeves, P.E.
Director of Public Works
City of Gautier
3330 Hwy 90
Gautier, MS 39553
Ph: 228-497-4283
Web: www.gautier-ms.gov

MACHADO | PATANO

1641 Popps Ferry Rd., Suite A-4 · Biloxi, MS 39532
Office 228.388.1950 · Fax 228.388.1971
www.mpeng.us

July 2, 2012

Mr. Dennis Reeves, P.E.
Director of Public Works
3305 Gautier-Vancleave Road
Gautier, MS 39553

VIA EMAIL: dreeves@gautier-ms.gov

RE: Engineering Proposal for Veterans Tribute Tower Foundation Design

Mr. Reeves:

Per your request, Machado | Patano (MP) is pleased to provide the City of Gautier (Client) with a proposal for professional engineering services for the required construction documents for a new clock tower foundation. This proposal is based on the Verdin documents provided by the client (attached) Below, we have prepared a scope of work, fee proposal, and billing schedule as well as attached our "General Terms and Conditions – Exhibit A" which are considered part of this proposal.

In accordance with the rules of the Mississippi State Board of Registration for Professional Engineers and Land Surveyors, we cannot offer pricing for these services for comparison to other firms. We understand that you have chosen Machado Patano PLLC for this assignment on the basis of qualifications.

SCOPE OF WORK

Task 1 – Provide Construction Drawings – Veterans Tribute Clock Tower Foundation

M|P will prepare the appropriate foundation drawings for construction of the Veterans Tribute Tower. The drawings will contain all of the necessary plans and details necessary to construct the foundation. The plans will be signed and sealed by a professional engineer registered in the State of Mississippi.

Exclusions to this Proposal:

- Geotechnical investigation
- Electrical lighting design
- Landscape architecture design
- Boundary or Topographic Survey
- Construction Layout Staking
- Permitting Services

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Fee Proposal

Task 1 – Provide Construction Drawings		=	$1,500
	Total Lump Sum Fee	=	**$1,500**

Note: M|P will only proceed on tasks identified above after written authorization from client is obtained.

Schedule

M|P can have final documents ready within 14 days from written authorization.

Billing Schedule

All services itemized above for each task shall be billed at percentage (%) complete of that particular task on a monthly basis. Payment terms for services rendered shall be NET 30. Individual task items will only be worked on by M|P with prior written approval from the Client.

We appreciate the opportunity to provide our services to the City of Gautier and look forward to working with you on this project. Should you have any questions or comments, please do not hesitate to contact me.

Respectfully submitted,
Machado | Patano, PLLC

Gerrod W. Kilpatrick, P.E.

GWK/gwk
w/ attachments

- *Exhibit A – General Terms and Conditions (4 pages)*
- *Exhibit B – Drawings provided by Verdin*

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Office 228.388.1950 · Fax 228.388.1971
www.mpeng.us

The Terms and Conditions of this agreement are accepted this _____ day of _____, 2012.

_____
***Signature

_____
Printed or typed name

_____
Title Date

_____ _____
Company Telephone

_____ _____
Street Address Fax

_____ _____
City State Zip Code E-mail Address

****By executing this proposal and signing above, the Client attest that they have read and reviewed all exhibits that are attached to this proposal and has accepted those exhibits in whole as part of the proposal.*

MACHADO | PATANO

EXHIBIT A
GENERAL TERMS AND CONDITIONS

1. **Relationship Between Machado | Patano, PLLC (hereafter, "MP") and Client.** Machado | Patano shall serve as the professional engineering consultant of City of Gautier (hereafter, "Client") in those phases of the Project to which this Professional Services Agreement ("Agreement") applies. MP shall not be considered to be the employee or agent of the Client and shall always be considered an independent contractor of Client. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

2. **Professional Services Agreement Documents.** The Agreement shall consist of these General Terms and Conditions and the Proposal executed by Client and MP, if any. In the event of a conflict between the Proposal and these General Terms and Conditions, the latter shall govern.

3. **Applicability.** These General Terms and Conditions shall apply to all work performed by MP for the benefit of Client on this and all future projects, unless the parties agree, in writing, to subsequent General Terms and Conditions. The execution of a written Proposal on future projects is not a condition precedent to the applicability of these General Terms and Conditions to such work.

