

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: 9/9/08 Consent Regular
Public Hearing

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

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I. EXECUTIVE BRIEF

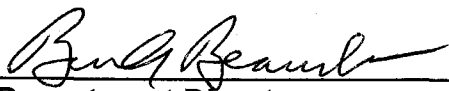
Motion and Title: Staff recommends motion to approve: A Mutual Release with Garney Companies, Inc.

Summary: On October 18, 2005, the Board approved a contract with Garney Companies, Inc. (Garney) (R2005-2073) in the amount of \$13,627,020 to install potable water mains and wastewater force mains for the Water Utilities Department Northern Region Utility Improvement Project. In performing the work required under the contract, Garney failed to regrade a section of the 40th Street Canal ("Canal") to the elevations specified in the contract documents. By execution of this mutual release, Garney agrees to reimburse the County the sum of \$90,000.00 for warranty work to re-grade the Canal to the specified elevations in lieu of performing the work themselves. In exchange for this payment, the County agrees to release Garney from any liability related to Garney's failure to properly regrade the Canal. (WUD Project No. 04-227 B) District 6 (MJ)

Background and Justification: After completion of the project on May 11, 2007, it was discovered that the Canal was not graded to the elevations specified in the contract documents. Garney does not have a local office and has since left the area. Garney has opted to make a payment to the County of \$90,000 to pay for re-grading work in lieu of returning to perform the work themselves. In return, the County will release any claims it has or may have against Garney related to Garney's failure to properly regrade the Canal.

Attachments:

1. One (1) Original Mutual Release
2. Location Map

Recommended By:  7/24/08
Department Director Date

Approved By:  8/8/08
Assistant County Administrator Date

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$90,000.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>(\$90,000.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4011 Dept 721 Unit WO06 Object 6543

Is Item Included in Current Budget? Yes X No

Reporting Category N/A


B. Recommended Sources of Funds/Summary of Fiscal Impact:

Garney Companies Inc. agrees to reimburse the County the sum of \$90,000.00 for warranty work to re-grade the 40th Street canal to the specified elevations in lieu of performing the work themselves.

C. Department Fiscal Review: Debra M West

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

A. White 8.6.08
OFMB  ON 7/29/08

Jim J. J... 8/6/08
Contract Development and Control
8/6/08

B. Legal Sufficiency:

[Signature] 8/11/08
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

MUTUAL RELEASE

KNOW ALL MEN BY THESE PRESENTS,

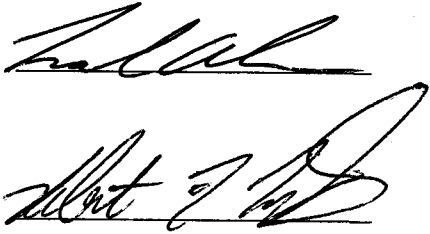
That Garney Companies, Inc., for and in consideration of the exchange of promises contained herein and other good and valuable considerations, received from or on behalf of Palm Beach County, the receipt and sufficiency of which is hereby acknowledged, hereby remises, releases, acquits, satisfies, and forever discharges Palm Beach County, of and from all, and all manner of action and actions, causes and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Garney Companies, Inc. ever had, now has, or which any successor or assign, hereafter can, shall or may have, against Palm Beach County, for, upon or by reason of any matter, cause or thing, whatsoever from the beginning of the world to the day of these presents which were brought or could have been brought specifically related to any and all legal fees or costs incurred by Garney Companies, Inc. arising out of that contract between Palm Beach County and Garney Companies, Inc. for construction services, said contract identified as WUD 04-227, Part B, including, but not limited to, any and all legal fees and costs incurred in Case No. 50 2005 CA 000965XXXX, and titled "*Indian Trail Improvement District, etc. v. Palm Beach County*", said case being consolidated with Case No. 50 2004 CA 012091XXXX, and titled "*City of West Palm Beach, a municipal corporation; Seminole Improvement District, an independent special district; and Callery-Judge Grove, L.P., a Florida limited partnership, Plaintiffs, v. Palm Beach County, Defendant*".

