MEMORANDUM

Agenda Item No. 8(O)(2)

TO:	Honorable Chairman Jose "Pepe" Diaz and Members, Board of County Commissioners	**DATE:**	May 17, 2022
FROM:	Geri Bonzon-Keenan County Attorney	**SUBJECT:**	Resolution approving and authorizing the execution of a Settlement Agreement between Miami-Dade County, Garney Companies, Inc., and David Mancini & Sons., Inc., which includes payment of $1,049,000.00 by the County to Garney Companies, Inc. in exchange for a release of all claims and dismissal of a lawsuit; and authorizing the County Mayor to exercise any rights contained therein

Resolution No. R-490-22

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.

Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum

Date: May 17, 2022

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Honorable Daniella Levine Cava
Mayor

Daniella Levine Cava

Subject: Approval of Settlement Agreement between Garney Companies, Inc., David Mancini & Sons, Inc. and Miami-Dade County Regarding Design-Build Services for the Installation of a 48-inch Diameter Water Transmission Main for "Area N"; Contract No. 16GCI001; Project No. DB14-WASD-03

Executive Summary

The attached resolution seeks approval of a Settlement Agreement between Miami Dade County (County), Garney Companies, Inc. d/b/a Garney Construction (Garney) and David Mancini & Sons, Inc. (DMSI), which resolves a dispute arising from various claims associated with the installation of a 48-inch diameter water transmission main for "Area N". An item seeking ratification of a Change Order awarding Garney 273 non-compensable days on the final completion date for the project is traveling concurrently with this item.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution approving and authorizing execution of the Settlement Agreement, attached hereto as Exhibit A, between the County, through its Water and Sewer Department (WASD), Garney and Garney's subcontractor, DMSI, which resolves a dispute arising from various claims associated with the installation of a 48-inch diameter water transmission main for "Area N".

Scope

The project at issue is located in various commission districts because the water transmission main that was installed transverses Commission Districts 7, 9, and 10, represented by Commissioner Raquel A. Regalado, Commissioner Kionne L. McGhee, and Commissioner Javier D. Souto, respectively.

Delegation of Authority

This item authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf the County and to exercise any rights contained therein.

Fiscal Impact/Funding Source

Under the terms of this Settlement Agreement, and as authorized by Change Order Number One to Contract No. 16GCI001, Garney will receive from the County: (1) a non-compensable time extension of 273 days (272 days for which $951,000 in retainage will be released and one day for which no monies have been retained); and (2) $1,049,000.00 as full and final payment of all claims relating to the installation of the 48-inch diameter water transmission main for "Area N." The settlement amount will be paid from the funds originally awarded by the Board for Contract No. 16GCI001 pursuant to Resolution R-141-17.

Track Recorder/Monitor

WASD's Deputy Director of Capital Improvements, Marisela Aranguiz, P.E. will oversee implementation of the Settlement Agreement.

Background

On February 17, 2017, the Board approved, via Resolution R-141-17, a design-build Contract with Garney for the design and construction of a 48-inch water transmission main, with all connections, fittings, and appurtenances, running from approximately S.W. 117 Avenue and S.W. 152 Street to Snapper Creek Canal (the Area "N" Project). The total award was $37,206,382.00 with a Contract duration of 900 days for substantial completion and 960 days for final completion and with a Contingency Time Allowance of 96 days.

As the project progressed, Garney submitted various claims related to its completion of the project. Garney sought compensation and additional time for claims related to: (1) delays it alleged were caused by the County's enforcement of Specification 15005 for Cleaning and Grouting of Prestressed Concrete Cylinder Pipe; (2) delays it alleged were caused by the County's desire to use butterfly valves instead of gate valves; (3) delays it alleged were caused by permit requirements imposed by the County's Department of Transportation and Public Works; and (4) delays it alleged resulted from the installation of a 60-inch tie-in at the Snapper Creek Canal (collectively, the "Claims"). Garney and WASD were unable to resolve the Claims through informal negotiations. Pursuant to the Contract's Dispute Resolution Clause, the County's Designee for the dispute resolution process issued a decision that denied each of Garney's Claims.

