

TERM SHEET
 FOR
 GRANT AWARD CONTRACT
 BETWEEN
 TRIUMPH GULF COAST, INC.
 AND
 OKALOOSA COUNTY, FLORIDA
 (Proposal #46)

This Term Sheet summarizes the basic terms upon which Triumph Gulf Coast, Inc. ("Triumph") is considering awarding a grant to Okaloosa County, Florida (the "County") under the Triumph Gulf Coast Trust Fund. This Term Sheet is intended for discussion and negotiation purposes only and (a) does not constitute a grant, or an approval of a grant, by Triumph to the County, and (b) does not create any binding obligations on Triumph or the County with respect to (i) any grant, (ii) any approval of a grant, or (iii) engaging in any further discussions or negotiations with respect to a grant. Any binding agreement between Triumph and the County with respect to any grant must be contained in a definitive grant award agreement (the "Agreement"), approved by the Board of Directors of Triumph and by the Board of County Commissioners for the County and executed by Triumph and the County. At any time prior to such execution of the Agreement, either Triumph or the County may terminate negotiations, and upon such termination, neither party shall have any liabilities or obligations to the other.

GRANT AMOUNT	Sixty Four Million One Hundred Thousand Dollars (\$64,100,000).
PURPOSE:	To provide partial funding for the construction of the Southwestern Crestview Bypass and East-West Connector in Crestview, Okaloosa County, Florida (the "Project"), all as further described in the County's Application for Funds submitted to Triumph (the "Grant Application").
CONTINGENCIES	<p>Triumph's approval of the grant and the funding of the grant are expressly contingent upon, among other things, the following:</p> <ol style="list-style-type: none"> 1. The County having by June 30, 2020, cash in hand or firm and enforceable commitments for funding covering the entire planning and construction cost of the Project. The estimated total planning and construction cost of the Project is \$199,019,000, with the Triumph grant being \$64,100,000, so the County's cash or other funding commitments must total at least \$134,919,000 (the "Matching Funds"), of which (a) \$38,953,000 has been committed by the County from the new local option sales tax revenues (approved in November

2018), TIFF proceeds, and local option gas tax revenues, and (b) \$95,966,000 is expected to be committed by the Florida Department of Transportation (FDOT). The FDOT funds shall be deemed to be committed only when (i) such funds are designated for the Project in FDOT's 5 year work plan and approved and appropriated by the Florida Legislature, and (ii) the Governor has signed the budget without vetoing that appropriation. The parties acknowledge that it is possible that the Governor may not make his decision until on or about June 30, 2020, the date by which he is legally required to do so, but that his decision could come earlier or later; provided, however, that in the event the Governor does not make a decision until after June 30, 2020, then the deadline shall be extended until such a decision is made. No Triumph grant funds shall be funded unless and until the County has provided Triumph with satisfactory evidence of firm and enforceable funding commitments for the Project totaling not less than \$134,919,000.

In the event cash and funding commitments totaling not less than \$134,919,000 are not in place by June 30, 2020, the grant shall be deemed automatically rescinded and revoked and the Agreement shall be deemed automatically terminated. Should the Project costs increase above the \$199,019,000.00 set forth in the Grant Application, such additional funds must be obtained from non-Triumph sources, as it is expressly understood and agreed that the maximum grant amount to be funded by Triumph shall be \$64,100,000.

2. The County entering into either (i) a guaranteed maximum price contract within the Project budget with a construction manager at risk ("CMAR"), no later than December 31, 2020, (ii) a contract within the Project budget with a qualified contractor under a design-build contract, no later than December 31, 2020, or (iii) a contract within the Project budget with a qualified contractor under a design-build-bid contract, no later than December 31, 2020. The County must provide Triumph with evidence satisfactory to Triumph that such contract is in place. In the event that contract is not in place by December 31, 2020, the grant shall be deemed automatically rescinded and revoked and the Agreement shall be deemed automatically terminated and any grant funds funded by Triumph to the County shall be returned to Triumph. However, in the event that the County has issued its Notice of Intent to Award but is prevented from entering into a contract with a CMAR, the design-build contract, or the design-bid-build contract as a result of a procurement challenge or some other condition that is beyond the reasonable control of the County, then the December 31, 2020 date shall be extended for a reasonable period of time (not to exceed 180 days) to allow the resolution of that issue.

