

Financial Project Number(s): **445568-1-88-01**  
Contract No.: **ASE09**  
COUNTY: Escambia County

**JOINT PARTICIPATION AGREEMENT**  
**BETWEEN**  
**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**  
**AND**  
**THE CITY OF PENSACOLA**

This AGREEMENT is between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, with offices at 1074 Highway 90 East, Chipley, FL 32428 (the “DEPARTMENT”), and the **CITY OF PENSACOLA**, a political subdivision of the State of Florida, with offices at 222 West Main Street, Pensacola, FL 32502 (the “CITY”). The DEPARTMENT and the CITY are sometimes referred to in this AGREEMENT as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this AGREEMENT pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the Parties are desirous of having the CITY purchase and install eighteen (18) Uninterruptible Power Supply (UPS) battery backup systems at 18 intersections, thirty-two (32) new batteries at eight (8) intersections, and replace signal cabinets and wiring at 2 intersections, under Financial Project Number 445568-1-88-01, which is further described on Exhibit “A” – Scope of Services, attached hereto and made a part hereof (the “PROJECT”); and

WHEREAS, the PROJECT is on the State Highway System, is not revenue producing and is contained in the adopted work program; and

WHEREAS, the DEPARTMENT is prepared to reimburse the CITY for the actual costs of the PROJECT in an amount up to but not to exceed **ONE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED AND XX/100 DOLLARS (\$151,600.00)** that has been allocated in the fiscal year **2019**; and

WHEREAS, the implementation of this PROJECT is in the best interest of both Parties and it would be most practical, expeditious, and economical for the CITY to perform services to complete the PROJECT;

WHEREAS, the intent of this AGREEMENT is to establish the terms and conditions of the funding and production of this PROJECT; and

WHEREAS, the CITY, by resolution number \_\_\_\_\_, dated \_\_\_\_\_, 201\_, a copy of which is attached hereto as Exhibit "D" and made a part hereof, has authorized the \_\_\_\_\_ to enter into this AGREEMENT.

**NOW THEREFORE**, in consideration of the mutual benefits to be derived by the terms of this AGREEMENT, the Parties agree as follows:

**1 – TERM:**

- A. This AGREEMENT shall begin upon full execution by both Parties and the CITY shall complete the PROJECT on or before **June 30, 2020**. If the CITY does not complete the PROJECT within this time period, this AGREEMENT will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the CITY and granted in writing by the DEPARTMENT prior to the expiration of this AGREEMENT. Expiration of this AGREEMENT will be considered termination of the PROJECT. The CITY acknowledges that no reimbursements for the actual costs of the PROJECT will be provided by the DEPARTMENT under this AGREEMENT for work performed on the PROJECT that is not timely completed and invoiced in accordance with the terms of this AGREEMENT, for work performed prior to full execution of this AGREEMENT, or for work performed after expiration of this AGREEMENT. Notwithstanding the foregoing, the CITY shall remain obligated to complete all aspects of the PROJECT identified in this AGREEMENT in accordance with its terms, unless otherwise agreed by the Parties in writing.

**2 – SERVICES AND PERFORMANCE:**

- A. The CITY shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The PROJECT and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A".

**3 – AMENDMENTS, EXTENSIONS AND ASSIGNMENT:**

- A. This AGREEMENT may be amended or extended upon mutual written agreement of the Parties.
- B. This AGREEMENT shall not be assigned, transferred or otherwise encumbered by the CITY under any circumstances without the prior written consent of the DEPARTMENT.

**4 – TERMINATION OR SUSPENSION OF PROJECT:**

- A. The DEPARTMENT may, by written notice to the CITY, suspend any or all of the DEPARTMENT'S obligations under this AGREEMENT for the CITY'S failure to comply with applicable laws or the terms of this AGREEMENT until such time as the event or condition resulting in such suspension has ceased or been corrected. The DEPARTMENT

may also terminate this AGREEMENT, in whole or in part, at any time the interest of the DEPARTMENT requires such termination.

1. If the DEPARTMENT terminates this AGREEMENT, the DEPARTMENT shall notify the CITY of such termination in writing within thirty (30) days of the DEPARTMENT'S determination to terminate this AGREEMENT, with instructions as to the effective date of termination or to specify the stage of work at which the AGREEMENT is to be terminated.
2. The Parties may also terminate this AGREEMENT when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions through mutual written agreement.
3. If this AGREEMENT is terminated before performance is completed, the CITY shall be reimbursed only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this AGREEMENT. All work in progress on the DEPARTMENT right-of-way will become the property of the DEPARTMENT and will be turned over promptly by the CITY.
4. Upon termination of this AGREEMENT, the CITY shall, within thirty (30) days, refund to the DEPARTMENT any funds determined by the DEPARTMENT to have been expended in violation of this AGREEMENT.

