

RESOLUTION NO. 22-117

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "ASSIGNMENT OF WATER TESTING SERVICES AGREEMENT" TO ASSIGN A CONTRACT FOR WATER TESTING BETWEEN THE CITY AND FLOWERS CHEMICAL LABORATORIES TO EUROFINS ENVIRONMENT TESTING SOUTHEAST, LLC ON THE SAME TERMS AND CONDITIONS; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 21-270 and concurrent CRA Resolution 21-277, the City Commission/CRA awarded the proposal and authorized a three-year contract with an option for two-year renewals between the City and Flowers Chemical Laboratories, Inc. for water testing services at Key West Bight, the Ferry Terminal and City Marina at Garrison Bight; and

WHEREAS, Flowers Chemical Laboratories, Inc. was merged into Flowers Chemical Lab Holding, LLC, then merged into Eurofins Environment Testing, LLC in March, 2022; and

WHEREAS, City staff recommends assignment of the contract with Flowers Chemical Laboratories, Inc. to Eurofins Environment Testing Southeast, LLC upon terms in the attached "Assignment of Water Testing Services Agreement" and the "Contract Agreement" dated December 10, 2021; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the attached "Assignment of Water Testing Services Agreement," to assign the City's contract with Flowers Chemical Laboratories, Inc. to Eurofins Environment Testing Southeast, LLC, on the same terms and conditions, is hereby approved.

Section 2: That the City Manager is authorized to execute any necessary documents, upon consent of the City Attorney.

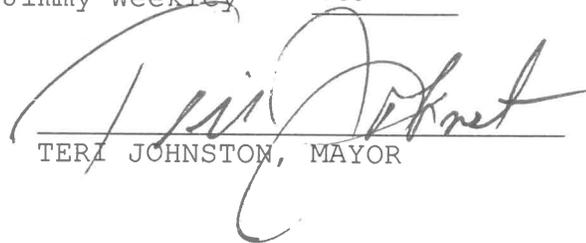
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18th day of May, 2022.

Authenticated by the Presiding Officer and Clerk of the Commission on 20th day of May, 2022.

Filed with the Clerk on May 20, 2022.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


TERI JOHNSTON, MAYOR

ATTEST:


KERI O'BRIEN, SENIOR DEPUTY
CITY CLERK

ASSIGNMENT OF WATER TESTING SERVICES AGREEMENT

THIS ASSIGNMENT is made this 20 day of May, 2022, by and between Flowers Chemical Laboratories, Inc. a Florida corporation, as Assignor, and Eurofins Environment Testing Southeast, LLC, a Delaware corporation, as Assignee.

The Assignor, in consideration of the covenants and agreements contained herein, assigns and transfers to Assignee the Water Testing Agreement (hereinafter "Agreement"), dated December 10, 2021, executed by Flowers Chemical Laboratories, Inc., contractor and by the City of Key West, Florida, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter "City").

1. The Assignor assigns and transfers unto the Assignee all of its right, title, and interest in and to the Agreement, subject to all the conditions and terms contained in the Agreement. A copy of the Agreement is incorporated by reference.
2. The Assignor herein expressly agrees and covenants that it is the lawful and sole owner of the interest assigned herein; that this interest is free from all encumbrances; and that it has performed all duties and obligations and made all payments required under the terms and conditions of the Agreement.
3. The Assignee herein expressly agrees herein to be liable for all the duties and obligations required by the terms of the Agreement. The Assignee expressly agrees to assume and perform all duties and obligations required by the terms of the Agreement.
4. In the event Assignee files any form of bankruptcy, City shall be entitled to immediate termination of the automatic stay provisions of 11 U.S.C. §362, granting the City complete relief and allowing the City to exercise all of its legal and equitable rights and remedies, including, without limitation, the right to terminate the Agreement and dispossess Assignee from the demised premises in accordance with Florida law. Additionally, Assignee agrees not to directly or indirectly oppose or otherwise defend against the City's effort to gain relief from any automatic stay. The City shall be entitled as aforesaid to the lifting of the automatic stay without the necessity of an evidentiary hearing and without the necessity or requirement of the City to establish or prove the value of the Agreement, the lack of adequate protection of its interest in the Agreement, or the lack of equity in the same. Assignee specifically agrees and acknowledges that the lifting of the automatic stay hereunder by the appropriate bankruptcy court shall be deemed to be "for cause" pursuant to section 362(d)(1).
5. No later than the effective date of this assignment, the Assignee herein expressly agrees to provide to the City proof of the insurance coverage required by the Agreement.

