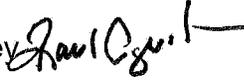


OFFICE OF THE CITY ATTORNEY

LETTER TO COMMISSION

184-2015

TO: Mayor Philip Levine and Members of the City Commission

FROM: Raul J. Aguila, City Attorney 

DATE: May 4, 2015

SUBJECT: *The City of Miami Beach, Florida v. Hargreaves Associates, Inc., et al.*
Case No. 10-61979 CA 40

Attached for your information is a copy of Circuit Court Judge John W. Thornton's April 30, 2015 Verdict following the non-jury trial, in connection with the above-referenced matter pertaining to the South Pointe Park Improvement Project.

The Court has found in favor of the City and awarded the City damages in the total amount of \$1,479,037.00 plus prejudgment interest.

As to the overall judgment award, the Court entered a judgment of \$1,000,937.00 against the architect-of-record, Hargreaves Associates (approximately 68% of fault) and a judgment of \$478,100.00 against the general contractor, MCM (approximately 32% of fault). Travelers Casualty & Surety Co. of America, the surety, was found jointly liable for the full amount of the judgment entered against MCM.

The total judgment award was broken down as follows:

- As to the sod and related green space, the Court awarded the City a total judgment amount of \$1,290,037.00, apportioning \$969,437.00 to Hargreaves Associates (approximately 75% of fault) and \$320,600.00 to MCM (approximately 25% of fault). This amount takes into account setoffs as to the prior settlements with the local landscape architect, Savino Miller Design Studio and the irrigation designer, Kenneth Didonato, Inc., as well as the County's force main work.
- As to the playground, the Court awarded the City a total judgment amount of \$189,000.00. The Court apportioned \$31,500.00 to Hargreaves Associates (approximately 10% of fault) and \$157,500.00 to MCM (approximately 50%

of fault). This amount takes into account the Court's deduction to the City of \$126,000.00 (approximately 40% of fault) for alleged betterment.

As to the Counterclaim filed by Hargreaves, the Court ruled that Hargreaves Associates is not entitled to recover any damages against the City. The City also does not have any fee exposure to MCM because the judgment exceeded its prior joint proposal for settlement with Travelers of \$100,000.00.

The Court has also ruled that the City is entitled to prejudgment interest from the date of termination through the date of the verdict, totaling approximately \$338,811.12. The Court has reserved ruling on the issue of attorney's fees.

Overall, the City prevailed in this litigation. Taking into account the prior settlement amounts received of \$1,919,866.66, the Court's judgment of \$1,479,037.00 and prejudgment interest of \$338,811.12, the City's total damages awarded in this matter a \$3,737,714.78.

Attachment.

RJA/SHR/ag

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

THE CITY OF MIAMI BEACH, FLORIDA

COMPLEX BUSINESS LITIGATION

Plaintiff,

CASE NO.: 10-61979 CA 40

v.

HARGREAVES ASSOCIATES, INCORPORATED,
WILLIAM LANE ARCHITECT, INC., WILLIAM
LANE, SAVINO & MILLER DESIGN STUDIO, P.A.,
DAN EUSER WATERARCHITECTURE, INC.,
KENNETH DIDONATO, INC., KENNETH
DIDONATO, LAM PARTNERS, INC., WILLIAM A.
ABARCA, P.E., PLAY.SITE.ARCHITECTURE, INC.,
JOANNE HIROMURA, JOHNSON, AVEDANO,
LOPEZ, RODRIGUEZ & WALEWSKI ENGINEERING
GROUP, INC., HORACIO A. RODRIGUEZ, P.E., AND
MAGNUM CONSTRUCTION MANAGEMENT
CORPORATION D/B/A MCM CORP. AND/OR
MCM, AND TRAVELERS SURETY & CASUALTY
COMPANY OF AMERICA,

Defendants.