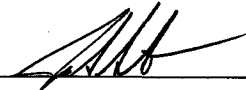
That Palm Beach County, for and in consideration of the exchange of the sum of Ninety Thousand Dollars (\$90,000.00) and other good and valuable considerations, received from or on behalf of Garney Companies, Inc., the receipt and sufficiency of which is hereby acknowledged, hereby remises, releases, acquits, satisfies, and forever discharges Garney Companies, Inc., of and from all, and all manner of action and actions, causes and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Palm Beach County ever had, now has, or which any successor or assign, hereafter can, shall or may have, against Garney Companies, Inc., for, upon or by reason of any matter, cause or thing, whatsoever from the beginning of the world to the day of these presents which were brought or could have been brought specifically related to all known and unknown claims arising out Garney Companies, Inc.'s failure to reshape the North Road Canal to a specified bottom elevation of 11.9 feet, as more fully set forth in the contract between Palm Beach County and Garney Companies, Inc., identified as WUD 04-227, Part B.

IN WITNESS WHEREOF we have hereunto set our hands and seals on the dates indicated below.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GARNEY COMPANIES, INC.



By: 
Title: **Jason A. Seubert**
Vice President
Date: 6/12/08

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY

Deputy

By: _____
Addie L. Greene, Chairperson

Date: _____

BOS 7/24/08

Approved as to Form
and Legal Sufficiency

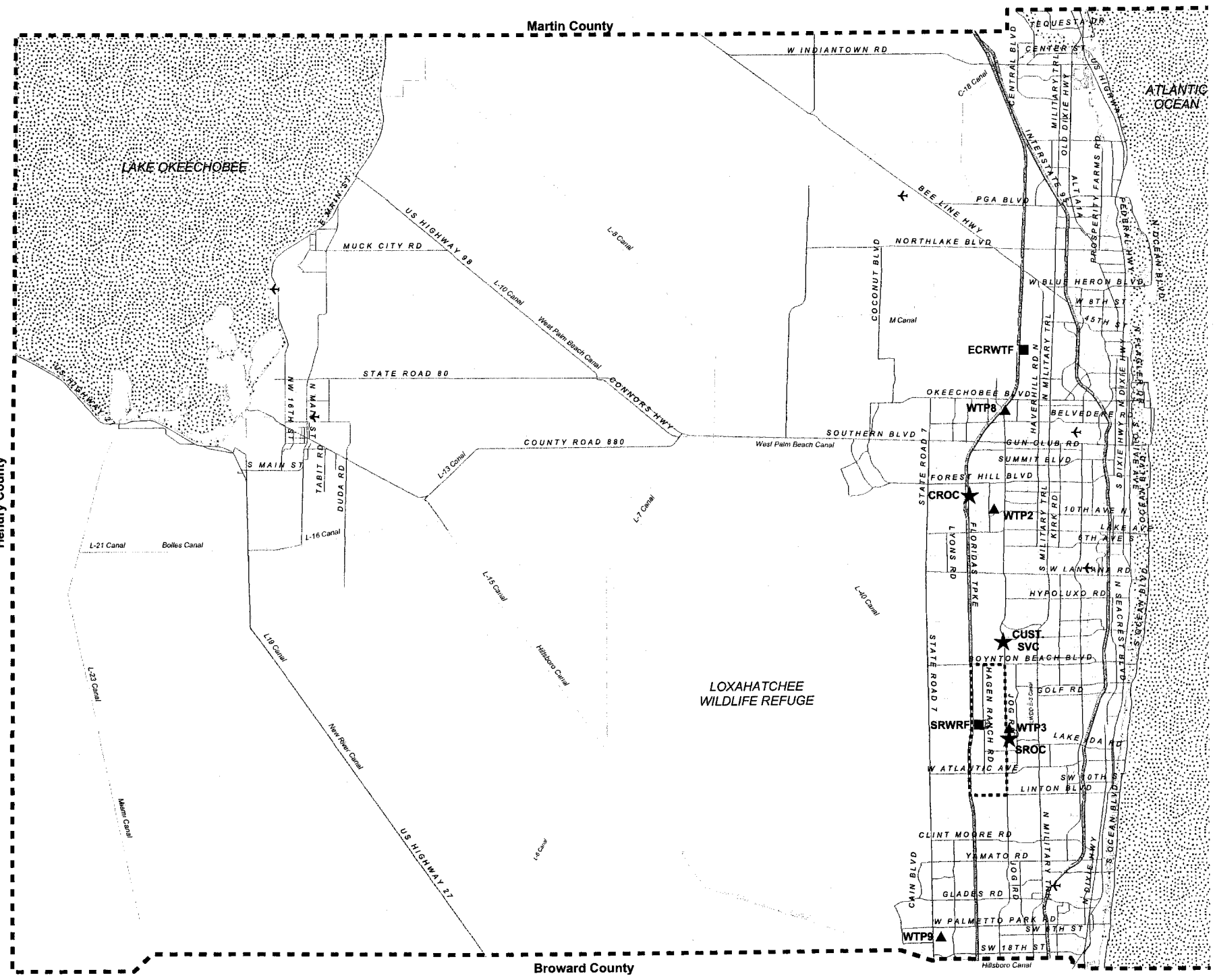
By: 
Assistant County Attorney



**Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities**

Attachment 2

- Legend**
- P.B.C.W.U.D. SA
 - MANDATORY RECLAIMED SA
 - - - COUNTY LIMITS
 - ★ Administration
 - Water Reclamation Plant
 - ▲ Water Treatment Plant
 - ⊙ Wetlands



Hendry County

Martin County

Broward County

ATLANTIC OCEAN

LOXAHATCHEE WILDLIFE REFUGE

MUTUAL RELEASE

KNOW ALL MEN BY THESE PRESENTS,