#### **5 – PROJECT COST:**

- A. The estimated cost of the PROJECT is **(\$151,600.00)**
- B. The DEPARTMENT agrees to reimburse the CITY for the actual costs of the PROJECT in an amount up to but not to exceed **ONE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED AND XX/100 DOLLARS (\$151,600.00)**. The method of compensation is more fully described in Exhibit "B" – Method of Compensation, attached hereto and made a part hereof. The CITY agrees to bear all expenses in excess of the aforementioned amount, including any cost overruns or deficits incurred in connection with completion of the PROJECT.

#### **6 – COMPENSATION AND PAYMENT:**

- A. The DEPARTMENT shall reimburse the CITY for actual costs of the PROJECT, as further described in Exhibit "A".
- B. The CITY shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and

the criteria for evaluating successful completion. The PROJECT and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit “A”.

- C. Invoices shall be submitted by the CITY in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable, and verifiable units of deliverables as established in Exhibit “A”. Deliverables must be received and accepted in writing by the DEPARTMENT’S Project Manager prior to payments. Requests for reimbursements by the CITY shall include an invoice, progress report and supporting documentation for the period of services being billed that are acceptable to the DEPARTMENT. The CITY shall use the format for the invoice and progress report that is approved by the DEPARTMENT.
- D. Supporting documentation must establish that the deliverables were received and accepted in writing by the CITY and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit “A” was met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in Attachment “F” – Contract Payment Requirements.
- E. There shall be no reimbursement for travel expenses under this AGREEMENT.
- F. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the DEPARTMENT’S Comptroller under Section 334.044(29), Florida Statutes. If the DEPARTMENT determines that the performance of the CITY is unsatisfactory, the DEPARTMENT shall notify the CITY of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the DEPARTMENT. The CITY shall, within five (5) days after notice from the DEPARTMENT, provide the DEPARTMENT with a corrective action plan describing how the CITY will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the DEPARTMENT, the CITY will not be reimbursed to the extent of the non-performance. The CITY will not be reimbursed until the CITY resolves the deficiency. If the deficiency is subsequently resolved, the CITY may bill the DEPARTMENT for the unpaid reimbursement request(s) during the next billing period. If the CITY is unable to resolve the deficiency, the funds shall be forfeited at the end of the AGREEMENT’S term.
- G. The CITY should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than twenty (20) working days from the DEPARTMENT’S receipt of the invoice. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables and costs incurred are received, inspected, and approved. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the CITY. Interest

penalties of less than one (1) dollar will not be enforced unless the CITY requests payment. Invoices that have to be returned to the CITY because of CITY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

- H. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for the CITY who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. The CITY shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this AGREEMENT shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this AGREEMENT and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the CITY'S general accounting records and the PROJECT records, together with supporting documents and records, of the contractor and all subcontractors performing work on the PROJECT, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.
- J. Upon request, the CITY agrees to provide progress reports to the DEPARTMENT in the standard format used by the DEPARTMENT and at intervals established by the DEPARTMENT. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of the PROJECT and of details thereof.
- K. If, after completion of the PROJECT, any claim is made by the DEPARTMENT resulting from an audit or for work or services performed pursuant to this AGREEMENT, the DEPARTMENT may offset such amount from payments due for work or services done under any agreement which it has with the CITY owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the DEPARTMENT. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the DEPARTMENT.
- L. The CITY must submit the final invoice on the PROJECT to the DEPARTMENT within one hundred twenty (120) days after completion of the PROJECT. Invoices submitted after the 120-day time period may not be paid.
- M. In the event this AGREEMENT is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is

null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year.”

- N. The DEPARTMENT’S obligation to pay is contingent upon an annual appropriation by the Florida Legislature.
- O. This AGREEMENT does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, Florida Statutes.
- P. Any PROJECT funds made available by the DEPARTMENT pursuant to this AGREEMENT which are determined by the DEPARTMENT to have been expended by the CITY in violation of this AGREEMENT or any other applicable law or regulation, shall be promptly refunded in full to the DEPARTMENT. Acceptance by the DEPARTMENT of any documentation or certifications, mandatory or otherwise permitted, that the CITY files shall not constitute a waiver of the DEPARTMENT’S rights as the funding agency to verify all information at a later date by audit or investigation.
- Q. In determining the amount of the payment, the DEPARTMENT will exclude all costs incurred by the CITY prior to the execution of this AGREEMENT, costs incurred after the expiration of this AGREEMENT, costs which are not provided for as described in this AGREEMENT, costs agreed to be borne by the CITY or its contractors and subcontractors for not meeting the terms of this AGREEMENT, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the DEPARTMENT.