VERDICT FOLLOWING NON-JURY TRIAL

Before the Court for Non-Jury Trial were The City of Miami Beach, Hargreaves Associates, Inc., and Magnum Construction Management Corporation d/b/a MCM. The majority of claims and parties having been otherwise resolved, the Court, in the above-entitled action, finds as follows as to the remaining causes of action on the main claim and counterclaim which were tried to this Court from September 22, 2014 through October 13, 2014¹:

¹ The Court, in addition to formulating its own questions, has utilized proposed questions from all parties, removed instructions, and in certain instances removed inapplicable continuation questions. The questions contained herein constitute questions submitted by all parties which the Court considered relevant and appropriate to render a complete verdict.

HISTORY OF THE PARK

The Park was originally a marshy, thickly-covered mangrove barrier island. Prior to 1979 it was owned and operated by the federal government for seacoast defense during World War II. As explained by Kenneth Gardner:

Site Information:

South Pointe Park is an approximately 18 acre parcel of land located at the southernmost tip of Miami Beach. This site originally was a marshy, thickly-covered mangrove barrier island. Prior to 1979, the site was federally owned and remained basically undeveloped. When the City of Miami Beach obtained this land, it was used for police and Port of Miami activities. In 1984 all existing buildings were demolished and the site was developed as the City's 19th park in 1985. The new development included the construction of an amphitheater, picnic pavilions, two wooden observation towers and a wooden boardwalk. To spark economic revitalization, the park hosted concerts and events for several years. In 2006, construction began to transform the park into its present configuration.



In 1984 the City converted the land into a public park. The new park contained an amphitheater and picnic pavilions among other structures. [*Id.*]. In 2005 the City invited proposals to design a new park. Hargreaves was awarded the contract. Simultaneously, the City conducted a “geo tech” report to determine the existing subgrade conditions. The geo tech report identified existing conditions to consist of sand with limestone beneath.

The design by Hargreaves included large, twenty foot berms (the “Serpentine Berms”), smaller mounds, flat lawn, a pavilion building with bathrooms and concessions, a large water feature, a paved sidewalk along Government Cut, 18 stainless steel pylon lights, natural grassy dunes, a playground, and interactive water play areas.

The project was let out for bid with 100% buildable plans.

On January 12, 2005, the City of Miami Beach (“City”) and Hargreaves Associates, Inc., (“Hargreaves”) entered into an Agreement for Professional Architecture and Engineering Services (the “A/E” Agreement) pursuant to a Request for Qualifications whereby Hargreaves would be the landscape architect-of-record and would perform design phase services, as amended to include additional services including construction administration for the Project, such as oversight of contractor Magnum Construction Management Corp., (“MCM”) and its sub-contractors.

Hargreaves in turn entered into sub-consulting agreements with Savino & Miller Design Studio, P.A. (“Savino”)(local landscape architect); William Lane Architect, Inc. And William Lane (“Lane”)(architect); Dan Euser Waterarchitecture, Inc. (“Dan Euser”)(water feature design consultant); Kenneth Didonato, Inc. and Kenneth Didonato P.E. (“Didonato”)(irrigation design engineer); Johnson, Avedano, Lopez, Rodriguez & Walewski Engineering Group, Inc. (“Johnson”)(mechanical electrical plumbing engineer); LAM Partners, Inc., (“LAM”)(architectural lighting design consultant) and Play.Site.Architecture(playground design).

Schedule B to the agreement reflects the itemized schedule of compensation for Hargreaves. The A/E also contains five amendments. Hargreaves was ultimately paid approximately \$2,100,000.

The Project included landscaping, irrigation, recreational areas, walkways, restrooms, signage, support structures, parking, lighting, seawall improvements, bay walk, water features, concession areas, and appropriate accessory park commercial uses, as well as any other park elements or public facilities required or desired by the City during the planning process.²

Following a competitive bidding process, MCM Corp., f/k/a Munilla Construction Company (“MCM” or “Contractor”) was awarded the general contract to act as general contractor for the design, planning and construction of certain improvements to South Pointe Park, located in Miami Beach, Florida. The lump sum contract price was \$21,698,000.00.