4. **Responsibility of MP.** MP will endeavor to perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. It is understood and agreed that no other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, including exhibits incorporated herein, if any, or in any report, opinion, document, or otherwise.

   Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, MP shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall MP be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to MP to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

   If the applicable Proposal directs it to do so, MP shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, MP will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

5. **Responsibilities of Client.** Client shall provide all criteria and full information as to its requirements for the Project, including budgetary limitations, insurance and bonding requirements, if any, and a written description of Project goals. Client shall arrange for MP to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

   Client shall give prompt written notice to MP whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of MP's services, or any defect or nonconformance in the work of any construction contractor.

   Client shall examine all documents presented by MP, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations, and provide decisions pertaining thereto within a reasonable time so as not to delay the services of MP.

   Client shall promptly pay invoices of MP for professional services rendered.

6. **Initial Decision Maker.** MP shall serve as the Initial Decision Maker on the Project only if agreed in writing by the Client and Contractor. The service of MP as Initial Decision Maker shall be in accordance with the Construction Industry Initial Decision Maker (IDM) Procedures currently in effect as of the date this Agreement is executed.

7. **Designation of Authorized Representatives.** Each party shall designate, in writing, one or more persons to act with authority in its behalf with respect to the Project. The persons designated shall review and respond promptly to all communications received from the party.

8. **Ownership of Documents.** Drawings, specifications, reports and any other documents prepared by MP in connection with any or all of the services furnished hereunder shall be the property of Client. MP shall have the right to retain copies of all documents and drawings for its files.

9. **Reuse of Documents.** All documents, including drawings and specifications furnished by MP pursuant to this Agreement, are intended for use on the Project only. They shall not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or adoption by MP, shall be at Client's sole risk, and Client shall indemnify and hold harmless MP from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.

10. **Opinions of Cost.** Since MP has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, MP cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs. MP shall not be liable in any way to Client for any cost variances.

11. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments; and MP and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.

12. **Delays.** If MP's services are delayed by the Client, or for other reasons beyond MP's control, for more than 120 days, the fee provided for in this Agreement shall be adjusted equitably.

13. **Subcontracts.** In its sole discretion, MP may elect to retain sub-consultants for the performance of portions of the services contemplated by this Agreement. MP shall have the authority to select such sub-consultants and shall not be required to obtain approval of Client as to the identity of such sub-consultants.

14. **Suspension of Services.** Should any amount owing MP remain past due and owing for more than 30 days, MP may, at its sole election, immediately stop work until such time as all amounts due and owing MP, including interest and attorney's fees are paid, and MP shall be held harmless by the Client for any damages accruing or alleged to have accrued from such work stoppage. Client may, at any time, by written order to MP, require MP to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, MP shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. MP will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse MP for the costs of such suspension and remobilization.

15. **Termination.** This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by MP either before or after the termination date shall be reimbursed by Client.

16. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.

17. **Indemnification.** MP or its insurer shall indemnify and hold harmless Client from Client's loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the sole negligent act, error or omission of MP.

    Client shall indemnify and hold harmless MP from MP's loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of Client.

    In the event of joint or concurrent negligence of MP and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage.

    Client shall not be liable to MP, and MP shall not be liable to the Client, for any special, incidental or consequential damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client or MP or their employees, agents or subcontractors, by reason of services rendered under this Agreement.

18. **Dispute Resolution.** The parties shall endeavor to resolve claims, disputes, and other matters in controversy via mediation, which, unless the parties agree otherwise, shall be conducted in Gulfport, Mississippi, pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association currently in effect as of the date this Agreement is executed.

    Except as otherwise specifically provided herein, all claims, disputes, and other matters in controversy between MP and the Client arising out of or relating to this Agreement shall be decided by binding arbitration. If MP in good faith believes that any claim, dispute, or matter in controversy with MP also involves rights or liabilities of any third party, then, at MP's sole election, the Client agrees to resolve such issues in the same forum or proceeding, including arbitration, court, or administrative authority, which has jurisdiction over some or all claims, disputes, and matters in controversy involving the third party so as to promote economy and avoid inconsistent results. Mediation shall not be a condition precedent to arbitration.