**7 – GENERAL REQUIREMENTS:**

- A. The CITY shall complete the PROJECT with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this AGREEMENT and all applicable laws.
- B. The CITY shall comply and require its contractors and subcontractors to comply with all terms and conditions of this AGREEMENT and all federal, state, and local laws and regulations applicable to the PROJECT.
- C. The CITY shall have the sole responsibility for resolving claims and requests for additional work for the PROJECT by the CITY’S contractors and consultants. No funds will be provided for payment of claims or additional work on the PROJECT under this

AGREEMENT without the prior written approval of the claim or request for additional work by the DEPARTMENT.

D. The CITY shall notify the DEPARTMENT in writing upon completion of the PROJECT, the form of which is attached hereto as Exhibit “C” – Notice of Completion.

E. The CITY:

1. Shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the CITY during the term of the AGREEMENT; and
2. Shall expressly require any subcontractors performing work or providing services pursuant to the AGREEMENT to likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the AGREEMENT.

F. The CITY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CITY in conjunction with this AGREEMENT. Specifically, if the CITY is acting on behalf of a public agency, the CITY shall:

1. Keep and maintain public records required by the DEPARTMENT to perform the service.
2. Upon request from the DEPARTMENT’S custodian of public records, provide the DEPARTMENT with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the AGREEMENT’S term and following completion of the AGREEMENT if the CITY does not transfer the records to the DEPARTMENT.
4. Upon completion of the AGREEMENT, transfer, at no cost, to the DEPARTMENT all public records in possession of the CITY or keep and maintain public records required by the DEPARTMENT to perform the service. If the CITY transfers all public records to the DEPARTMENT upon completion of the AGREEMENT, the CITY shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CITY keeps and maintains public records upon completion of the AGREEMENT, the CITY shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the DEPARTMENT, upon request from DEPARTMENT’S custodian of public records, in a format that is compatible with the information technology systems of the DEPARTMENT.

- G. If the CITY has questions regarding the application of chapter 119, Florida Statutes, to the CITY'S duty to provide public records relating to this agreement, contact the custodian of public records at:

District 3  
850-330-1894  
[D3prcustodian@dot.state.fl.us](mailto:D3prcustodian@dot.state.fl.us)  
Florida Department of Transportation  
District 3 – Office of General Counsel  
1074 Highway 90 East  
Chipley, FL 32428

- H. Failure by the CITY to grant such public access shall be grounds for immediate unilateral cancellation of this AGREEMENT by the DEPARTMENT. The CITY shall promptly provide the DEPARTMENT with a copy of any request to inspect or copy public records in possession of the CITY and shall promptly provide the DEPARTMENT a copy of the CITY'S response to each such request.

## **8 – CONTRACTS OF THE CITY:**

- A. The DEPARTMENT has the right to review and approve any and all third-party contracts with respect to the PROJECT before the CITY executes any contract or obligates itself in any manner requiring the disbursement of DEPARTMENT funds under this AGREEMENT, including consultant or construction contracts or amendments thereto. If the DEPARTMENT exercises this right and the CITY fails to obtain such approval, the DEPARTMENT may deny payment to the CITY. The DEPARTMENT may review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- B. It is understood and agreed by the Parties that participation by the DEPARTMENT in a project that involves the purchase of commodities or contractual services or the purchasing of capital equipment or the equipping of facilities, where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Chapter 287.017 Florida Statutes, is contingent on the CITY complying in full with the provisions of Chapter 287.057, Florida Statutes. The CITY shall certify to the DEPARTMENT that the purchase of commodities or contractual services has been accomplished in compliance with Chapter 287.057, Florida Statutes. It shall be the sole responsibility of the CITY to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the maximum participation amount in this AGREEMENT must be approved by the DEPARTMENT prior to CITY execution. Failure to obtain such approval,



and subsequent execution of an amendment to the AGREEMENT, if required, shall be sufficient cause for nonpayment by the DEPARTMENT.

