



TO: VENETIA BARNES, STORMWATER ENGINEER MANAGER, ENGINEERING
 FROM: ANDREA H. DUENAS, ASSISTANT CITY ATTORNEY **AHD**
 THROUGH: SARA HEDGES, CITY ATTORNEY **SH**
 RE: RE-REVIEW FDEP GRANT AGREEMENT – COMPREHENSIVE VULNERABILITY ASSESSMENT
 CAO RLS FILE: 24-418
 RELATED RLS 24-277 – INITIAL REVIEW OF FDEP GRANT AGREEMENT (7/16/24)
 RELATED RLS 24-333 -- REVIEW OF SA NO.8 FOR KIMLEY-HORN AND ASSOCIATES FOR
 COMPREHENSIVE VULNERABILITY ASSESSMENT PURSUANT TO FDEP GRANT AGREEMENT (8/26/24)
 DATE: NOVEMBER 18, 2024

This Request for Legal Services (“RLS”) asks the City Attorney’s Office to review a Comprehensive Vulnerability Assessment Grant Agreement between the Department of Environmental Protection (the “DEP”) and the City (the “Revised Agreement”).

A. The Original DEP Grant Agreement

A 44-page DEP Grant Agreement was reviewed and approved by this Office on July 16, 2024, pursuant to RLS 24-277 (the “Original Agreement”).

In August of 2024, the Department submitted RLS 24-333 to this office seeking review and approval of Specific Authorization Number 8 for Kimley-Horn and Associates to conduct the Comprehensive Vulnerability Assessment pursuant to the Original DEP Grant Agreement (“SA No. 8”). SA No. 8 was returned by this Office with comments, and I do not know if it has been executed.

The Original DEP Grant Agreement was signed by Mayor Hudson on October 4, 2024.

B. The Revised DEP Grant Agreement

Thereafter, the Department learned that the agreement executed by the City was obsolete and that the DEP required the City to execute a Revised Grant Agreement.

The Revised Agreement contains multiple sections. The chart below lists the sections, indicates the revision date for each section, and states whether the section was previously reviewed and approved by this Office.

		Number of pages	Revision date	Previously reviewed?
	Standard Grant Agreement	3 pages	6/23/23	RLS 24-277
Att. 1	Standard Terms and Conditions Applicable to Grant Agreements	14 pages	10/1/24	NEW
Att. 2	Special Terms and Conditions	3 pages	6/27/24	NEW

Att. 3	Grant Work Plan	5 pages	9/9/24	NEW
Att. 4	Public Records Requirements	1 page	4/8/24	NEW
Att. 5	Special Audit Requirements	7 pages	10/1/24	NEW
Att. 6	Program-Specific Requirements	3 pages	9/9/24	NEW
Ex. A	Progress Report Form	1 page w/link	7/1/24	NEW
Ex. C	Payment Request Summary Form	1 page w/link	12/2/19	RLS 24-277
Ex. F	Final Project Report	2 pages	6/30/23	RLS 24-277
Ex. G	Release Form for Photographs, Videos, Audio Recordings and Artworks	1 page	11/19/21	RLS 24-277
Ex. H	Contractual Services Certification	1 page	4/8/24	RLS 24-277
Ex. I	Certification Checklist	1 page w/link	7/1/24	NEW
Ex. J	Common or Contracted Carrier Attestation Form	1 page	8/22	RLS 24-277

C. Comments, Caveats, and Suggestions from the City Attorney's Office

Pursuant to this RLS (24-418), I have reviewed only those sections marked as NEW above. Two of the new sections (Attachment 1 and Attachment 3) contain important terms which are discussed below.

Attachment 1 - Standard Terms and Conditions

¶ 7(b). Financial Consequences for Nonperformance: Under this paragraph, if the City fails to meet a deadline for any deliverable, the DEP **will** reduce the City's invoice by 1% **for each day the deadline is missed** unless an extension is approved by the DEP in writing. This daily penalty could drastically reduce the amount of grant money the City receives from the DEP.

¶ 8(i). Payment: Under this paragraph, **to ensure the availability of funds**, the City's final payment request must be submitted no later than 60 days following the expiration date of the Agreement.

¶ 12(c). Insurance: This paragraph mandates that the City must provide proof of insurance **prior to performance of any work**.

¶ 17. Force Majeure: Under this paragraph, if the City's performance is delayed due to a *force majeure* event, the City **must report the event** within specific deadlines set forth in Paragraph 17.

** This Office recommends reviewing the *force majeure* clause in the Kimley-Horn agreements to ensure that similar language binds the Contractor in the event the Contractor's performance is excusably delayed due to a *force majeure* event. If this language has not been included in the agreements, SA No. 8 should be amended.

¶ 22(a). Statutory Notices – unauthorized aliens: Language found in this paragraph must be included in all subcontracts.

** This Office recommends reviewing the Kimley-Horn agreements to ensure that the requisite language related to employment of unauthorized aliens has been included.

¶ 23(a). Compliance with Federal, State and Local Laws (including nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements): Language found in this paragraph must be included in all subcontracts.

** This Office recommends reviewing the Kimley-Horn agreements to ensure that the requisite language related to compliance with Federal, State and Local Laws (including nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements) has been included.

¶ 23(d). Venue: Under this paragraph, if any dispute arises under the Revised Agreement, the dispute must be resolved in Leon County courts.

¶ 28. Record Keeping: This paragraph mandates that the City and its subcontractors maintain their records for audit purposes **for five years** following the termination (or completion date) of the Revised Agreement.

** This Office recommends reviewing the Kimley-Horn agreements to ensure that the Contractor is required to maintain its records for the requisite five years. If a shorter length of time is provided by the agreements, SA No. 8 should be amended.

¶ 29(a). Audits by Inspector General: Language found in this paragraph related to cooperation with the Inspector General in any investigation, audit, inspection, review, or hearing must be included in all subcontracts.

** This Office recommends reviewing the Kimley-Horn agreements to ensure that the requisite language has been included. If it has not been included, SA No. 8 should be amended.

Attachment 3 - Grant Work Plan

Attachment 3 contains a list of nine Tasks with Deliverables for each Task. The Tasks and Deliverables are the same in the Revised Agreement as in the Original Agreement.

Attachment 3 also includes a Project Timeline and Budget Detail which is identical to the Project Timeline and Budget Detail found in the Original Agreement.

Please note that under the Revised Agreement all Deliverables must be received by the Task Due Date and accepted by the Department on or before the Agreement's Date of Expiration **or the Consequences for Non-Performance shall apply.**

Consequences for Non-Performance: The Revised Grant Work Plan reduces funding for each Task by **5% per day** for each Deliverable not received by the Task Due Date. *This new daily penalty could drastically reduce the amount of proceeds received from the DEP.*

** This Office recommends adding this new penalty provision to SA No. 8.

** SA No. 8 should be carefully reviewed to confirm that the deadlines imposed on the Contractor align with the DEP's Task Due Dates.

D. Conclusion

While the Revised Agreement is approved as to form and correctness, this Office recommends that the Department review the Kimley-Horn Agreements carefully amend as necessary.

/ahd