    MP and Client intend and agree that the foregoing dispute resolution provisions are not independent of nor severable from the remainder of the Agreement and that such provisions are supported by the consideration and mutuality of the Agreement as a whole. The locale for any arbitration or litigation involving the Client and MP shall be Gulfport, Mississippi, unless MP agrees to designate another locale to facilitate joinder of parties, to consolidate claims, or for any other reason. Any arbitration proceedings conducted pursuant to this Agreement shall be conducted and decided pursuant to the American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures in effect as of the date this Agreement is executed.

    If MP and the Client litigate or arbitrate a monetary claim, not otherwise prohibited by this Agreement, the party found liable in such proceedings will pay the other party's reasonable and necessary attorneys' fees. If less than the full amount of such monetary claim is awarded, the party asserting such claim ("claimant") shall recover reasonable and necessary attorneys' fees (but no contingent fees) equal to the proportion of the amount awarded to the amount claimed, and the claimant shall pay the other party's reasonable and necessary attorneys' fees (but no contingent fees) equal to the proportion of the amount denied to the amount claimed.

19. **Legal Proceedings.** In the event MP's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding or inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where MP is not a party to such proceeding, Client will compensate MP for its services and reimburse MP for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Client engages MP to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.

20. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.

21. **Insurance.** MP shall maintain workmen's compensation and unemployment compensation for its direct employees of a form and in an amount as required by state law. MP shall endeavor to maintain comprehensive general liability insurance, automotive liability, and professional liability insurance. Client recognizes that the insurance market is erratic and MP cannot guarantee to maintain the coverages identified above, except to the extent required by law.

22. **Information Provided by the Client.** MP shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to MP. In this case, the Client recognizes that MP cannot assure the sufficiency of such information. Accordingly, MP shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client or any other person or entity acting on behalf of Client. In addition, the Client agrees to compensate MP for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is insufficient or inaccurate.

23. **Latent or Subsurface Conditions and Utilities.** Client recognizes that a comprehensive, site investigation and sampling and testing program implemented by trained and experienced personnel of MP or MP's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological and geotechnical conditions that MP properly inferred to exist between sampling points may differ significantly from those that actually exist.

    MP will locate utilities which will affect the project from information provided by the Client and utility companies and from MP's surveys. In that these utility locations are based, at least in part, on information from others, MP cannot and does not warrant their completeness and accuracy.

24. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, MP is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform MP in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. MP agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client waives any claim against MP and agrees to indemnify, defend and hold MP harmless from any claim or liability for injury or loss arising from MP's encountering unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate MP for any time spent and expenses incurred by MP in defense of any such claim.

25. **Risk Allocation.** The Client recognizes that MP's fee includes an allowance for funding a variety of risks which affect MP by virtue of his agreeing to perform services on the Client's behalf. One of these risks stems from MP's potential for human error. In order for the Client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Client agrees to limit MP's liability to the Client and all construction contractors arising from MP's professional acts, errors or omissions, such that the total aggregate liability of MP to all those named shall not exceed $50,000 or MP's total fee for the services rendered on this project, whichever is greater.

26. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change orders are to be expected. As long as MP provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, client agrees not to make any claim against MP for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against MP for costs incurred if the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against MP will be limited to the lesser of the cost increase (and not the entire cost of the change order) or the limit set forth in Paragraph 25.

27. **Payment.** MP shall submit monthly invoices to Client. Payment in full shall be due upon receipt of the invoice. If payments are delinquent after 30 days from the invoice date, Client agrees to pay interest on the unpaid balance at the legal rate. Payment for MP's services is not contingent on any factor except MP's ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Should MP be required to initiate collection efforts, whether through correspondence or formal dispute resolution proceedings, Client agrees that it shall be liable to MP for its reasonable attorney's fees expended in connection with such collection efforts.

28. **Force Majeure.** Neither Client nor MP shall be liable for any fault or delay caused by any contingency beyond their control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.

29. **Compliance with Laws.** To the extent they apply to its employees or its services, MP shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory or commonwealth thereof.