After the denial of the Claims, Garney and DMSI filed a complaint against the County: Garney for the use and benefit of itself and for DMSI. v. Miami-Dade County, Florida, Case No. 2021-009285-CA-01, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the Case) seeking $4,924.610.36 in damages The Parties participated in mediation to try to resolve the matter and reached an agreement through which: Garney and DMSI would dismiss their lawsuit and release all Claims and, in exchange, the County would grant a non-compensable time extension of 272 days and release any retained monies, and pay $1,049,000.00 as full and final payment of all Claims related to the installation of a 48-inch diameter water transmission main for "Area N."

WASD recognizes that the Claims are, at least partly, associated with the contractor's means and methods. Therefore, because of the inherent uncertainty of litigation, WASD believes that it is in the County's best interest to resolve the dispute between the Parties. WASD recommends approval of the Settlement Agreement.

Jimmy Morales
Chief Operations Officer

SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN GARNEY COMPANIES, INC., DAVID MANCINI & SONS, INC., AND MIAMI-DADE COUNTY

Garney Companies, Inc. ("Garney"), David Mancini & Sons, Inc. ("DMSI"), and Miami-Dade County, Florida (the "County") (each individually, the "Party", and collectively referred to herein as the "Parties") agree to settle, in full, the pending disputes between them, pursuant to the terms set forth below ("Settlement Agreement").

WHEREAS, on February 23, 2017, Garney and the County entered into Contract No. 16GCI001 (the "Contract"), Project No. DB14-WASD-03, for the design and construction of a 48-inch water transmission main, with all connections, fittings, and appurtenances, running from approximately S.W. 117 Avenue and S.W. 152 Street to Snapper Creek Canal (the "Area 'N' Project"); and

WHEREAS, DMSI is one of Garney's subcontractors for the Area "N" Project; and

WHEREAS, during the Project, Garney submitted four claims to the County seeking time extensions and monetary compensation, including: (1) a claim related to the County's enforcement of Specification 15005 for Cleaning and Grouting of Prestressed Concrete Cylinder Pipe (PCCP) for which Garney sought a non-compensable time extension of 145 days and $2,853,999.76; (2) a claim related to the installation of butterfly valves on the Project, instead of gate valves, for which Garney sought a non-compensable time extension of 51 days and $426,171.81; (3) a claim related to a County Department of Public Works and Transportation permit requirement that Garney submit a detailed traffic signal and timing plan for which Garney sought a non-compensable time extension of 60 days and $164,688.47; and (4) a claim related to installation of a 60-inch tie-in at the Snapper Creek Canal for which Garney sought a non-compensable time extension of 16 days and $21,480.09 (collectively, the "Claims"); and

WHEREAS, the Parties were unable to resolve the Claims through informal negotiations; and

WHEREAS, on January 21, 2021, pursuant to Article 13.12 of the Contract—the Dispute Resolution Clause—the County's Designee for the dispute resolution process issued a decision that denied each of Garney's Claims; and

WHEREAS, on April 19, 2021, Garney and DMSI filed a complaint against the County in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Case No. 2021-009285-CA-01, alleging breach of contract and implied covenants, demanding a jury trial, and seeking $4,923,610.36 in damages related to the Claims (the "Lawsuit"); and

WHEREAS, the County sought to dismiss the Lawsuit on the grounds that it was not in accordance with the Contract's dispute resolution process; and

WHEREAS, the Parties want to avoid the associated expense and uncertainty of litigation, and, therefore, desire to amicably resolve their dispute and settle all of the Claims; and

WHEREAS, in exchange for Garney and DMSI's dismissal of the Lawsuit with prejudice and execution of full releases as to all of the Claims that were asserted in the Lawsuit or could have been asserted in the Lawsuit, the County shall grant Garney a non-compensable time extension of 272 days (resulting in the release of $951,000.00 in retained monies) and shall pay Garney $1,049,000.00 in full and final settlement of all of the Claims asserted in the Lawsuit as well as all claims that could have been asserted in the Lawsuit,

NOW, THEREFORE, in consideration of the foregoing recitals and following premises, terms and conditions and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The Parties agree that the above recitals are true and correct and that those recitals are incorporated by reference and form a part of this Agreement.