That Garney Companies, Inc., for and in consideration of the exchange of promises contained herein and other good and valuable considerations, received from or on behalf of Palm Beach County, the receipt and sufficiency of which is hereby acknowledged, hereby remises, releases, acquits, satisfies, and forever discharges Palm Beach County, of and from all, and all manner of action and actions, causes and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Garney Companies, Inc. ever had, now has, or which any successor or assign, hereafter can, shall or may have, against Palm Beach County, for, upon or by reason of any matter, cause or thing, whatsoever from the beginning of the world to the day of these presents which were brought or could have been brought specifically related to any and all legal fees or costs incurred by Garney Companies, Inc. arising out of that contract between Palm Beach County and Garney Companies, Inc. for construction services, said contract identified as WUD 04-227, Part B, including, but not limited to, any and all legal fees and costs incurred in [case name/number].

That Palm Beach County, for and in consideration of the exchange of the sum of Ninety Thousand Dollars (\$90,000.00) and other good and valuable considerations, received from or on behalf of Garney Companies, Inc., the receipt and sufficiency of which is hereby acknowledged, hereby remises, releases, acquits, satisfies, and forever discharges Garney Companies, Inc., of and from all, and all manner of action and actions, causes and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Palm Beach County ever had, now has, or which any successor or assign, hereafter can, shall or may have, against Garney Companies, Inc., for, upon or by reason of any matter, cause or thing, whatsoever from the beginning of the world to the day of these presents which were brought or could have been brought specifically related to all known and unknown claims arising out Garney Companies, Inc.'s failure to reshape the North Road Canal to a specified bottom elevation of 11.9 feet, as more fully set forth in the [specifications] ~~set forth in that~~ contract between Palm Beach County and Garney Companies, Inc., identified as WUD 04-227, Part B, and any [purchase orders] ~~issued to Garney Companies, Inc. related to that contract.~~