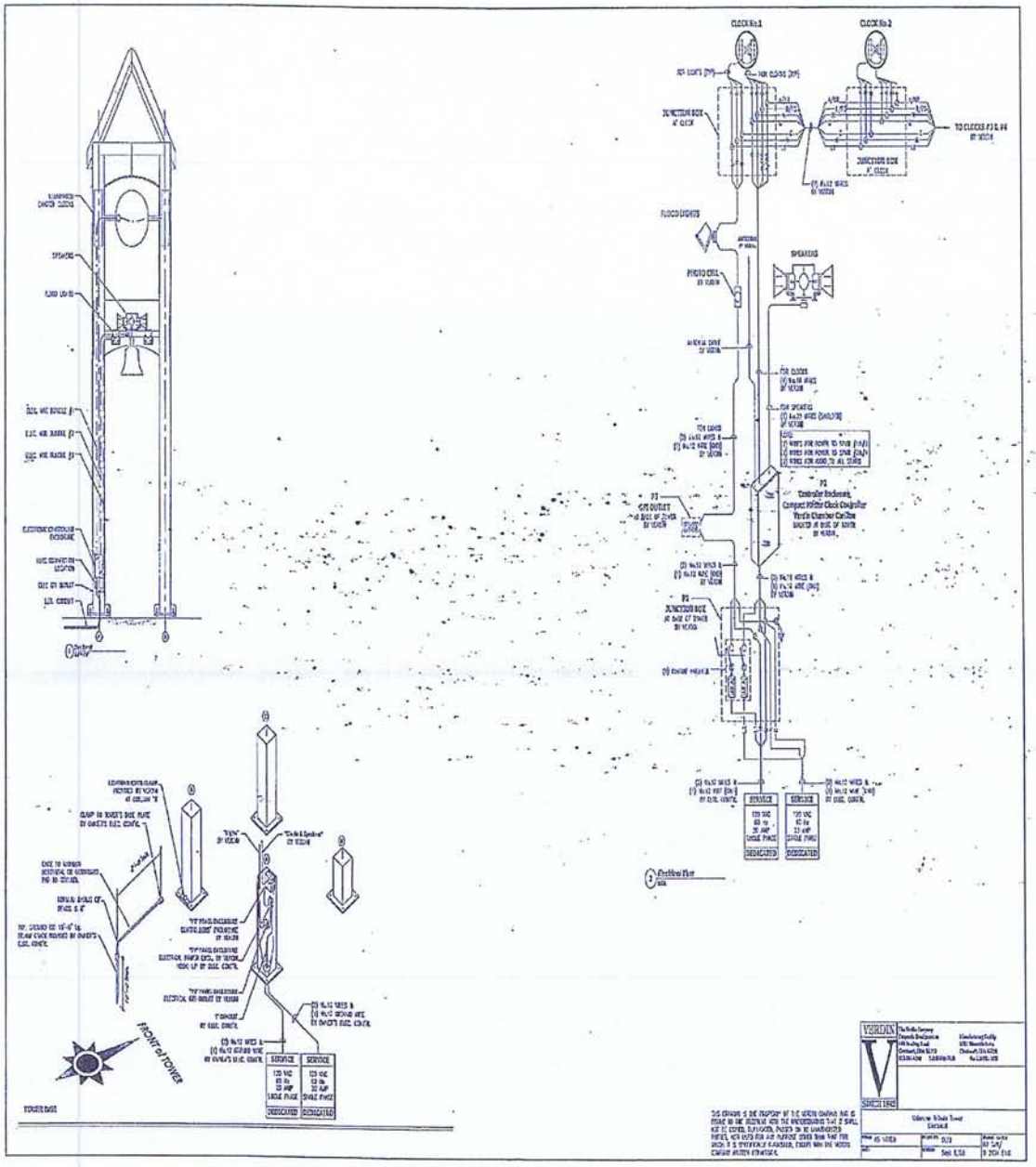
30. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.

31. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.

32. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each of the parties.

33. **No Waiver.** No action or inaction on the part of any party shall constitute a waiver of any provision of this Agreement. The failure to enforce any provision of this Agreement shall not constitute a waiver, nor prohibit subsequent enforcement of such provision. A waiver shall be valid and binding only if in writing and signed by the party against whom the waiver is being asserted.

34. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and MP hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.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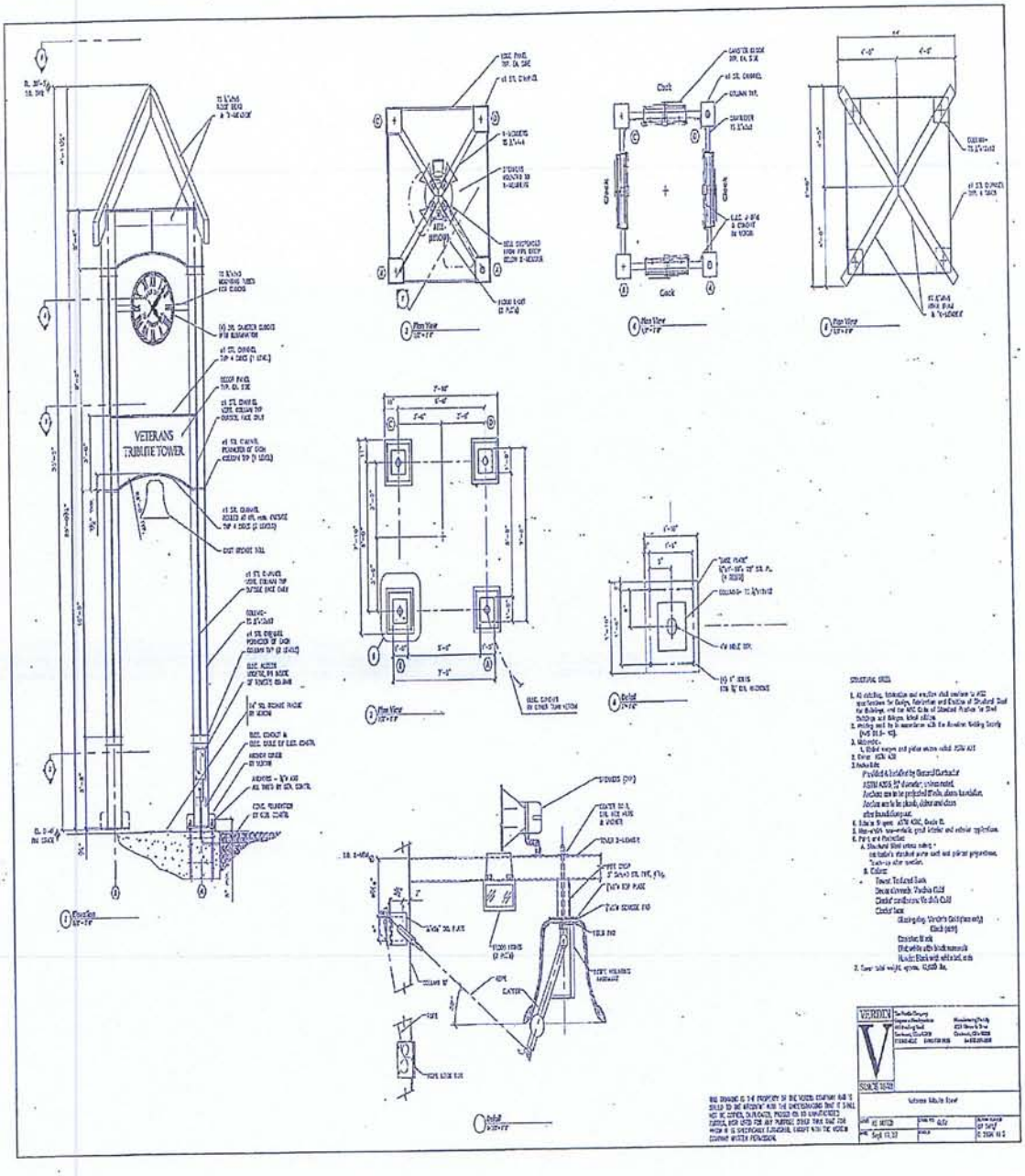
