RESOLUTION NO. 17-05-35

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING CONSENT TO AN ASSIGNMENT OF THE DESIGN BUILD AND OPERATE (DBO) AGREEMENT BETWEEN ISLAMORADA, VILLAGE OF ISLANDS, AND REYNOLDS WATER ISLAMORADA, LLC; AUTHORIZING VILLAGE OFFICIALS TO EXECUTE THE CONSENT TO ASSIGNMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on August 21, 2012, the Village Council of Islamorada, Village of Islands (the “Village”) adopted Resolution 12-08-68, thereby approving and entering into a Design Build and Operate (“DBO”) Agreement with Reynolds Water Islamorada, LLC, a Delaware limited liability company (“Reynolds Water”), to provide design, construction and operation for a Village-wide central wastewater system; and

WHEREAS, Reynolds Water is a special purpose entity established by Layne Christensen Company’s heavy civil division, Layne Heavy Civil, Inc., an Indiana corporation (“Layne”), specifically for the Village’s central wastewater system DBO project; and

WHEREAS, Reynolds Water and certain of their affiliates have entered into an Asset Purchase Agreement with Reycon Partners LLC, a Delaware limited liability company (“Reycon”), pursuant to which Layne will sell and Reycon will purchase substantially all of the assets that are primarily used in Layne Christensen Company’s heavy civil division, including 100% of the membership interest in Reynolds Water (the "Transaction"); and

WHEREAS, Article XVII “Assignment and Delegation” of the DBO Agreement provides for assignment of the Agreement by Reynolds subject to the formal consent of the Village; and
WHEREAS, the Village Attorney along with representatives of Reynolds Water, Reynolds Construction and Layne have prepared and reviewed the necessary documents for the Village to formally consent to assignment of the Agreement; and

WHEREAS, the Letter Agreement and Consent to Assignment, attached as Exhibit “1” hereto, sets forth the terms and conditions under which the Village will provide its consent to the Assignment and Transaction, subject to all terms and conditions of the DBO Agreement; and

WHEREAS, the Village Council of Islamorada, Village of Islands (the “Village Council”) finds that it necessary to review, consider and approve the Consent to Assignment, attached hereto as Exhibit “1”.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approving Consent to Assignment. The Village Council of Islamorada, Village of Islands, hereby approves the Consent to Assignment of the DBO Agreement, a copy of which is attached hereto as Exhibit “1”, together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney.

Section 3. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are hereby authorized to take all actions necessary to implement the terms and conditions of the Consent to Assignment.

Section 4. Execution of Consent to Assignment. The Mayor and Village Manager are authorized to the Consent to Assignment on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Consent to Assignment and to authorize any further acts necessary to implement the terms thereof, subject to approval as
to form and legality by the Village Attorney.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

Motion to adopt by Councilwoman Deb Gillis, second by Councilman Mike Forster.

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS:

Mayor Jim Mooney        YES
Vice-Mayor Chris Sante  YES
Councilman Mike Forster  YES
Councilwoman Deb Gillis  YES
Councilwoman Cheryl Meads YES

PASSED AND ADOPTED this 4th day of May, 2017.

JIM MOONEY, MAYOR

ATTEST:
KELLY TOOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF ISLAMORADA, VILLAGE OF ISLANDS ONLY

ROGET V. BRYAN, VILLAGE ATTORNEY
CONSENT TO ASSIGNMENT

April 28, 2017

Roget V. Bryan, Village Attorney
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036

Re: Consent to Assignment

Dear Mr. Bryan:

Layne Heavy Civil, Inc., an Indiana corporation ("Company"), Reynolds Water Islamorada, LLC, a Delaware limited liability company ("Reynolds Water") and certain of their affiliates have entered into an Asset Purchase Agreement ("Agreement") with Reycon Partners LLC, a Delaware limited liability company ("Reycon"), pursuant to which the Company will sell and Reycon will purchase substantially all of the assets that are primarily used in Layne Christensen Company’s heavy civil division, including 100% of the membership interest in Reynolds Water (the "Transaction").

For clarity, the Company will sell and transfer ownership of substantially all of its heavy civil assets, including 100% of the membership interest in Reynolds Water, to Reynolds Construction, LLC, a Delaware limited liability company, authorized to transact business in the State of Florida as Reynolds Construction of Florida, LLC, a Delaware limited liability company ("Reynolds Construction"), which will be a wholly-owned subsidiary of Reycon. As a result of the Transaction, Reynolds Water will be a wholly-owned subsidiary of Reynolds Construction, which will be held by Reycon. Reycon is owned by Jeffrey Reynolds (who previously owned the heavy civil division prior to its acquisition by Layne Christensen Company in 2005) and the senior members of Layne’s heavy civil division management team: Leslie F. Archer, Kevin F. Strott, Michael P. Burton, Kevin D. Shemwell, Wesley L. Self and Elizabeth Smith. The management team of Reynolds Water will not change as a result of the transaction.