² Second Amended Complaint, ¶43.

Travelers issued a Public Works Performance Bond and Payment Bond for the South Pointe Park Improvement Project, Bond Number: 10429814, in the amount of \$22,453,000.00. The Bond names the Project's general contractor MCM as the Principal and the City as Obligee.

MCM, as General Contractor, subcontracted Vila & Sons as the landscape subcontractor.

Construction began in the summer of 2007, and a Certificate of Substantial Completion for the Project was issued by Hargreaves on March 20, 2009. A temporary Certificate of Occupancy was issued. The milestone coincided with the grand opening of the Park. Photographs from the grand opening show that the sod was vibrant, but beginning to decline in the Serpentine Berms.

On June 5, 2009 the Park suffered from the "Great Miami Beach Flood of 2009". The sod in the flat areas was washed out. MCM, through its subcontractor, set about re-sodding the washed out areas before the upcoming Fourth of July holiday. Nevertheless, the sod continued to decline. Representatives from MCM, its subcontractor Vila & Sons, the CITY and its expert met to discuss the problems with the sod. HARGREAVES did not attend the meeting although it was the designer and supervisor of the project.

Ultimately MCM, and its subcontractor Vila, ceased their limited maintenance in the Park, and the City's Parks Department took over maintenance on March 22, 2010. The Parks Department attempted fertigation, weed elimination programs and planting of rye grass. However, it was determined that the soil conditions were the cause of landscaping failures. Many hours of testimony were had with regard to the "fines", vertical drainage and over-compaction.

Clearly the City notified Hargreaves and MCM of failures, defects and deficiencies in the Project and the parties worked together to remediate the problems over the course of two years.

The evidence showed that during the construction period and pursuant to the contract, the City properly notified the Consultant, Hargreaves; that Hargreaves made its determinations as to the cause of the deficiencies; that MCM failed to timely respond to Hargreaves determinations and when it did, objected to being found responsible.

The contract between the City and Hargreaves was terminated by the City on January 28, 2011.

The City made a claim against the Public Works Performance Bond on November 15, 2011. Travelers denied the claim. Travelers has not paid the City any monies in connection with its claim against the Bond.

The parties were unable to resolve their differences, thus proceeding to trial. The claims tried before this Court were specifically limited to the following, and as confirmed by the City's counsel at the inception of the trial, were the *only* issues being tried before the Court:

- a. Alleged defects and deficiencies relating to the subsoils/subgrade at the Park (the "Subgrade");
- b. Alleged defects and deficiencies relating to the sod, top soil blanket, landscaping, trees and planting at the Park (the "Landscaping");
- c. Alleged defects and deficiencies relating to the playground at the Park (the "Playground"); and
- d. Hargreaves' claim for non-payment against the City for invoices rendered.

In addition to the claims asserted above, it was represented to the Court that the City and Hargreaves had reached various settlements relating to the Landscaping, the irrigation system ("Irrigation"), pavilion building ("Pavilion"), Washington Avenue water feature ("Water Feature") and the decorative pylon lights ("Pylon Lights")(hereinafter collectively referred to as the "Settlement Agreements"). It was uncontested at Trial that the City and Hargreaves' entered into the Settlement Agreements and that all of the City's claims on those issues were explicitly

settled between the City and Hargreaves. In addition, at trial the City agreed that it was not seeking damages and/or trying claims against Hargreaves or MCM relating to the Coquina Walkways ("Walkways") at the Park.

Post trial, Hargreaves filed a notice of voluntary dismissal of its cross-claim against MCM.

COUNT I: BREACH OF CONTRACT (HARGREAVES)

1. Based upon the greater weight of the evidence, did HARGREAVES breach its obligations as set forth in the A/E Agreement, Amendments 1-5, and the Contract Documents?