	3. The County securing all rights of way, property, easements, permits, plan amendments and other regulatory approvals from federal, state and local authorities.

<p>FUNDING MECHANISM</p>	<p>The grant funds shall be allocated among the various components of the Project in the amounts, and shall be funded on the timetable, as set forth in the budget attached hereto as Exhibit “A”. As indicated on the budget, the County shall use its own funds to acquire right of way and have the design prepared before any Triumph grant funds are used.</p> <p>Thereafter, not more than once per month, the County may submit to Triumph an Application for Funds (“Application for Funds”) related to costs incurred to that point for each eligible element of the Project, along with supporting documentation and invoices evidencing completion. Each Application for Funds shall request no more than 55% of the costs that are the subject of the Application (with the County incurring the remaining 45%). Documentation and invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof, based on deliverables as established by the Agreement. Such documentation shall include, without limitation, evidence that FDOT has timely funded their portion of the Matching Funds to date. Within forty-five (45) days of receipt of an Application for Funds, Triumph shall either approve or disapprove of the Application for Funds in a written notice to the County. If Triumph approves the Application for Funds, then it shall fund the approved amount to the County within thirty (30) days after delivery of the notice of approval. If Triumph disapproves the Application for Funds, Triumph shall state in the notice of disapproval the reasons for such disapproval.</p> <p>Triumph will honor requests for grant funds to the County; however, Triumph may elect by notice in writing not to make a payment if:</p> <ul style="list-style-type: none"> (a) Missing or incomplete documentation; (b) The Application for Funds seeks funding for more than the amounts actually paid to contractors, materialmen, or vendors under applicable contracts (“Contracts”); (c) The amount requested under the Application for Funds, together with all amounts previously funded under the grant, would exceed the \$64,100,000 maximum amount of the grant, or the amount requested for a particular budget category, together with all amounts previously funded for
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	<p>such budget category, would exceed the maximum amount allocated to such budget category described above;</p> <p>(d) The County made a misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished to Triumph;</p> <p>(e) There is any pending litigation with respect to the performance by the County of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement, or the funding of the grant;</p> <p>(f) There is any pending litigation regarding Triumph's legal, statutory, or other authority to enter into a Grant Award Agreement with the County for the contemplated Project.</p> <p>(g) The County shall have taken any action pertaining to the Project which requires the approval of Triumph, and the County has failed to obtain such approval;</p> <p>(h) The terms of the Agreement (or the parties conduct thereunder) place(s) Triumph or the County in violation or alleged violation or any federal, state, or local law;</p> <p>(i) There has been any violation of the prohibited interests (conflicts of interest) provisions of the Agreement;</p> <p>(j) The County is in violation, default, or breach of or under any provision of the Agreement;</p> <p>(k) The County is in breach of any representation or warranty contained in the Agreement;</p> <p>(l) Any federal, state or local agency or municipality (including the County) providing financial assistance to the Project as stated in the Agreement has revoked, suspended or terminated that financial assistance to the Project, including but not limited to Matching Funds;</p> <p>(m) The Matching Funds are not being used for the intended purposes and in the amount and at the times as set forth in a schedule of expenses approved by Triumph and/or the County has failed to provide Triumph with evidence of payment of the Matching Funds toward completion of the Project;</p> <p>(n) With respect to previous fundings of the grant, the County has failed to pay, or has failed to provide Triumph with evidence of payment of, the grant for the purposes of such funding;</p> <p>(o) The County has abandoned or, before completion, discontinued the Project, or for any reason the commencement, prosecution or timely completion of the Project will be rendered improbable, infeasible, impossible, or illegal; or</p> <p>(p) All or any portion of the requested funding includes costs that are not shown or contemplated under the budget attached to the Agreement; provided, however, that any change order under \$250,000 shall not be subject to approval under the Agreement.</p> <p>(q) One or more of the Contracts have been modified, amended,</p>
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	<p>or terminated without the prior consent or approval of Triumph.</p> <p>Upon completion of the Project, the County shall send Triumph a notice certifying that elements of the Project have been completed in accordance with the plans and specifications. Within thirty (30) days after receipt of certification of completion, Triumph and/or its agents, engineers, and consultants shall have the right to inspect the Project elements to determine if they were in fact completed in accordance with the plans and specifications. If so, Triumph shall fund the final payment of the grant to the County within thirty (30) days of such determination; if not, no grant funds shall be funded unless and until the County promptly corrects any deficiencies and Triumph thereafter determines that it was finally completed in accordance with the plans and specifications. In connection with its inspection of the Project, the County shall make available to Triumph copies of any and all invoices, contracts, plans and specifications, and other documentation relating to the construction and completion of the Project.</p>
<p>ELIGIBLE COSTS/ DOCUMENTATION</p>	<p>The County shall seek funding of grant funds only for costs of the Project construction as shown or contemplated under the budget attached to the Agreement. All amounts paid by the County with respect to the Project shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail for the nature and propriety of the charges. Any check or order drawn by the County with respect to any item which is or will be chargeable against the Project account will be drawn only in accordance with a properly signed voucher then on file in the office of the County stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.</p>
<p>ANNUAL REPORTS</p>	<p>The County shall on an annual basis on or before October 31 of each year submit to Triumph an activity report which outlines, among other matters requested by Triumph, (i) the progress of the Project, (i) costs incurred to date, (iii) the progress of satisfaction of the performance metrics, and (iv) the amounts FDOT has paid toward the Project to for the prior period and to date.</p>