- C. Participation by the DEPARTMENT in a project that involves a consultant contract for engineering, architecture or surveying services, is contingent on the CITY'S complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the CITY shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- D. If the PROJECT is procured pursuant to Chapter 255 for construction services and at the time of competitive solicitation for the PROJECT, 50 percent or more of the cost of the PROJECT is to be paid from state-appropriated funds, then the CITY must comply with the requirements of Section 255.0991, Florida Statutes.
- E. The CITY agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

**9 – CONSTRUCTION STANDARDS AND REQUIRED APPROVALS:**

- A. In the event the PROJECT includes construction, the following provisions are incorporated into this AGREEMENT:
  - 1. The CITY is responsible for obtaining any and all permits necessary for the PROJECT.
  - 2. In the event the PROJECT involves construction on the DEPARTMENT'S right-of-way, the CITY shall provide the DEPARTMENT with written notification of either its intent to:
    - i. Award the construction of the PROJECT to a DEPARTMENT prequalified contractor which is the lowest and best bidder in accordance with the applicable state and federal statutes, rules, and regulations. The CITY shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or
    - ii. Construct the PROJECT utilizing existing CITY employees, if the CITY can complete said PROJECT within the time frame set forth in this AGREEMENT. The CITY'S use of this option is subject to approval by the DEPARTMENT.
  - 3. The CITY shall hire a qualified contractor using the CITY'S normal bid procedures to perform the construction work for the PROJECT.
  - 4. The CITY is responsible for provision of Construction Engineering Inspection (CEI) services. The DEPARTMENT reserves the right to require the CITY to hire

a DEPARTMENT pre-qualified consultant firm that includes one individual that has completed the Advanced Maintenance of Traffic Level Training. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the PROJECT meets the minimum construction standards established by DEPARTMENT. The DEPARTMENT shall have the right to approve the CEI firm. The DEPARTMENT shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the PROJECT. Subject to the approval of the DEPARTMENT, the CITY may choose to satisfy the requirements set forth in this paragraph by either hiring a DEPARTMENT prequalified consultant firm or utilizing CITY staff that meet the requirements of this paragraph, or a combination thereof.

5. The CITY shall adhere to the DEPARTMENT'S Conflict of Interest Procedure (FDOT Topic No. 375-030-006).
6. The CITY shall require the CITY'S contractor to post a payment and performance bond in accordance with applicable law.
7. The CITY shall be responsible to ensure that the construction work under this AGREEMENT is performed in accordance with the approved construction documents, and that it will meet all applicable CITY and DEPARTMENT standards.

#### **10 – MAINTENANCE OBLIGATIONS:**

- A. The CITY agrees to maintain the PROJECT in accordance with the terms of the existing Traffic Signal Maintenance and Compensation Agreement between the Parties.

#### **11 – RESTRICTIONS, PROHIBITIONS, CONTROLS AND LABOR PROVISIONS:**

- A. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- B. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity;

may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

- C. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the DEPARTMENT to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the CITY.
- D. No funds received pursuant to this AGREEMENT may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- E. The DEPARTMENT shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this AGREEMENT.

## **12 – INDEMNIFICATION AND INSURANCE:**

- A. It is not intended by any of the provisions of any part of this AGREEMENT to create in the public or any member thereof, a third party beneficiary under this AGREEMENT, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this AGREEMENT. The CITY guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the CITY or any subcontractor, in connection with this AGREEMENT. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the CITY agrees to indemnify and hold harmless the DEPARTMENT, including the DEPARTMENT'S officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CITY and persons employed or utilized by the CITY in the performance of this AGREEMENT. This indemnification shall survive the termination of this AGREEMENT. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the CITY'S sovereign immunity. Additionally, the CITY agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this AGREEMENT:

“To the fullest extent permitted by law, the CITY'S contractor/consultant shall indemnify and hold harmless the CITY and the State of Florida, Department of Transportation, including the DEPARTMENT'S officers and employees, from

liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor or consultant and persons employed or utilized by the contractor or consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida or the CITY'S sovereign immunity."

- B. The CITY shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultants have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- C. If the CITY elects to self-perform the PROJECT, and such self-performance is approved by the DEPARTMENT in accordance with the terms of this AGREEMENT, the CITY may self-insure and proof of self-insurance shall be provided to the DEPARTMENT. If the CITY elects to hire a contractor or consultant to perform the PROJECT, then the CITY shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the AGREEMENT. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The CITY shall, or cause its contractor to cause the DEPARTMENT to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the DEPARTMENT as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the AGREEMENT, and may not be shared with or diminished by claims unrelated to the AGREEMENT. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured

Retention unless the CITY is a state agency or subdivision of the State of Florida that elects to self-perform the PROJECT. Prior to the execution of the AGREEMENT, and at all renewal periods which occur prior to final acceptance of the work, the DEPARTMENT shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The DEPARTMENT shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The DEPARTMENT'S approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the DEPARTMENT may have.