2. **Effective Date.** The Effective Date of this Agreement shall be the sooner of: (a) the date of the expiration of the County Mayor's veto period after the approval of this Agreement by the Board of County Commissioners of Miami-Dade County (the "BCC") without the County Mayor vetoing the BCC's resolution approving same, or (b) the date on which the County Mayor approves the BCC-approved resolution authorizing the execution of this Agreement, as set forth in Section 3 of this Agreement, or (c) the date on which the BCC overrides a County Mayor veto of this Agreement.

3. **County Approval Process.** The Parties acknowledge that before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County must obtain the approval of the BCC and the subsequent assent of the County Mayor or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor's veto by the BCC.

a. **BCC Approval.** The Parties acknowledge that County Resolution No. 130-06 requires that all non-County parties must execute this Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, Garney and DMSI agree to execute this Agreement before the County and as a precondition of the presentation of this Agreement to the County Mayor/designee and the BCC. After such execution, Garney and DMSI agree that neither may withdraw from or modify the terms of its settlement with the County, as presented in this Agreement except as provided in Paragraph 3(c) below.

b. **The Parties' Obligations Before BCC Approval.** None of the Parties shall be required to file any document compromising any claims they may have against the other Parties and shall not have to release the other Parties until the Effective Date.

c. **Consequence Upon Failure to Obtain BCC Approval**. If the BCC does not approve this Agreement or override a County Mayor veto of this Agreement, and after all opportunities for BCC reconsideration have passed, the Parties shall return to the status quo existing before the Parties' preparation of this Agreement, and the fact that the County, Garney and DMSI sought to negotiate a resolution to their dispute concerning the Project, including any supporting documents necessary to present this Agreement to the BCC, shall be inadmissible for all reasons and shall not prejudice any of their pre-existing rights and remedies with respect to each other or any other person or entity.

4. **Agreement to Settle: No Admission of Liability.** Subject to the terms and conditions of this Agreement, the Parties hereby agree that the terms of this Agreement, the payment of any monies, or any other action of forbearance taken pursuant to this Agreement shall in no way constitute, nor be construed as, an admission of liability or acknowledgment of the validity of any allegation, finding or conclusion, by the Parties, or their respective agents, but rather are made as a contractual settlement by way of compromise for the purpose of settling the claims, controversies, and differences addressed herein and to avoid the expense and uncertainty of litigation. Moreover, this Agreement shall not be admissible in any proceeding for any purpose, except for the purpose of establishing a claim of default or violation of the provisions contained herein.

a. **Payment Terms.** As full and final settlement of the Lawsuit, the Claims, and all possible claims that could have been brought by either Garney and/or DMSI, within ten (10) days of approval of this Agreement by the BCC, the County shall pay Garney the total sum of $1,049,000.00 (the "Settlement Sum"). In addition, the County shall process a change order for a 272-day non-compensable time extension, resulting in the release of $951,000.00 in monies withheld from Garney, which change order will be brought to the BCC for ratification simultaneously with this Agreement.

b. **Payment Method.** The County shall wire payment of the Settlement Sum to Garney as follows: c/o Vezina, Lawrence & Piscitelli, P.A. Trust Account; Capital City Bank; 217 N. Monroe Street; Tallahassee FL 32301; 850-402-7770. Routing # 063100688. Account # 0285011302.

c. **Contractual Warranties.** The Parties agree that this Settlement Agreement shall not release, modify, or affect, in any way, any warranties and/or guarantees owed by Garney and its subcontractors, including DMSI, to the County pursuant to the terms of the Contract or any other Project close-out documentation.

