RESOLUTION NO. 14-10-74

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING THE SETTLEMENT AGREEMENT IN THE CASE OF THEATER OF THE SEA, INC. V. ISLAMORADA AND THE DEPARTMENT OF ENVIRONMENTAL PROTECTION; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE SETTLEMENT AGREEMENT AND ANY ADDITIONAL DOCUMENTS PERTAINING TO THE SETTLEMENT AGREEMENT AND TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Theater of the Sea, Inc. ("TOTS") initiated a Petition for Administrative Hearing challenging issuance of a permit issued by the Florida Department of Environmental Protection (the "Department") to Islamorada, Village of Islands (the "Village") which authorized the construction of the low pressure force main for the Village’s wastewater collection/transmission system; and

WHEREAS, TOTS filed a separate Petition for Administrative Hearing challenging issuance of a permit issued by the Department to the Village for construction of the transmission force main as part of the Village’s wastewater collection/transmission system; and

WHEREAS, the respective petitions were forwarded to the State of Florida Division of Administrative Hearings ("DOAH") and consolidated as Theater of the Sea, Inc. v. Islamorada, Village of Islands and Department of Environmental Protection, Case No: 14-1634 and 14-3101, which are pending before DOAH; and

WHEREAS, TOTS and the Village have tentatively agreed upon settlement terms that would resolve those consolidated proceedings and alleviate the need for a final hearing before DOAH; and
WHEREAS, the Village Council desires to approve a settlement for the consolidated cases, a copy of which is attached hereto as Exhibit “A” (the “Settlement Agreement”), which will avoid the expense and delay of the administrative hearing process and allow the Village and TOTS to amicably resolve these cases; and

WHEREAS, the Village Council has determined that approval of the Settlement Agreement is in the best interests of the Village.

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. Approval of Settlement Agreement. The Village Council of Islamorada, Village of Islands, hereby approves the execution of the Settlement Agreement between the Village and TOTS, which is attached hereto as Exhibit “A”, along with any additional documents pertaining thereto.

Section 3. Authorization of Village Officials. The appropriate Village officials, including the Mayor, Village Manager and Village Attorney are authorized to execute and deliver the Settlement Agreement and any additional documents pertaining to the Settlement Agreement, including but not limited to any addendums thereto, and to take all actions necessary to implement the terms and conditions of the Settlement Agreement.

Section 4. Effective Date. This resolution shall be effective immediately upon its adoption.

Motion to adopt by Councilman Ken Philipson, seconded by Councilman Mike Forster.
FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA:

Mayor Ted Blackburn       YES
Vice Mayor Deb Gillis     YES
Councilman Mike Forster   YES
Councilman Ken Philipson  YES
Councilman Dave Purdo     YES

PASSED AND ADOPTED this 8th day of October, 2014.

ATTEST:

[Signature]
TED BLACKBURN, MAYOR
Deb Gillis, Vice Mayor

KELLY TOTH, VILLAGE CLERK

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

[Signature]
ROGET V. BRYAN, VILLAGE ATTORNEY
EXHIBIT “A”

Settlement Agreement
SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between REYNOLDS WATER ISLAMORADA, LLC (Layne); ISLAMORADA, VILLAGE OF ISLANDS (Islamorada) and THEATER OF THE SEA, INC. (TOTS). Layne, Islamorada, and TOTS shall be referred to herein collectively as the "Parties" for the purposes of this Agreement.

RECATALS

A. Islamorada proposed sewer lines adjacent to TOTS’ property and in the vicinity of TOTS’s water supply intake under Old State Highway 4a. Layne, and its affiliates, designed and constructed the sewer lines, which includes a low pressure force main as well as a transmission force main.

B. On July 23, 2013, the Florida Department of Environmental Protection (the Department) issued its Notice of Permit Issuance, which proposed to issue Permit No. 281237-153-DWC/CM to Islamorada authorizing the construction of a low pressure force main for a domestic wastewater collection/transmission system; which permit was applied for on July 2, 2013.

C. On August 16, 2013, the Department issued its Notice of Permit Issuance, which proposed to issue Permit No. 281237-155-DWC/CM to Islamorada to construct a transmission force main as part of a domestic wastewater collection/transmission system; which permit was applied for on July 25, 2013.

D. Collectively, the two above permits allow the construction of a wastewater collection and transmission system to service Islamorada within Monroe County, known herein as the Project.

E. On January 22, 2014, TOTS filed with the Department a Petition for Administrative Hearing challenging issuance of Permit No. 281237-153-DWC/CM. On March 24, 2014, Petitioner amended its original petition. The Department forwarded the Amended Petition to the State of Florida Division of Administrative Hearings (DOAH) on April 11, 2014, with a request that an Administrative Law Judge be assigned to conduct a hearing. The Amended Petition has been assigned DOAH Case No. 14-1634.