Yes No

2. Did Hargreaves inadequately supervise the project?

Yes No

3. Did the CITY suffer damages as a result of HARGREAVES' breach of the A/E Agreement, Amendments 1-5, and the Contract Documents?

Yes No

4. Does the greater weight of the evidence show that the CITY has not been fully compensated for HARGREAVES' breach of A/E Agreement?

Yes No

COUNT II: NEGLIGENCE (HARGREAVES)

1. Was there negligence on the part of HARGREAVES that was a legal cause of the damages to CITY?

Yes No

2. Did HARGREAVES' negligence cause loss or damage to the CITY?

Yes No

COUNT III: NEGLIGENCE PER SE (HARGREAVES)

1. Was there negligence per se by failing to comply with any Florida Building Code, Ordinance, Statute or Regulation concerning the safety at the Playground in the Park on the part of HARGREAVES that was a legal cause of the damages to CITY?

Yes No

2. Did HARGREAVES' negligence per se cause loss or damage to the CITY?

Yes No

COUNT XVIII: BREACH OF CONTRACT (MCM)

1. Based upon the greater weight of the evidence, did MCM breach its obligations as set forth in General Contract and/or the Contract Documents?

Yes No

2. Did the CITY comply with all conditions precedent in its contract with MCM prior to initiating this action?

Yes No

3. Did the CITY suffer damages as a result of MCM'S breach of the General Contract and/or the Contract Documents?

Yes No

4. Does the greater weight of the evidence show that the CITY has not been fully compensated for MCM's breach of contract?

Yes No

COUNT XIX: BREACH OF WARRANTY (MCM)

1. Based upon the greater weight of the evidence, did MCM breach its Warranty to the CITY?

Yes No

2. Did the CITY suffer damages as a result of MCM'S breach of Warranty?

Yes No

3. Does the greater weight of the evidence show that the CITY has not been fully compensated for MCM's breach of warranty?

Yes No

COUNT XX: BREACH OF PERFORMANCE BOND (TRAVELERS)

1. Based upon the greater weight of the evidence, did TRAVELERS breach its obligations as set forth in the Performance Bond?

Yes No

2. Did the CITY suffer damages as a result of TRAVELERS' breach of the Performance Bond?

Yes No

HARGREAVES' COUNTERCLAIM: BREACH OF CONTRACT AGAINST THE CITY

1. Based upon the greater weight of the evidence, did the CITY breach its obligations to HARGREAVES as set forth in the A/E Agreement, Amendments 1-5, and the Contract Documents?

Yes No

SUBGRADE, SOD & LANDSCAPING

Subgrade, Sod & Landscaping

Did the CITY fail to mitigate its damages by not continuing the Drill & Fill process to remediate the subgrade?

Yes No

Has HARGREAVES been released with regard to the issues relating to the Subgrade?

Yes No³

Did the damages relating to the Subgrade in any way result from the failure of MCM to comply with the requirements of the Plans and Specifications and/or Contract documents?

Yes⁴ No

³ Any release with regard to Hargreaves is *limited* to vicarious liability as to the subcontractors. The City released Hargreaves from all liability relating to "the irrigation work performed by Hargreaves **and** KDI" at the Park and KDI's and Hargreaves' contract administration work performed on the irrigation system; however the Court determines that this release did not absolve Hargreaves of its overall failures.

Did any of the damages result from the “over compaction” by MCM of the subgrade?⁵

Yes No

Did the remediation performed on the over compacted subgrade constitute “betterment” for the City?⁶

Yes No⁷

Do you find that any of the CITY’s damages should be reduced for failure to mitigate on the sod and landscape?

Yes No

Did the CITY or its agents fail to properly perform maintenance on the sod and landscaping at the Park?

Yes No

Has the CITY received any sums which reduce the damages it has alleged occurred with regard to the landscaping portion of the project?

Yes No

Did any of the damages result from the specification of a two-inch topsoil blanket/growing medium?