- D. When the AGREEMENT includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the CITY shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the DEPARTMENT as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the AGREEMENT, and at all renewal periods which occur prior to final acceptance of the work, both the DEPARTMENT and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the DEPARTMENT and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The DEPARTMENT'S approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the DEPARTMENT may have.
- E. When the AGREEMENT involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the DEPARTMENT as an Additional Insured on the Commercial General Liability policy/ies procured above.

### **13 – MISCELLANEOUS:**

- A. In no event shall any payment to the CITY constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist on the part of the CITY and the making of such payment by the DEPARTMENT, while any such

breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

- B. If any provision of this AGREEMENT is held invalid, the remainder of this AGREEMENT shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- C. The Parties agree that the CITY, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the DEPARTMENT as a result of this AGREEMENT.
- D. By execution of this AGREEMENT, the CITY represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- E. Nothing in this AGREEMENT shall require the CITY to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the AGREEMENT violate any applicable state law, the CITY will at once notify the DEPARTMENT in writing in order that appropriate changes and modifications may be made by the Parties to the end that the CITY may proceed as soon as possible with the PROJECT.
- F. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same AGREEMENT. A facsimile or electronic transmission of this AGREEMENT with a signature on behalf of a Party will be legal and binding on such Party.
- G. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this AGREEMENT that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements, whether written or oral. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- H. The DEPARTMENT reserves the right to unilaterally terminate this Agreement for failure by the CITY to comply with the provisions of Chapter 119, Florida Statutes.
- I. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of this AGREEMENT and Florida law, the laws of Florida shall prevail. The CITY agrees to waive forum and venue and that the DEPARTMENT shall determine the forum and venue in which any dispute under this AGREEMENT is decided.

- J. Notices pursuant to this AGREEMENT shall be sent by U.S. Mail to the following addresses:

FOR THE DEPARTMENT:

Florida Department of Transportation  
District Traffic Operations Office  
Attn: Kenneth Shiver, District Traffic Systems Specialist  
1074 Highway 90 East  
Chipley, Florida 32428

FOR THE CITY:

City of Pensacola  
Attn: Ryan Novota, P.E., Transportation Engineer  
West Main Street  
Pensacola, FL 32502

*The remainder of this page intentionally left blank*

**IN WITNESS WHEREOF**, the Parties have executed this AGREEMENT on the dates set forth below.

CITY OF PENSACOLA

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ (Seal)

By: \_\_\_\_\_  
Krissy Cook  
Executive Secretary (Seal)

LEGAL REVIEW:

LEGAL REVIEW:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Office of the General Counsel