<p>MAINTENANCE OF RECORDS:</p>	<p>The County’s records of costs incurred shall be maintained in the Project account and made available upon request to Triumph at all times during the period of the Agreement and for eight (8) years after the expiration of any clawback period. The County shall furnish copies of these documents and records upon request by Triumph. Records of costs incurred include general accounting records and the Project records, together with supporting documents and records, of the County, and all sub-consultants performing work on the Project and all other records of the County, and sub-consultants considered necessary by Triumph for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of any clawback period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.</p>
<p>AUDITS:</p>	<p>Triumph, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives shall have access to any of the County’s books, documents, papers, and records, including electronic storage media, as they may relate to the Project, for the purposes of conducting audits or examinations or making excerpts or transcriptions.</p>

<p>TERMINATION OR SUSPENSION OF PROJECT:</p>	<p>If the County abandons or, before completion, finally discontinues the Project; or for any other reason, the commencement, prosecution, or timely completion of the Project by the County is rendered improbable, infeasible, impossible, or illegal, Triumph will, by written notice to the County, suspend any or all of its obligations under the Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or Triumph may terminate any or all of its obligations under the Agreement. Upon receipt of any final termination or suspension notice, the County shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, the Project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the grant is to be computed; (2) furnish a statement of the Project activities and contracts, and other undertakings the cost of which are otherwise includable as the Project costs; and, (3) remit to Triumph such portion of the grant and any advance payment previously received as is determined by Triumph to be due under the provisions of the Agreement.</p>
<p>APPROVAL OF CONTRACTS/COMPLIANCE WITH LAWS:</p>	<p>The County shall comply with all applicable laws regarding third party contracts, public contracting, procurement, labor laws, civil rights laws, etc.</p> <p>The County shall obtain competitive bids for completion of the Project in accordance with all applicable federal, state, and local bidding procedures.</p> <p>Triumph shall have the right to review and approve any consultant and construction Contracts (including bid process and bid documents and the CMAR, Design-Build contract, or Design-Bid-Build contract) that will be paid for, in whole or part, with Triumph funds. Triumph shall have fifteen (15) days from receipt thereof to approve or disapprove such contracts; Triumph's failure to approve or disapprove within said fifteen (15) days shall be deemed approval. Additionally, as a result of the time parameters required for the Project, the County has entered into various consultant contracts to provide preliminary services as to the Project. Following the approval of this Term Sheet by the County, those consultant contracts shall be submitted to the Triumph for its review and approval. Triumph shall have fifteen (15) days from receipt thereof to approve or disapprove such contracts, and Triumph's failure to approve or disapprove within said fifteen (15) days shall be deemed approval.</p>