5. **Garney's Release.** For and upon receipt by Garney of the Settlement Sum as stated in Paragraph 4 above, Garney forever releases and discharges the County and its officers, directors, agents, successors, sureties, representatives, executors, attorneys, experts, consultants, and employees from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, choate or inchoate, known or unknown, past or future, related to or in any way arising out of the Claims, the Lawsuit, and the Project. In addition, Garney agrees that it will obtain any and all releases requested by the County from its subcontractors on the Project.

6. **DMSI's Release.** For and upon receipt by Garney of the Settlement Sum as stated in Paragraph 4 above, DMSI forever releases and discharges the County and its officers, directors, agents, successors, sureties, representatives, executors, attorneys, experts, consultants, and employees from any and all claims, causes of action, demands, disputes, and rights of whatever nature and kind, choate or inchoate, known or unknown, past or future, related to or in any way arising out of the Claims, the Lawsuit, and the Project.

7. **Dismissal of the Lawsuit.** Within five (5) days of Garney's receipt and clearance of the Settlement Sum, Garney and DMSI shall file a Notice of Voluntary Dismissal with prejudice in the Lawsuit. Each Party agrees to bear its own attorneys' fees and costs.

8. **Florida Law Applies; Exclusive Venue.** This Agreement shall be construed under the laws of the State of Florida without regard to its choice of law provisions. Venue for any dispute arising out of this Agreement shall lie exclusively in Miami-Dade County, Florida.

9. **Entire Agreement: Modification.** This Agreement together with all documents required to be executed hereunder constitutes the entire agreement and understanding between the Parties to this Agreement with respect to the subject matter of this Agreement. No supplement, modification, or amendment to this Agreement shall be binding unless it is duly executed in writing by all Parties.

10. **Rule of Construction: Opportunity to Review.** The Parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any Party hereto as to its construction. The Parties declare that: (a) they have completely read the terms of this Agreement, (b) they have discussed the terms of the Agreement with legal counsel of their choice, and (c) they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, officers, directors, predecessors, affiliates, parents, subsidiaries, successors or assigns in connection with any legal action arising out of the Agreement.

12. **Authority to Execute and Bind.** By executing this Agreement, the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective Parties to these terms and, where applicable, their parents, affiliates, subsidiaries, successors, assignees and related entities. Further, the Parties represent that they have not assigned any of their respective rights or claims that are the subject of this Agreement to any third party.

13. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

14. **Severability.** The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in federal, state or County law, whether through legislation or judicial interpretation, which create, eliminate, or change the rights and obligations of the Parties. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement is held to be invalid, void, or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired, or invalidated.

15. **Counterparts; Electronic Signatures.** The Parties agree that this Agreement, and any and all other documents in connection with this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same Agreement. This Agreement may be executed as facsimile, email, or electronic originals, and each copy of this Agreement bearing the facsimile, email, or electronic transmitted signature of any Party's authorized representative shall be deemed to be an original.

(Remainder of Page Left Blank Intentionally)

IN WITNESS WHEREOF, the Parties have executed this Agreement and Mutual Releases by their duly authorized representatives as of the date of year appearing by their respective signatures.

ATTEST:

By:____________________________
Harvey Ruvin
Clerk of the Board

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

By:____________________________
Daniella Levine Cava
County Mayor

ATTEST:

By:____________________________
Signature

Billy Page, Secretary
Print Name

GARNEY COMPANIES, INC.
(Corporate Seal)

GARNEY COMPANIES, INC. CORPORATE SEAL STATE OF MISSOURI

By:____________________________
Signature

Jason A Seubert, Chief Operating Officer
Print Name

LOURDES PARKER NOTARY PUBLIC FULTON COUNTY, GEORGIA My Commission Expires December 12, 2025

STATE OF GA
COUNTY OF FULTON

The foregoing instrument was acknowledged before me this 1st day of March 2022, by Jason A. Seubert, as Chief Operating Officer, and Billy Page, as Secretary, of Garney Companies, a ______________, on behalf of the corporation. He/She/They is/are personally known to me or has/hasn't/have/haven't produced identification and did/did not take an oath.

