

RESOLUTION NO. 22-137

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED "ASSIGNMENT OF WATER TESTING SERVICES AGREEMENT" TO ASSIGN A CONTRACT FOR WATER TESTING BETWEEN THE CITY/CRA 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/CRA 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 CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

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

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

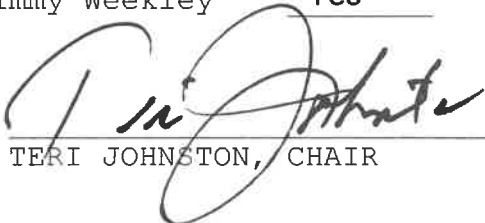
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 7th day of June, 2022.

Authenticated by the presiding officer and Clerk of the Agency on June 8, 2022.

Filed with the Clerk June 8, 2022.

Chair Teri Johnston	<u>Yes</u>
Vice Chair 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, CHAIR

ATTEST:



CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

EXECUTIVE SUMMARY

TO: Patti McLauchlin, City Manager
CC: Todd Stoughton, Assistant City Manger
FROM: Doug Bradshaw, Director Port & Marine Services
DATE: May 4, 2022
SUBJECT: Approving an amendment to the Water Testing Contract Agreement which will allow an assignment from Flowers Chemical Laboratories, Inc. to Eurofins Environment Testing Southeast, LLC.

ACTION STATEMENT

This resolution will authorize an amendment to the existing water testing services contract that will allow for assignment of the Agreement from Flowers Chemical Laboratories, Inc. to Eurofins Environment Testing Southeast, LLC

PROJECT ISSUE

The City maintains a water testing contract with Flowers Chemical Laboratories, Inc. that was approved for a 3-year term in 2021 (Resolution #21-270 and 21-277). Eurofins Environment Testing Southeast, LLC has acquired Flowers Chemical Laboratories, Inc.

PURPOSE AND JUSTIFICATION

For the City to continue the water testing contract under the new owner, Eurofins Environment Testing Southeast, LLC, the Carolina Street Bahama Village Community Redevelopment Authority (CRA) must approve an amendment to the existing contract with Flowers Chemical Laboratories, Inc. to allow for an assignment to Eurofins Environment Testing Southeast, LLC.

OPTIONS

1. The CRA can approve an amendment to the contract which will allow an assignment from Flowers Chemical Laboratories, Inc. to Eurofins Environment Testing Southeast, LLC. Doing so will allow the current level of service and contractual terms to remain.
2. The CRA can disapprove an amendment for assignment. This option is not recommended by Staff, as the City would not be able to continue the required water testing at both marinas.

STRATEGIC PLAN

The water testing contract is consistent with the Key West Forward Strategic Plan Priority 4: Environmental Protection.

FINANCIAL ISSUES

There is no financial impact to assigning this contract. The hourly rate will remain the same.

RECOMMENDATION

Staff recommends that the CRA select option 1, approving an amendment to the contract which will allow an assignment from Flowers Chemical Laboratories, Inc. to Eurofins Environment Testing Southeast, LLC.

Key to the Caribbean – Average yearly temperature 77° F.

WESTMAN'S 3061203K3

ASSIGNMENT OF WATER TESTING SERVICES AGREEMENT

THIS ASSIGNMENT is made this _____ day of _____, 20____, 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 Layton
Witness as to City

By: Patti McLauchlin
Patti McLauchlin, City Manager

Theresa Smith
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 8th day of June, 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 affect.

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

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

CITY OF KEY WEST

By [Signature]

Printed [Signature]

Title Code Manager

CONTRACTOR

By [Signature]

Printed 12/10/21

Title President

APPROVED AS TO FORM

Attorney for Owner

April 28, 2022

VIA EMAIL

Doug Bradshaw
Port and Marine Services Director
201 William St.
Key west, FL
Tel. (304) 809-3792
Email: dbradshaw@cityofkeywest.fl.gov

Re: Notice of Ownership Change

Dear Mr. Bradshaw:

I am writing in response to your request for confirmation of the sale of Flowers Chemical Laboratories. We hereby confirm that Eurofins Environment Testing Southeast, LLC acquired 100% ownership of Flowers Chemical Laboratories, effective March 1, 2022.

The transaction was accomplished by the following steps:

- (1) merging Flowers Chemical Laboratories, Inc. (a Florida corporation) into Flowers Chemical Lab Holding, LLC (a Delaware limited liability company, the surviving entity);
- (2) merging Flowers Chemical Lab Holding, LLC into Eurofins Environment Testing Southeast, LLC (a Delaware limited liability company, the surviving entity).

The attached documents evidencing the transaction include:

- (a) State of Delaware Certificate of Merger of Flowers Chemical Laboratories, Inc. into Flowers Chemical Lab Holding, LLC, filed March 1, 2022;
- (b) State of Delaware Certificate of Merger of Flowers Chemical Lab Holding, LLC into Eurofins Environment Testing Southeast, LLC, filed March 1, 2022;
- (c) Florida Department of State, Division of Corporation Certificates filed March 1, 2022, regarding the Articles of Merger of Flowers Chemical Laboratories, Inc. into Flowers Chemical Lab Holding, LLC.

Please feel free to contact me if you require any further information. I can be reached by email at alex.montoya@et.eurofinsus.com, or by phone at (281) 240-4200.

Thank you for your prompt attention to this matter.

Sincerely,



Alex Montoya
President
Eurofins Environment Testing Southeast, LLC