Reynolds Water and Islamorada, Village of Islands, a Florida municipal corporation ("Village") have entered into a Design, Build and Operate Agreement dated August 21, 2012 (together with any and all amendments, addendums, change orders, purchase orders, and all other documents incorporated into the heretofore described contract, the "DBO Agreement"). As a result of the Transaction, and pursuant to the requirements of Section 17.1 of the DBO Agreement, the Company and Reynolds Water hereby seek the consent of the Village to the Transaction. Notwithstanding the Transaction, the contracting entity under the DBO Agreement will remain Reynolds Water Islamorada, LLC.
The closing of the Transaction is expected to be effective as of April 30, 2017 or as soon thereafter as all of the conditions to the closing of the Transaction have been satisfied (the "Closing").

The Company hereby requests that the Village consent to the Transaction, as described above, and that the Village agree that the Transaction will not constitute a breach of the DBO Agreement.

Pursuant to the DBO Agreement and effective at Closing, the Village hereby consents to the Transaction, subject to all terms and conditions of the DBO Agreement, and subject to the following terms and conditions contained in this Letter Agreement: (i) Reycon and Reynolds Construction hereby expressly assume and agree to be fully bound by the terms and conditions of the DBO Agreement and assume the performance of any and all obligations, representations, and warranties of the Company pursuant to the DBO Agreement; (ii) the Transaction shall not relieve the Company or the Guarantor (Layne Christensen Company as defined in the DBO Agreement) of the performance of any of its payment or performance obligations under the DBO Agreement, which shall be ratified and remain in full force and effect after the Closing; (iii) the key management and supervisory personnel for the project shall remain the same, and shall not be changed or substituted without the prior written consent of the Village; (iv) the Payment and Performance Bonds shall remain the same with no changes as specified in the DBO Agreement (including, Appendix 4 to the DBO Agreement), except that Reynolds Construction shall be added as an additional principal on the bonds; (v) all Insurance Requirements and policies as required by the DBO Agreement (including, Appendix 13 of the DBO Agreement) shall remain the same with no changes, except that the policies of Reynolds Construction will be substituted for the policies of Reynolds Water; (vi) the Guaranty Agreement with Layne Christensen Company, a Delaware Corporation, shall remain in full force and effect and is hereby ratified; (vii) the Company, Reynolds Water, Reycon, Reynolds Construction, and Layne Christensen Company represent and warrant to the Village that as of the date hereof and on the Closing of the Transaction, they have good right, power and authority to authorize the Transaction and to execute this Letter Agreement with the Village; and (viii) the Village is not in breach or default of the DBO Agreement, and no event of default exists on the part of the Village as of the Closing.

By executing this Letter Agreement below, the parties agree to be bound by the terms and conditions of the DBO Agreement and this Letter Agreement. This Letter Agreement may be executed in two or more counterparts, each of which shall be and be taken as an original and collectively deemed one instrument.

The Village shall be notified promptly of the occurrence of the Closing, but in no event later than three (3) days after the Closing. The Village’s consent shall be contingent upon and not be effective, however, unless and until: (i) the Closing occurs, and if, for any reason the Closing does not occur, then the Village shall have no obligations pursuant to this Letter Agreement; and (ii) approval by the Village Council of the Transaction and this Letter Agreement and Consent to Assignment.
If you have any questions regarding the foregoing, please do not hesitate to contact me immediately at (205) 447-8787. Thank you for giving this your prompt attention.

Very truly yours,

LAYNE HEAVY CIVIL, INC.,
an Indiana Corporation

By: [Signature]

Name: Wesley Self
Title: Vice President

[Agreement and Acceptance Signature Pages for Letter Agreement Follow]
Agreed to and Accepted:

LAYNE HEAVY CIVIL, INC.,
an Indiana Corporation

By: [Signature]
Name: Michael Anderson
Title Authorized Officer: Vice President
Date Executed: 5-18-17

Agreed to and Accepted:

REYNOLDS WATER ISLAMORADA, LLC,
a Delaware limited liability company

By: [Signature]
Name: [Name]
Title Authorized Officer: President
Date Executed: 5/17/17

Agreed to and Accepted:

REYCON PARTNERS, LLC,
a Delaware limited liability company

By: [Signature]
Name: [Name]
Title Authorized Officer: President
Date Executed: 5/17/17
Agreed to and Accepted:

REYNOLDS CONSTRUCTION OF FLORIDA, LLC,
a Delaware limited liability company

By: [Signature]
Name: [Signature]
Title Authorized Officer: President
Date Executed: 5/17/17

Agreed to and Accepted:

LAYNE CHRISTENSEN COMPANY,
a Delaware Corporation

By: [Signature]
Name: J. Michael Anderson
Title Authorized Officer: Sr. VP. and CFO
Date Executed: 5-18-17

Agreed to and Accepted:

ISLAMORADA, VILLAGE OF ISLANDS,
A Florida municipal corporation

By: [Signature]
Name: Jim Mooney
Title Authorized Officer: Mayor
Date Executed: 5/9/17