Yes No

Did any of the damages result from the sodding of the Serpentine berms?

Yes⁸ No

⁴ Hargreaves concluded that there was a disconnect between the preparation of the subgrade and installation of the sod caused by a lack of scarifying and soil preparation prior to sod being laid as required in the Specifications.

⁵ The Court finds that over compaction caused damage solely in the flat area of the project; not on the berms.

⁶ The Court does not consider “betterment” a “damage”.

⁷ There is a significant difference between what was required to be spent to correct issues, and what was actually spent. A “betterment” arises where the CITY improved on plans and specifications at issue in this case; e.g. planting depths; soil blanket density, etc. It is undisputed that the City did not pay for the installation of additional soil, drainage tiles, gravel, fiber soil or the AdvanEdge Drain Pipe when the Park was designed and constructed.

⁸ These damages were not specifically attributed to MCM as the berms were not over-compacted.

Did any of the damages result from the specification of Seashore Paspalum on the berms?

Yes No

Did any of the damages result from improper design of the irrigation system?

Yes, but not from these Defendants No

Did any of the damages result from the use of "SM" or "GM" soils with too many fines?

Yes, but nominally No

Has the CITY received any sums which reduce the damages with regard to the landscaping portion of the Project, including monies received for the irrigation system and/or the grass and plant selection?

Yes No

CHILDREN'S PLAYGROUND

The evidence was clear that the CITY over-compensated for the deficiencies found on the playground by unilaterally deciding to remove it in its entirety as opposed to curing or correcting them. MCM admitted its responsibility to correct the Playground equipment deficiencies, but the CITY did not agree to work with them to prepare a joint audit and never provided MCM an opportunity to cure deficiencies.

The evidence suggested that some of the minor deficiencies, such as installing a 3½ inch or properly sized metal cap cover, a slide side rail, and properly functioning webnests (here the product itself was likely defective as well the installation and design of the product), the relocation of a sculpture. The City's Playground Expert never recommended that the Playground be removed in its entirety, just that the equipment be removed from service until compliant. Instead, the City went above and beyond and removed the entire playground and redesigned and constructed a new one. The CITY had received the playground it requested, unfortunately some

was defective in production, design and/or installation, but modest remediation such as the relocation of a sculpture would have cured some problems and reduced costs. To be sure, the Court does not rely on the testimony of Mr. Munilla as an expert here, but considers his testimony as that of a fact witness on behalf of MCM.

Nonetheless, the Court finds both HARGREAVES and MCM liable for deficiencies in the playground project particularly in light of the testimony of Ms. Hendy. Clearly there were life safety issues at play. However, the CITY went beyond what would have been necessary to cure many defects by removing the entire playground. As a result, the CITY failed to mitigate its damages, and a portion of those costs must be borne by the CITY.

The Court does find that Hargreaves design services and oversight was compellingly lacking, considering the public was exposed to numerous safety violation issues. MCM failed to comply with the requirements of the Plans and Specifications and/or Contract documents, particularly as related to safety issues and installation of the playground equipment, either directly or through its subcontractors.⁹

FINDINGS AND CONCLUSIONS

SUBGRADE, SOD & LANDSCAPE

The CITY is entitled to be reimbursed for remediation of the deficiencies in the park for the removal and replacement of the soils and bush vegetation in the landscape beds and the removal of the soils and paspalum sod on all of the flat areas of the project which were over-compacted with the exception of the area carved out for the turnaround, and for the Water and Sewer easement as the Court finds that MCM's over-compaction of soils was a substantial and hastening cause of the failure of the sod on the flat areas. The Court also finds HARGREAVES

⁹ Pursuant to Specification Section 2881, MCM understood and agreed that it would supply and install the Playground equipment in accordance with the requirements of the CPSC, ASTM and ADA. The supplier and installer of the Playground equipment were both employed by MCM, and not Hargreaves.

failure to properly supervise was a contributing cause of the damage. However, the CITY is not entitled to be reimbursed for removal and replacement of such soils to a depth of twenty four to thirty two inches. Those depths were not what were contracted for initially. As a result a portion of that cost must be borne by the City.