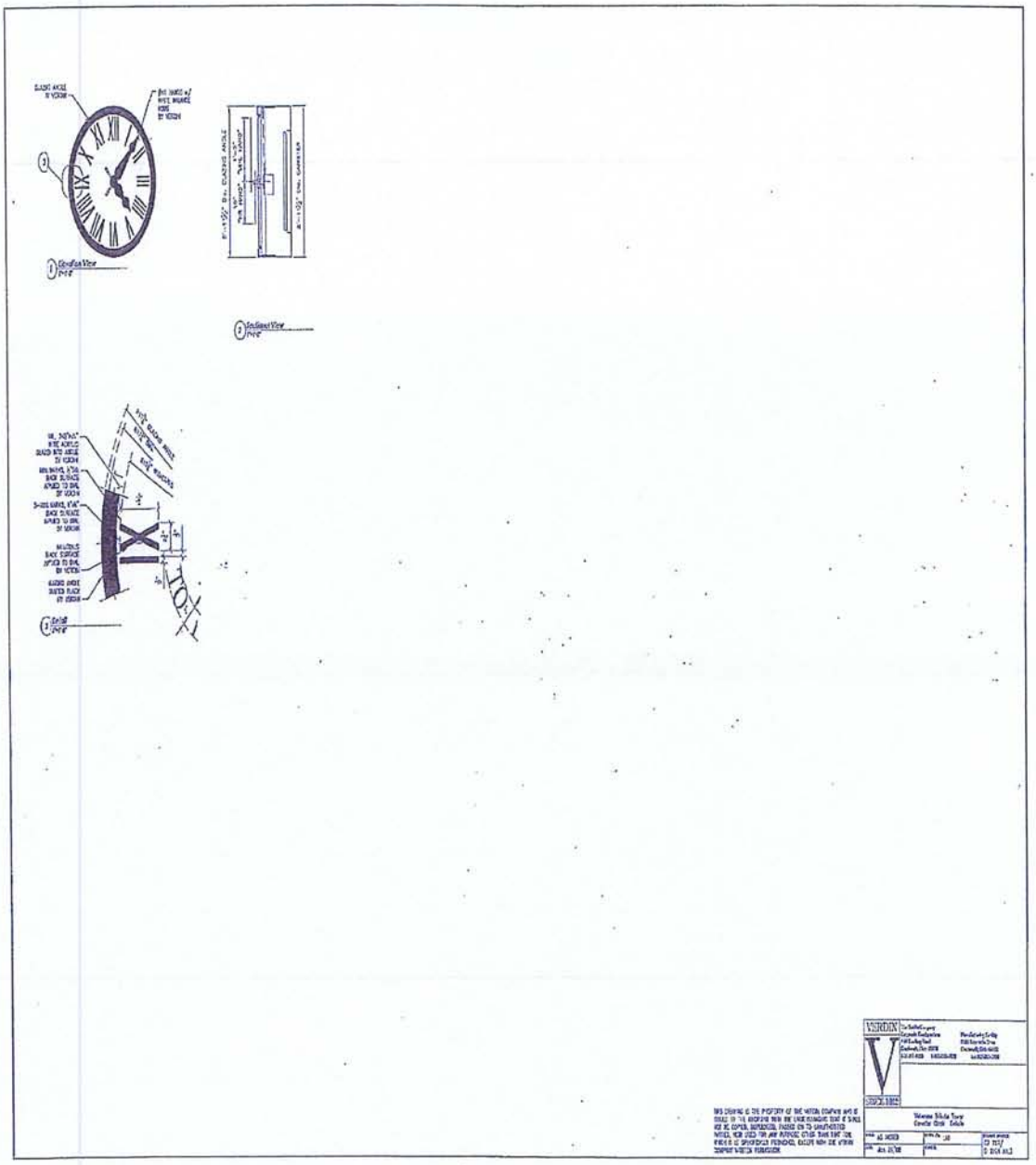
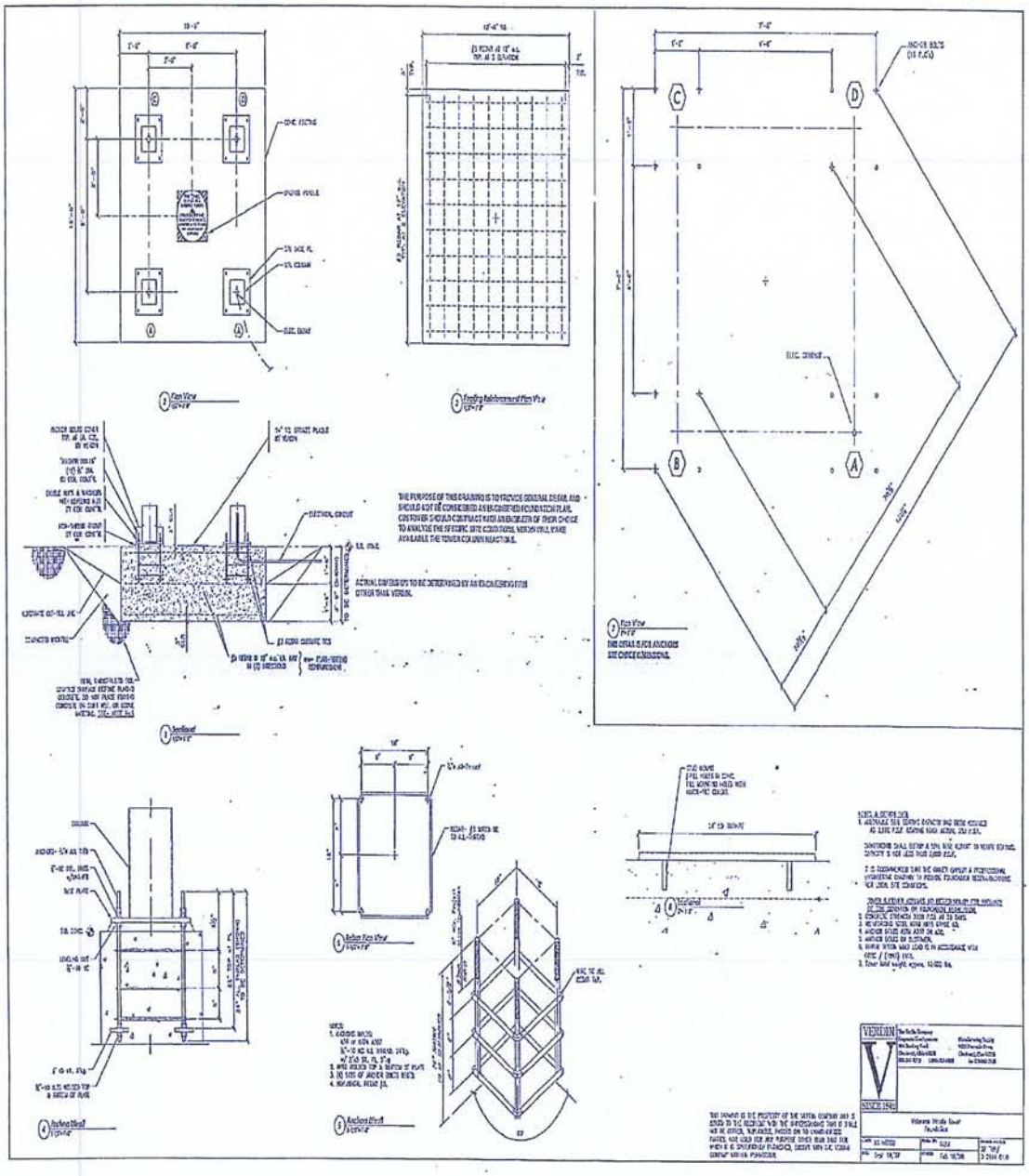
CLOCK No 2
FLOOD LIGHTS
SPEAKERS
SERVICE
DEDICATED
FRONT OF TOWER
TOWER BASE
VERDIN