F. On June 20, 2014, Petitioner filed a Petition for Formal Administrative Hearing challenging the issuance of Permit No. 281237-143-DWC/CM. This Petition was later amended on September 12, 2014, to reference Permit No. 281237-155-DWC/CM as the proper permit number for the transmission force main installed in the vicinity of TOTS’ property. The Department forwarded the original petition to DOAH on July 3, 2014, also with a request that an Administrative Law Judge be assigned to conduct a hearing. This Petition has been assigned DOAH Case No. 14-3101 and has been consolidated with DOAH Case No. 14-1634.

G. The transmission force main was installed in the vicinity of TOTS’ property in January 2014.
H. The low pressure force main was installed in the vicinity of TOTS' property in February 2014.

I. The Parties have agreed to a settlement of the pending proceeding before DOAH in Case No. 14-1634, as consolidated with DOAH Case No. 14-3101.

**TERMS AND CONDITIONS**

In consideration of the full and timely performance by each party hereto of each of the terms and conditions of this Agreement in the manner prescribed herein, and in full and final settlement of the proceeding pending before the Division of Administrative Hearings as described above, the Parties agree as follows:

A. Upon execution of this Agreement, TOTS shall voluntarily dismiss with prejudice its Petitions and Amended Petitions for Formal Administrative Proceeding with DOAH Case Nos. 14-1634 and 14-3101.

B. In accordance with the responsibilities set forth in the Design, Build, and Operate Agreement dated August 21, 2012, Islamorada and Layne shall implement the engineering design illustrated in Attachment A (four figures), the commitments in Attachment B (one page), and the items described below, which shall collectively be referred to hereinafter as the “Engineering Settlement”. The Engineering Settlement shall be operated and maintained through the operational life of the Project. If Layne or any of its successors or assigns are no longer bound by the Design, Build and Operate Agreement referenced above, Islamorada shall remain responsible for the Engineering Settlement and its operation and maintenance.

1. The low pressure line shall be cut and capped on the channel side of the last service connection as shown on Attachment A;

2. Installation of manual pressure gauges on the transmission line that crosses TOTS water supply channel to show pressure in the line;

3. Installation of valves with channel bypass assemblies on the transmission force main line (two assemblies per force main) that allows Islamorada or Layne to turn off flow in the line and perform a temporary bypass of the flow in the same area;

4. Islamorada shall continuously monitor pressure in the transmission force main for the Project as part of its existing telemetry monitoring system, which monitors are to be installed at certain pump stations. The telemetry monitoring system has been designed to set off an emergency alert system if a pressure anomaly is sensed.

5. The Response Protocol in Attachment B shall be implemented.

6. The transmission force main and low pressure force main shall be pressure tested after construction of the engineering design in Attachment A and prior to the
placement of the lines into operation and the results of such pressure testing shall be provided to TOTS and to the Department as part of the request for an operational approval.

C. For settlement purposes, Layne and Islamorada shall bear the costs associated with the Engineering Settlement.

D. Layne shall begin construction pursuant to the Engineering Settlement within forty-five (45) days of execution by the Parties of this Agreement and shall complete the construction no later than 120 days from the start of construction.

E. Layne shall provide TOTS and Islamorada with signed and sealed as-built engineering drawings of the Engineering Settlement within ninety (90) days after completion of the construction of the Engineering Settlement. Islamorada shall coordinate with TOTS' engineer prior to any future construction in the area of the Engineering Settlement and TOTS' engineer may be present during all construction referenced in this Agreement. Coordination prior to such construction shall occur by contacting TOTS's contact listed in Paragraph K. via telephone or email, no later than 5 business days prior to the start of construction. Islamorada shall submit the signed and sealed as-built engineering drawings depicting the construction of the Engineering Settlement and all existing sewage line construction in the vicinity of the Engineering Settlement to the Department as part of the applicable permits. Drawings provided to the Department shall be simultaneously provided to TOTS.

F. Layne and Islamorada shall not seek to convert the abandoned portion of the low pressure line into operation at any time during the life expectancy of the Project, and this intent shall be included and documented in the Department permitting files for the Project.

G. Provided that the Engineering Settlement is constructed, maintained, and operated pursuant to the terms herein, TOTS agrees not to oppose the Project, nor initiate or support any administrative or judicial proceeding regarding the Project, including, but not limited to:

(1) Any and all allegations, in any forum, regarding the operational approval to be issued by the Florida Department of Environmental Protection (Department) for the Project;

(2) Any and all allegations, in any forum, regarding any environmental resource permit or other permit or approval that TOTS or any other person may contend is needed for the Project under Florida law;

(3) Any and all allegations, in any forum, regarding any permit or other approval that TOTS or any other person may contend is needed for the Project under the federal Clean Water Act; and

(4) Any and all allegations, in any forum, that the Project was constructed on land owned by TOTS.