The CITY is entitled to be reimbursed for remediation of the deficiencies in the park for the removal and replacement of the soils and sod on the slopes as the Court finds that HARGREAVE'S design team is responsible and knew, or should have known, that paspalum was likely an inappropriate grass to be used in a setting such as South Pointe Park which would see substantial foot traffic from adults, children, toys, bicycles, pets, etc.

Again, the Court does not view betterment as a recoverable damage and the CITY is not entitled to be reimbursed by the Defendants for a better park than was originally contracted.

The Court finds that HARGREAVES breached its Agreements with the CITY, failed to properly supervise the job and its negligence was a legal cause of the CITY'S damages as all other damages flowed from HARGREAVES' failures.

The Court finds that MCM failed to comply with the requirements of the Plans and Specifications and/or Contract documents, both with regard to over-compaction of the flat areas of the park and as related to life safety issues and installation of the playground equipment.¹⁰

HARGREAVES ASSOCIATES, INC. is responsible for seventy (70%) percent, seventy-five (75%) percent, or ninety-five (95%) percent of the CITY's damages addressed herein as a result of improper design, drafting and failure to properly supervise. The specific calculations are reflected in the below chart.

MCM CORP. is responsible for twenty five (25%) percent, or zero (0%) percent (as addressed in the below chart) of the of the CITY's damages for failure to recognize that over

¹⁰ Particularly installation in the play area above one of the sculptures

compacting above 85% would cause damage to grass and landscape. Such breach goes to the essence of the contract rather than a failure to perform some minor contractual duty. *Beefy Trail, Inc. v. Beefy King International, Inc.*, 267 So. 2d 853 (Fla. 4th DCA 1972). Nor does the Court find that MCM was misled in any way by the CITY so as to be entitled to seek relief under *United States v. Spearin*, 248 U.S. 132 (1918). See also *Miami-Dade Water & Sewer Authority v. Inman, Inc.*, 402 So. 2d 1277, 1278 (Fla. 3d DCA 1981).

The **CITY OF MIAMI BEACH** is responsible for five (5%) of the CITY'S damages having initially specified an inappropriate sod, i.e., paspalum, and requiring use of soils from designated borrow pits. The CITY, to the extent it should have known the specified sod would not be entirely successful on the berms or in the shade, failed to maintain what it could. The CITY is not entitled to liquidated damages from MCM as the evidence showed Final Completion was not achieved because of design errors and omissions, including permitting of the Washington Avenue Water Feature; none of which are attributable to MCM. In addition, while contractually allowed, the Court finds that the CITY failed to plead its entitlement to such special damages with the requisite specificity so as to put MCM on notice. This determination is moot inasmuch as the evidence showed that the failure to achieve final completion was not placed at MCM's feet. The Court notes that the CITY dropped its claim with regard to the coquina walks, does not seek damages with regard to the dog park and claims as to Phase II were addressed by Miami Dade Water and Sewer.

The CITY has received funds from Savino & Miller Design Studio, P.A., in the amount of \$375,000 for issues relating to their work with regard, for example, to sod and subsurface soils. The CITY has received funds from Kenneth Didonato, P.E. and Kenneth Didonato, Inc., (KDI) in the amount of \$45,000 for issues related to Irrigation work. The Court is not advised of

any other funds received by the CITY as relate to the matters tried before this Court or addressed herein. If such have been received, defendants HARGREAVES and MCM would be entitled to a set off as to those amounts.