VETERANS
TRIBUTE TOWER





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

ORDER NUMBER 168-2012

IT IS HEREBY ORDERED by the Mayor and Members of the Council of the City of Gautier, Mississippi, that Consent Agenda is hereby approved.

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

Motion was made by Mayor Fortenberry, seconded by Councilwoman Martin and the following vote was recorded:

AYES: Tommy Fortenberry
Johnny Jones
Hurley Ray Guillotte
Gordon Gollott
Mary Martin
Scott Macfarland
Adam Colledge

NAYS: None

_____
MAYOR

ATTEST:

_____
CITY CLERK

PASSED AND ADOPTED by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of July 3, 2012.

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

ORDER NUMBER 169-2012

IT IS HEREBY ORDERED by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the City is hereby authorized to accept donated plastic barrels from Ingalls Shipbuilding to use as trash receptacles at the City's Parks, Ball Fields and maintenance Facilities, etc.

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

Motion was made by Mayor Fortenberry, seconded by Councilwoman Martin and the following vote was recorded:

AYES: Tommy Fortenberry
Johnny Jones
Hurley Ray Guillotte
Gordon Gollott
Mary Martin
Scott Macfarland
Adam Colledge

NAYS: None

_____
MAYOR

ATTEST:

_____
CITY CLERK

PASSED AND ADOPTED by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of July 3, 2012.