This provision applies to the Project as of the execution of this Agreement and does not apply to any future modifications of the Project within the immediate vicinity of the TOTS water
supply intake. The terms of this paragraph shall survive the filing of the notice of voluntary dismissal with prejudice referenced herein.

H. Nothing in this Agreement is intended to alter liability for any remediation of contamination associated with the design, construction, maintenance, or operation of the wastewater collection and transmission system described in Permit No. 281237-153-DWC/CM and Permit No. 281237-155-DWC/CM.

I. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

J. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of Florida. Exclusive jurisdiction and venue for any litigation brought to enforce this Agreement shall be in the Circuit Court for Monroe County, Florida, and the Parties do hereby specifically waive any other jurisdiction and venue. In any such litigation, the parties shall seek only declaratory or injunctive relief or specific performance. Neither party shall file any lawsuit to enforce this Agreement unless it has first provided written notice of the alleged violation to the other party thirty (30) days prior to filing suit and the other party has failed to cure the alleged violation.

K. Any notice required by this Agreement shall be directed to the listed names below. Written Notice shall be by U.S. Mail or electronic mail to each party at the addresses below:

To Theater of the Sea:

Luna E. Phillips
Gunster
450 E. Las Olas Blvd. Ste 1400
Fort Lauderdale, Florida 33301
lphillips@gunster.com
954-712-1478

To Layne:

Shellie Clausen
Layne Christensen Company
610 South 38th Street
Kansas City, KS 66106
Shellie.Clausen@Layne.com

To Islamorada:

Maria Aguilar
Village Manager
Village Administrative Center
86800 Overseas Highway
Islamorada, Florida 33036

L. No amendments or modifications of this Agreement shall be valid unless set forth in writing and signed by the duly authorized representatives of each Party.

M. This Agreement shall be deemed to be effective immediately upon its full execution by all Parties.

N. The Parties acknowledge and agree that each of them shall bear their own costs, expenses and attorneys' fees in relation to the Case No 14-3101 and Case No. 14-1634 proceedings consolidated before DOAH.

O. This Agreement, including Attachments A and B, contains the entire understanding among the Parties with regard to the matters herein set forth, and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to this Agreement which are not fully expressed herein.

P. The undersigned have represented and warranted that they have the full power and right to execute this Agreement with full authority to bind the party on whose behalf they are signing. This Agreement shall be binding on all successors in interest and assigns of the Parties.
Date: 11/20/19

REYNOLDS WATER ISLAMORADA, LLC

By: [Signature]

Its: President
Date: 11/20/14

ISLAMORADA, VILLAGE OF ISLANDS

By: María Jaqueira

Its: Village Manager
THEATER OF THE SEA, INC.

Date: 11/20/14

By: [Signature]

Its: Owner
TYPICAL CFM TRENCH DETAILS

NOTE:
A. COMPATIBLE MATERIALS MUST BE USED IN CONJUNCTION WITH SPECIFICATION SECTION 133.
B. IN CLAY SOILS, COMPACTION TRENCHES MAY BE NEEDED TO MAINTAIN ELEVATION FOR SOIL CONSTRUCTION.
C. IN SOILS WITH A HIGH PERMEABILITY, THE INSTALLER SHOULDN'T INSTALL INTERIOR TRENCHES AND PREVENT THE TRENCH FROM BEING COMPACTED.

FM ENCASEMENT DETAIL

PRESSURE GAUGE INSTALLATION

PLUG VALVE INSTALLATION DETAIL

[Diagram showing various trench details, encasement, pressure gauge installation, and plug valve installation]
ATTACHMENT B
RESPONSE PROTOCOL

The Village and Layne agree to respond to any wastewater-related emergencies regarding the Theater of the Sea’s water supply in accordance with its response protocol in the Design, Build, and Operate (“DBO”) Agreement, Article VII Operation and Maintenance of Wastewater Facilities, dated August 21, 2012, and such response may include, as appropriate, the following response specific to Theater of the Sea (“TOTS”):

1. The Village pipeline system (Low Pressure Force Main and Transmission Force Main) in the vicinity of the TOTS coral rock water supply channel has emergency shut-off valves, manual pressure gages, and bypass assemblies.

2. Sewage spill detection procedures include, but are not limited to:
   a. Pipeline pressure readings and coliform readings are not normal.
   b. Direct onsite observations of discolored water, unusual sewer smells, etc.
   c. Water quality monitoring by TOTS detects significantly abnormal results consistent with a spill of untreated sewage.
   d. Reports from the public suggesting something is wrong with the sewage pipelines.
   e. Other indications of a spill are detected.