**EXHIBIT "A"**

**Scope of Services**

**For**

**The City of Pensacola**

**Uninterruptible Power Supply (UPS) Systems and Signal Wiring**

**Financial Project Number: 445568-1-88-01**

**Summary:**

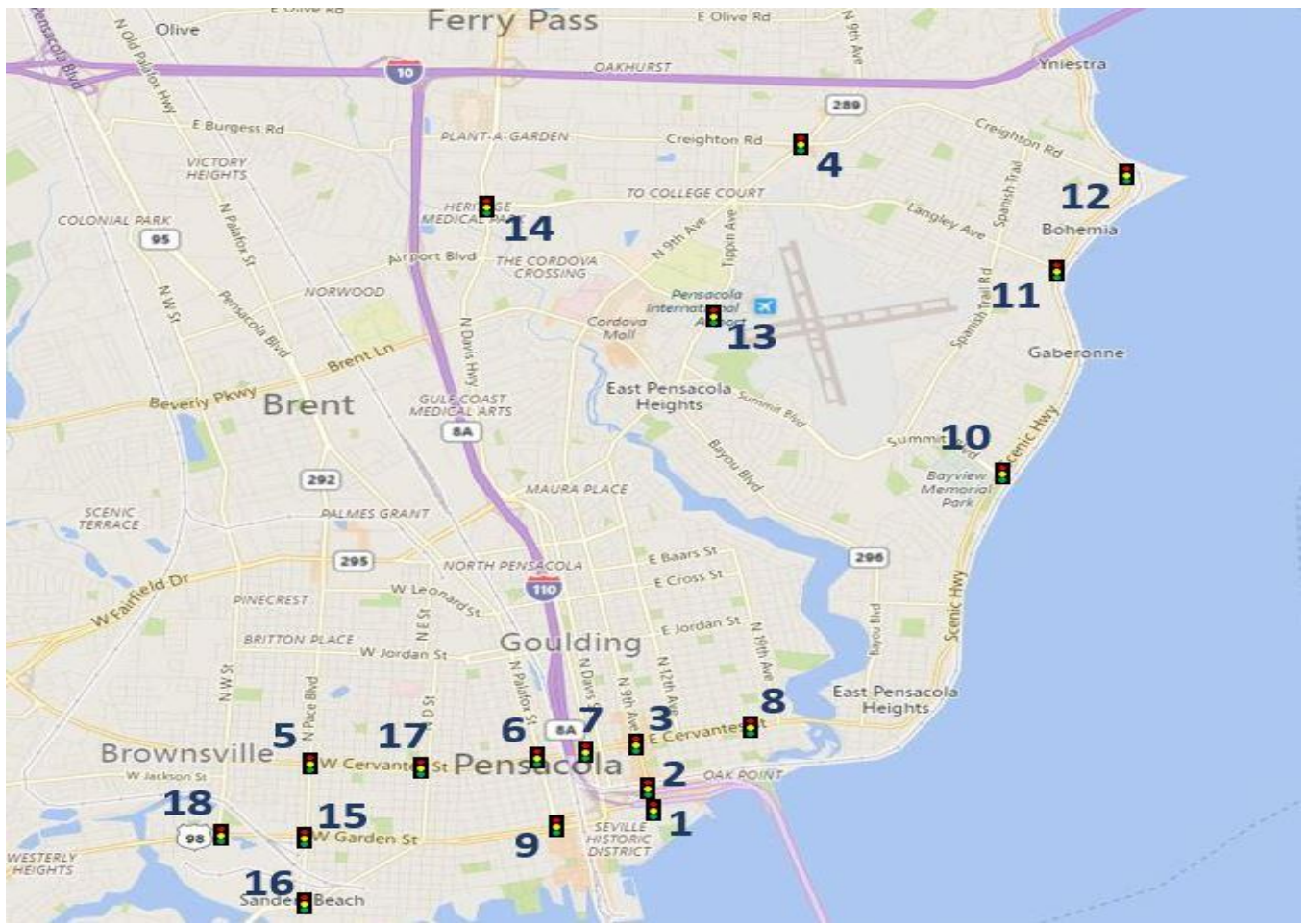
This Project involves furnishing and installing eighteen (18) Uninterruptible Power Supply (UPS) battery backup systems at eighteen (18) major intersections, thirty-two (32) new batteries for eight (8) intersections which already have UPS battery backup systems, and replacement of traffic signal cabinets, foundation, and signal wiring at two (2) locations. These intersections are on state roads in the City of Pensacola.

The following intersections require UPS battery backup systems:

- 1. SR 289/9<sup>th</sup> Ave. at SR 30/ Chase St.**
- 2. SR 289/9<sup>th</sup> Ave. at SR 30/ Gregory St.**
- 3. SR 289/9<sup>th</sup> Ave. at SR 10A/ Cervantes St.**
- 4. SR 289/9<sup>th</sup> Ave. at SR 742/Creighton Rd.**
- 5. SR 10A/ Cervantes St. at SR 292/Pace Blvd.**
- 6. SR 10A//Cervantes St. at SR 95/Palafox St.**
- 7. SR 10A/ Cervantes St. at Haynes St.**
- 8. SR 10A/ Cervantes St. at 17<sup>th</sup> St.**
- 9. SR 30/Garden St. at SR 95/Palafox St.**

- 10. SR 10A/Scenic Hwy. at Summit Blvd.
- 11. SR 10A/Scenic Hwy. at Langley Ave.
- 12. SR 10A/Scenic Hwy. at SR 742/ Creighton Rd.
- 13. SR 750/Airport Blvd. at 12<sup>th</sup> Ave.
- 14. SR 291/Davis Hwy. at Langley Ave.
- 15. SR 292/Pace Blvd. at SR 30/Garden St.
- 16. SR 292/Pace Blvd. at SR 292/Barrancas Ave
- 17. SR 10A/Cervantes St at E St.
- 18. SR 30/Navy Blvd. at W St.