ASSIGNOR: Flowers Chemical Laboratories, Inc.

Witness as to Assignor

By: _____

Witness as to Assignor

ASSIGNEE: Eurofins Environment Testing Southeast, LLC

Witness as to Assignee

By: _____

Witness as to Assignee

State of _____ }
County of _____ }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, _____ (Flowers Chemical Laboratories, Inc.) to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this _____ day of _____, 2022.

Notary Public, State of _____

My Commission Expires:

State of _____ }
County of _____ }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, _____ (Eurofins Environment Testing Southeast, LLC) to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this _____ day of _____, 2022.

Notary Public, State of _____

My Commission Expires:

CONSENT OF CITY

The City of Key West, Florida, a municipal corporation, a party to the Water Testing Agreement dated December 10, 2021, and referred to in the Assignment above, herein expressly consents to that Assignment.

The City also consents to the agreement by the Assignee to assume, after the effective date of the Assignment, the performance of all duties and obligations as set forth in the Agreement and accept Assignee as contractor in the place of Flowers Chemical Laboratories, Inc. alone.

City's consent herein is expressly contingent upon City's receipt of the proof of insurance referred to herein above.

CITY OF KEY WEST, FLORIDA

Sarah Suggart
Witness as to City

By: Patti McLauchlin
Patti McLauchlin, City Manager

Mano Jainert
Witness as to City

ATTEST:
Cheryl Smith
Cheryl Smith, City Clerk



State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Patti McLauchlin (City of Key West), to me personally known or who provided n/a as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 20th day of May, 2022.

[Signature]
Notary Public, State of Florida

My Commission Expires:



CONTRACT AGREEMENT

This Contract, made and entered into 10th day of December 2021, by and between the City of Key West, hereinafter called the "Owner", and Flowers Chemical Laboratories, Inc., hereinafter called the "Contractor".

WITNESSETH:

The Contractor, in consideration of the sum to be paid him by the Owner and of the covenants and agreements herein contained, hereby agrees at his own proper cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery, and appurtenances for ITB #21-019 WATER TESTING - KEY WEST BIGHT, KEY WEST BIGHT FERRY TERMINAL and CITY MARINA at GARRISON BIGHT Key West, Florida to the extent of the Bid made by the Contractor, dated the 29th day of September, 2021, all in full compliance with the Contract Documents referred to herein.

The PROCUREMENT REQUIREMENTS, including the signed copy of the BID FORM, the CONTRACT FORMS, the SCOPE OF WORK, DRAWINGS and/or SUPPLEMENTAL INFORMATION (if any), which consists of WATER TESTING AT KEY WEST BIGHT, KEY WEST BIGHT FERRY TERMINAL, AND CITY MARINA at GARRISON BIGHT are hereby referred to and by reference made a part of this Contract as fully and completely as if the same were fully set forth herein and are mutually cooperative therewith.

In consideration of the performance of the work as set forth in these Contract Documents, the Owner agrees to pay to the Contractor the amount bid in the Bid as adjusted in accordance with the Contract Documents, or as otherwise herein provided, and to make such payments in the manner and at the times provided in the Contract Documents.

The Contractor agrees that the Contract period is for three (3) years with the Owner having an option to renew at the same terms for additional two (2) year terms. The Contract shall begin on the date this Contract is entered into.

The Contractor agrees that the Contract period is for three (3) years with the Owner having an option to renew at the same terms for additional two (2) year terms. The Contract shall begin on the date this Contract is entered into.

This contract will automatically expire upon completion of the project. Contractor warranty obligations remain in effect.

IN WITNESS WHEREOF, we, the parties hereto, each herewith subscribe for same this

14th day of December, A.D., 2021.

CITY OF KEY WEST

By [Signature]

Printed [Signature]

Title City Manager

CONTRACTOR

By [Signature]

Printed 12/10/21

Title President

APPROVED AS TO FORM

Attorney for Owner
