# RESOLUTION NO. 22-137

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE **ATTACHED SERVICES** "ASSIGNMENT OF WATER TESTING 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:

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 Yes

Vice Chair Sam Kaufman Yes

Commissioner Mary Lou Hoover
Commissioner Clayton Lopez

Commissioner Gregory Davila

Commissioner Billy Wardlow Yes

Commissioner Jimmy Weekley Yes

Yes

Yes Yes

TERI JOHNSTON, CHAIR

ATTEST:

CHERYL SMITH, CITY CLERK

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.

EXECUTIVE SUMMAN



# **CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY) 02/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

this certificate does not confer rights	to the cert	ificate holder in lieu of s	CONTACT	s).			
Marsh USA Inc. 1717 Arch Street			NAME: PHONE FAX (A/C, No, Ext): (A/C, No): E-MAIL				
							Philadelphia, PA 19103-2797
			INSURER(S) AFFORDING COVERAGE			NAIC#	
CN134111012-ALL-GU-21-22			INSURER A: HDI Global America Insurance Company				41343
INSURED  Eurofins Environment Testing Southeast			INSURER B:				
LLC			INSURER C:				
5102 LaRoche Avenue Savannah, GA 31404			INSURER D :				
Savanilali, GA ST404			INSURER E :				
			INSURER F :				
		NUMBER:	CLE-006854820-01		REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE POLICIES INDICATED. NOTWITHSTANDING ANY RICERTIFICATE MAY BE ISSUED OR MAY EXCLUSIONS AND CONDITIONS OF SUCH	EQUIREME PERTAIN,	NT, TERM OR CONDITION THE INSURANCE AFFORD	OF ANY CONTRACTED BY THE POLICIES BEEN REDUCED BY	T OR OTHER ES DESCRIBE PAID CLAIMS	DOCUMENT WITH RESP D HEREIN IS SUBJECT	ECT TO	WHICH THIS
NSR TYPE OF INSURANCE	ADDL SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIN	ITS	
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CLAIMS-MADE X OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	1,000,000
					MED EXP (Any one person)	\$	10,000
					PERSONAL & ADV INJURY	\$	1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE	\$	2,000,000
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OTHER:						\$	
AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident)	\$	
ANY AUTO					BODILY INJURY (Per person)	\$	
OWNED SCHEDULED AUTOS ONLY					BODILY INJURY (Per acciden	t) \$	
HIRED NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)	\$	
						\$	
A UMBRELLA LIAB X OCCUR		CUD1314007	01/01/2022	01/01/2023	EACH OCCURRENCE	\$	5,000,000
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DED RETENTION\$				1	DED. OTU	\$	
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N					PER OTH- STATUTE ER		
ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	N/A				E.L. EACH ACCIDENT	\$	
(Mandatory In NH) If yes, describe under					E.L. DISEASE - EA EMPLOYE	E \$	
DESCRIPTION OF OPERATIONS below					E.L. DISEASE - POLICY LIMIT	\$	
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHIC							
CERTIFICATE HOLDER			CANCELLATION				
City of Key West P.O. Boz 6434 Key West, FL 33041				N DATE THE	ESCRIBED POLICIES BE EREOF, NOTICE WILL Y PROVISIONS.		
			AUTHORIZED REPRESE				
			A 40		Marsh US,		

# 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 Delaws	are corporation, as Assi	gnee.	

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.
- 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.

By:	
Witness as to Assignor	
Witness as to Assignor  ASSIGNEE: I	Eurofins Environment Testing Southeast, LLC
By:	
Witness as to Assignee	
Witness as to Assignee	
State of} County of}	
I HEREBY CERTIFY that on this day per authorized to administer oaths and take acknowled	lgements,
(Flowers Chemical Laboratories, Inc.) to as photo identification and he acknowledged before me that he executed	, and who executed the foregoing instrumen
therein expressed.	the same marvidually and for the purposes
IN WITNESS WHEREOF, I have hereunto s County and State last aforesaid, this day of	et my hand and affixed my official seal in the of, 2022.
My Commission Expires:	Notary Public, State of
State of} County of}	
I HEREBY CERTIFY that on this day perauthorized to administer oaths and take acknowled (Eurofins Environment Testing Southeast, LLC)	lgements,
	, and who executed the foregoing instrument
IN WITNESS WHEREOF, I have hereunto s County and State last aforesaid, this day of	
	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
Swit Luggt Witness as to City	Patti McLauchlin, City Manager
Witness as to City	ATTEST: Cheryl Smith, City Clerk
State of Florida } County of Monroe }	
authorized to administer oaths and take acknow to me personally known or who provide	instrument and he acknowledged before me that he
IN WITNESS WHEREOF, I have here County and State last aforesaid, this	unto set my hand and affixed my official seal in the day of, 2022.
My Commission Expires:	Notary Public, State of Florida  KERIL. O'BRIEN Commission # GG 910688

Expires September 5, 2023 Bonded Thru Troy Fain Insurance 800-345-7616

## **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".

#### WITNESSETE:

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 #21-119 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. Contractors warranty obligations remain in affect.

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

141 day of Decomber ,AD, 20 ZI.

CITY OF KEY WEST
By James James
Printed Said Management
Title Care Manager
CONTRACTOR
Printed 12/12/
Title (Ass.)

APPROVED AS TO FORM

Attorney for Owner

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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:

- 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