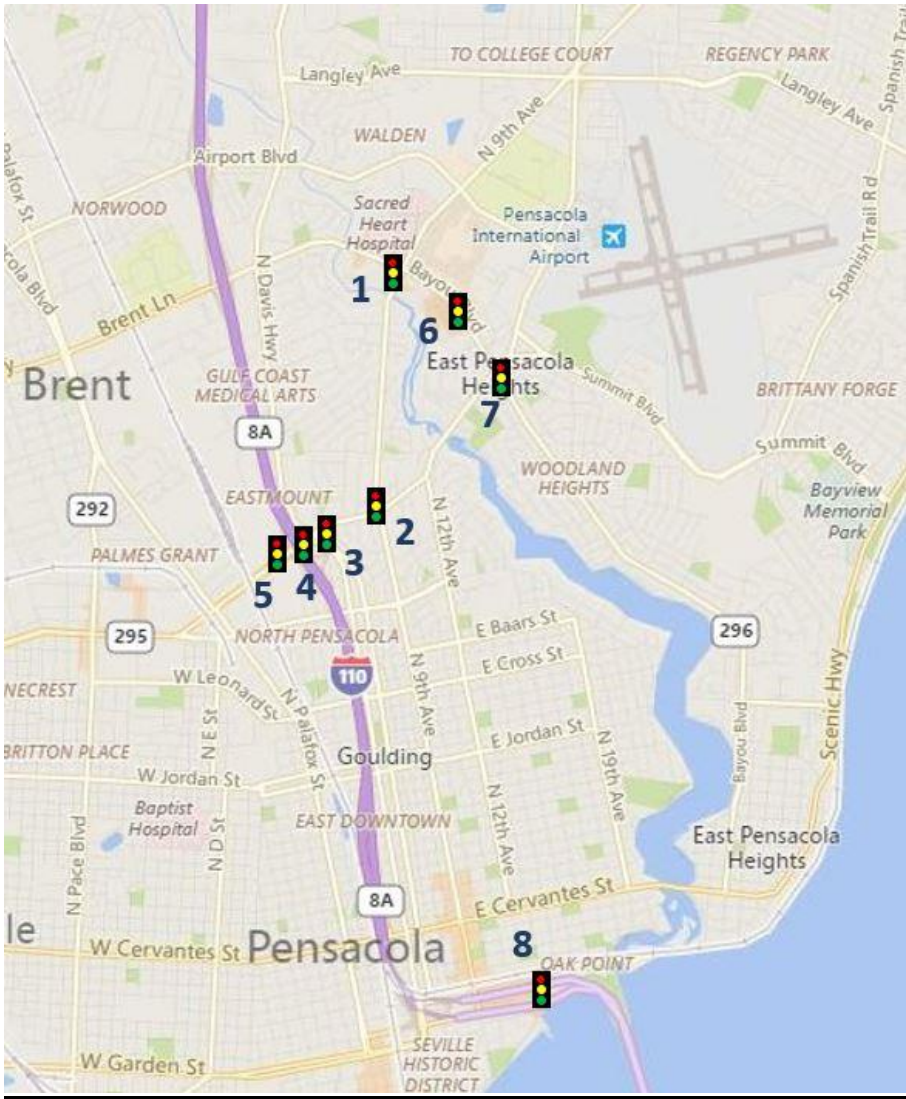
**Intersections Location Map**



The following intersections require new batteries for the existing UPS battery backup systems:

- 1. N. 9<sup>th</sup> Ave and Bayou Blvd
- 2. N. 9<sup>th</sup> Ave and Fairfield Dr
- 3. Fairfield Dr and Davis
- 4. Fairfield Dr and I-110 NB Ramp
- 5. Fairfield Dr and I-110 SB Ramp
- 6. Bayou Blvd and Target Store
- 7. Bayou Blvd and 12<sup>th</sup> Ave
- 8. Chase St and Bayfront Pkwy

**Intersections Location Map**



The City will install the UPS units and batteries at the above indicated intersections. All work and materials shall be in accordance with DEPARTMENT'S established standards and specifications. In addition, all equipment and materials utilized on the project that are subject to certification by the DEPARTMENT shall be listed on the Approved Product List (APL) and be compatible with the existing traffic signal controller equipment and associated system.

Furnish and install new traffic signal cabinets, foundation, and wiring for each intersection listed below:

- 1. Chase (SR20) and Palafox (US29)**
- 2. Gregory (SR291) and Palafox Street (US29)**

The City will install new traffic signal cabinet, foundation and all signal wiring at the above indicated intersections. All work and materials shall be in accordance with DEPARTMENT'S established standards and specifications. In addition, all equipment and materials utilized on the project that are subject to certification by the DEPARTMENT shall be listed on the Approved Product List (APL) and be compatible with the existing traffic signal controller equipment and associated system.