____
Notary Public

Lourdes Parker
Print Name

n/a
Serial Number

(Signatures Continue on Next Page)

ATTEST:

DAVID MANCINI & SONS, INC.
(Corporate Seal)

By:_________________________
Signature

David Mancini Jr., Secretary
Print Name

By:_________________________
Signature

David Mancini Jr. - Vice, President
Print Name

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 4TH day of March 2022, by David Mancini, Jr., as Vice President, and David Mancini, Jr., as Secretary, of David Mancini & Sons, Inc. a ________________, on behalf of the corporation. He/~~She/They~~ is/~~are~~ personally known to me or has/~~hasn't/have/haven't~~ produced identification and did/did not take an oath.

Kathleen Teresa McFadden
Notary Public

____
Serial Number

____
Print Name

NOTARY PUBLIC STATE OF FLORIDA
KATHLEEN TERESA MCFADDEN
Commission # GG 970106
Expires June 1, 2024
Bonded Thru Troy Fain Insurance 800-385-7019

Approved for Legal Sufficiency:

____
Assistant County Attorney

MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz and Members, Board of County Commissioners

DATE: May 17, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(O)(2)

Please note any items checked.

_______	**"3-Day Rule" for committees applicable if raised**
_______	**6 weeks required between first reading and public hearing**
_______	**4 weeks notification to municipal officials required prior to public hearing**
_______	**Decreases revenues or increases expenditures without balancing budget**
_______	**Budget required**
_______	**Statement of fiscal impact required**
_______	**Statement of social equity required**
_______	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
✓	**No committee review**
_______	**Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve**
_______	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved Danielle Levine Cava Mayor
Veto __________
Override __________

Agenda Item No. 8(O)(2)
5-17-22

RESOLUTION NO. R-490-22

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY, GARNEY COMPANIES, INC., AND DAVID MANCINI & SONS., INC., WHICH INCLUDES PAYMENT OF $1,049,000.00 BY THE COUNTY TO GARNEY COMPANIES, INC. IN EXCHANGE FOR A RELEASE OF ALL CLAIMS AND DISMISSAL OF A LAWSUIT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves and authorizes the County Mayor or County Mayor's designee to execute a Settlement Agreement between Miami-Dade County, Garney Companies, Inc., and David Mancini & Sons., Inc., which includes payment of $1,049,000.00 by the County to Garney Companies, Inc. in exchange for a release of all claims and dismissal of a lawsuit brought against the County, in substantially the form attached to the accompanying memorandum. This Board further authorizes the County Mayor or County Mayor's designee to exercise any rights contained therein.

The foregoing resolution was offered by Commissioner **Oliver G. Gilbert, III** , who moved its adoption. The motion was seconded by Commissioner **Raquel A. Regalado** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman **aye**
Oliver G. Gilbert, III, Vice-Chairman **aye**

Sen. René García	**aye**	Keon Hardemon	**aye**
Sally A. Heyman	**absent**	Danielle Cohen Higgins	**absent**
Eileen Higgins	**aye**	Joe A. Martinez	**aye**
Kionne L. McGhee	**aye**	Jean Monestime	**aye**
Raquel A. Regalado	**aye**	Rebeca Sosa	**absent**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared this resolution duly passed and adopted this 17th day of May, 2022. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

COUNTY COMMISSIONERS
MIAMI-DADE
COUNTY
FLORIDA

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SED

Sarah E. Davis