The **CITY OF MIAMI BEACH** has suffered damages with regard to the **subgrade, sod and landscape** which have been calculated as follows:

PHASE	TOTAL AWARD	HARGREAVES	MCM	CITY
	100%	70 %, 75% or 95% for FAULT ALLOCATED	25% FAULT ALLOCATED	5% FAULT ALLOCATED
1	\$133,375	\$ 88,360	\$39,603	\$ 5,412
2	REMOVED	BY WASD		
3 Flat sod &shrub Slope	\$143,996 \$ 61,072	\$100,797 \$ 58,018	\$35,999	\$7,200 \$ 3,054
4	\$ 85,971	\$ 60,180	\$21,492	\$ 4,299
5	\$213,774	\$149,642	\$53,443	\$10,689
6	\$220,206	\$154,144	\$55,052	\$11,010
7 Flat sod &shrub Slope	\$231,911 \$ 16,847	\$162,338 \$ 16,005	\$57,978	\$11,595 \$ 842
8 Flat sod &shrub Slope	\$241,556 \$ 24,652	\$169,089 \$ 23,420	\$60,389	\$12,078 \$ 1,232
Pro-rata fence	\$ 49,845	\$ 34,892	\$ 12,461	\$ 2,492
Design Admin Fees; Other Costs, Prior Remedial; Permitting etc	\$356,735	\$267,552	\$ 89,183	
Less City 5% fault	-\$ 69,903			
Less Savino & Didonato settlements	-\$420,000	-315,000	-105,000	
TOTAL AWARD Sod, Subgrade, Landscape	\$1,290,037.00	\$969,437.00	\$320,600.00	

CHILDRENS' PLAYGROUND

The CITY OF MIAMI BEACH has suffered damages with regard to the Playground in the amount of: \$315,000 for the removal and replacement which is supported by relevant evidence.

Clearly the testimony showed violations of ASTM and CPSC standards, standards which HARGREAVES and MCM knew were included in the project specifications. HARGREAVES is charged here with failure to supervise and MCM is charged with design and construction installation deficiencies. However, complete removal and replacement of the playground by the CITY is found to be excessive, particularly in light of the fact that some of the materials removed were relocated in other areas of the park not restricted to children's use.

Accordingly, the Court finds CITY forty (40%) percent responsible for its over-compensation in removing the playground. HARGREAVES is found to be ten (10%) percent at fault for failure to supervise and MCM is found to be fifty (50%) percent at fault for deficient design and installation directly or through its own subcontractors.

		HARGREAVES 10%	MCM 50%	CITY 40%
TOTAL AWARD	\$315,000	\$31,500	\$157,500	\$126,000
Less City 40%	-\$126,000			
TOTAL ENTIRE AWARD	\$1,479,037.00	\$1,000,937.00	\$478,100.00	

The difference between the amount of the entire award here, and the total sought by the CITY is deemed to have constituted betterment inasmuch as, on remediation, the CITY designed and built a better park than it contracted for with HARGREAVES and MCM.

Pursuant to its bond, Travelers Insurance Company is responsible for any of the CITY'S damages incurred that the Court has determined were charged to MCM.

The Court has previously determined that Hargreaves was not "unlicensed".

All requests for special damages are DENIED.

Hargreaves Associates, Inc. is not entitled to any damages on its counterclaim.

MCM is not entitled to any setoff as to HARGREAVES.

The CITY is entitled to prejudgment interest on the monies owed from the date of termination to the date of this Verdict.

The Court reserves jurisdiction to address the issue of attorneys' fees upon proper motion and notice.

This Verdict constitutes the Court's Findings and Conclusions. The parties are directed to submit a final judgment in accordance with this Verdict.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 04/30/15.



JOHN W. THORNTON
CIRCUIT COURT JUDGE

**No Further Judicial Action Required on THIS
MOTION
CLERK TO RECLOSE CASE IF POST
JUDGMENT**

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Thornton's staff.

Copies to:

mah@lydeckerdiaz.com;msc@lydeckerdiaz.com;Alfred@armaslaw.com;aaz5@aol.com;bhingston@welbaum.com;lthurswell@welbaum.com