### **Benefits of Deployment:**

The Uninterruptible Power Supply (UPS) battery backup system provides conditioned power to traffic signals and will operate a traffic signal intersection without interruption or complications and provides enough run time to allow the City to make valued decisions regarding traffic control.

If a loss of AC power is in the short term the UPS will allow the traffic signal controller to continue operating road traffic intersections smoothly and without any impact on the road user. If a power outage is going to last longer than the standby time of the UPS, a portable generator can be used to extend the time the intersection is powered.

The existing batteries at these locations have passed their life expectancy and require replacement.

Refreshing the deteriorated wiring, upgrading traffic signal back plates and brackets, and obsolete traffic signal cabinets will allow new high-resolution traffic controllers, signal communications, and connected vehicle capability to be utilized. Replacement of the equipment will help to increase availability and reduce traffic damage claims due to lightning and other force majeure events.

**Deliverables:**

Deliverables to be provided shall include purchase of 18 UPS battery backup Systems, 32 batteries for the existing UPS battery backup system at 8 intersections, 2 traffic signal cabinets, signalization cable, installation of back plates, installation of required signal hardware and required cabinet hardware to permit the traffic signal to be fully operational. The City will install the new UPS battery backup systems, and batteries. The City will install new traffic signal cabinets, foundations, signalization wiring, and all equipment required to permit the traffic signal to be fully operational.

## EXHIBIT "B"

### Measurement and Payment:

For satisfactory completion of all services detailed in Exhibit "A" (Scope of Services) of this AGREEMENT, the DEPARTMENT shall reimburse the CITY for actual costs of the PROJECT incurred by the COUNTY, excluding any overhead, in an amount up to but not to exceed **ONE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED AND XX/100 DOLLARS (\$151,600.00)**. The CITY shall expend funds allocated under this AGREEMENT to the direct costs associated with the work as detailed in Exhibit "A" – Scope of Work. Invoices and other backup documentation for all work, equipment, activities, and services shall be clearly associated with the associated goal of furnishing and installing intersection UPS, battery replacement, and replacement of traffic signal cabinets, traffic signal hardware with wiring at required intersections as discussed in this AGREEMENT. Utilization of funding for the intended purpose under the terms of this AGREEMENT shall be plainly evident, otherwise the CITY should seek advance approval from the DEPARTMENT prior to expenditure of the funds. The DEPARTMENT in some cases may require a memorandum of justification or clarification from the CITY as backup for certain expenditures reimbursable under the terms of this AGREEMENT.

The CITY may receive progress payments up to the DEPARTMENT's participation limit for deliverables based on documentation of invoice(s) from vendor, approved and accepted to the satisfaction of the DEPARTMENT, and when properly supported by detailed backup documentation with acceptable evidence of payment. The final balance due under this AGREEMENT will be reimbursed upon the completion of all PROJECT services, receipt of final cost documentation and proper submission of a detailed invoice and when the PROJECT has been inspected, approved and accepted to the satisfaction of the DEPARTMENT in writing.

It shall be noted that any accrued funding allocated by the DEPARTMENT in any previous fiscal year toward the PROJECT shall be permitted to "roll over" to be available for expenditure by the CITY in subsequent fiscal years.

**EXHIBIT "C"**

**NOTICE OF COMPLETION**

JOINT PARTICIPATION AGREEMENT

BETWEEN

FLORIDA DEPARTMENT OF TRANSPORTATION

AND

CITY OF PENSACOLA

PROJECT DESCRIPTION: **City of Pensacola New Uninterrupted Power Supply (UPS) Systems**

FINANCIAL PROJECT ID NUMBER: 445568-1-88-01

In accordance with the terms and conditions of the AGREEMENT, the undersigned hereby provides notification that the work authorized by this AGREEMENT is complete as of \_\_\_\_ day of \_\_\_\_\_, 201\_\_ and all terms and conditions of any utility permits associated with closing out the permits have been met.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "D"**

**CITY OF PENSACOLA COMMISSION RESOLUTION**



## ATTACHMENT F

### CONTRACT PAYMENT REQUIREMENTS

#### Florida Department of Financial Services, Reference Guide for State Expenditures

##### *Cost Reimbursement Contracts*

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel (not authorized in this AGREEMENT): Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address [http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/)