INSURANCE:	At all times during the term of the Agreement, the County shall maintain or cause to be maintained casualty insurance on all improvements, the cost of which was, in whole or in part, reimbursed using Triumph grant funds, to the extent such improvements can in fact be insured.
PERFORMANCE METRIC:	<p>The Agreement shall contain the following performance metric for the Project:</p> <p>By the 10th anniversary of the start of the Agreement, employment in the Federal Government Military sector, as measured by Economic Modeling Specialists International (EMSI) Industry Sector 901200 (using QCEW employees, non-QCEW employees, and Self-Employed), shall have increased by 1,300 above the 2019 number of sector 901200 workers plus growth that had been projected for the 10-year period. Because the EMSI measure of 901200 workers in Q3 2019 was 16,052 and projected growth over the next 10 years totaled 243, the forecasted number of 901200 workers in 2029 is 16,347. The agreed upon 1,300 increase in sector 901200 over baseline means that in 2029, the EMSI sector 901200 needs to exceed 17,595, (i.e., baseline projected growth of 243 from the 2019 base of 16,052, plus incentivized growth of 1,300).</p>
CLAWBACK:	<p>Clawback from County</p> <p>Any grant funds funded by Triumph to the County shall be subject in being repaid (“clawed back”) in the event (i) the County made any materially false certification or representation to Triumph in connection with the Grant Application, under the Agreement, and/or in connection with the funding of the grant, and/or (ii) the County breached, violated, or is in any way in default under any of its obligations under the Agreement, and/or (iii) the County fails to achieve the performance metric described above. In the event of the occurrence of items (i) or (ii) above, any grant funds funded shall be subject to a 100% clawback. In the event the County fails to achieve the performance metric under item (iii) above, the clawback shall be proportional to the jobs shortfall, based on \$49,308 per job (see the basis for this number below). For example, if there is a shortfall of 1 job (1,299 jobs created instead of 1,300), then the clawback would be \$49,308 (1 x \$49,308), and if there is a shortfall of 400 jobs 900 jobs created instead of 1,300), then the clawback would be \$19,723,200 (400 x \$49,308). The \$49,308 per job amount is determined by dividing the \$64,100,000 grant amount by the 1,300 promised jobs. Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under the clawback provisions if (i) it determines in its sole and absolute discretion that, based on quantitative evidence, the performance metric was not achieved due to negative economic conditions beyond the County’s control, (ii) it determines in its sole and absolute discretion that the County made a good faith effort to achieve full performance metric and its failure to</p>

	<p>fully achieve the performance metric does not substantially frustrate the general purpose of the grant, or (iii) it determines in its sole and absolute discretion that, based on quantitative evidence, the effects of a named hurricane or tropical storm, or specific acts of terrorism, adversely affected the County’s ability to achieve the performance metric. Interest shall accrue on the clawback amounts due at the rate of <i>Wall Street Journal Prime</i> plus 3%, commencing thirty (30) days after the date of demand by Triumph.</p> <p>As indicated above, the clawback would be proportional, with the clawback per job shortfall as of ten years from the signing of the Agreement equal to \$64.1 million divided by the number of jobs promised. That number of jobs promised is to be the EMSI job count in sector 901200 (federal military) for Okaloosa County for 2019 (assuming that is the year the agreement is signed) plus the current forecasted jobs for 10 years hence (2029) plus 1,300. That count is currently 16,052 in 2019 and is forecasted to grow to 16,295 by 2029, for projected baseline growth of 243 jobs. Thus, the industry sector 901200 baseline growth of 243 is added to the incentivized 1,300 jobs, so that by 2029 the industry sector 901200 shows job growth of 1,543, resulting in 17,595 jobs (16,095 + 243 + 1,300). Since $\\$64,100,000 / 1,300 = \\$49,308$, this would be the clawback per job for the jobs shortfall relative to the contracted goal of 17,595, with total clawback not to exceed the amount of the Triumph award. If EMSI were to go out of business or cease publishing job counts, the Triumph economic advisor would have to pick a similar information source he or she determines to provide equivalent information.</p> <p>If Triumph ceases to operate before the end of the performance metric period, the rights to clawback enforcement are assignable by Triumph to any other governmental person or entity.</p>
<p>AVAILABILITY OF GRANT FUNDS</p>	<p>At such time as all contingencies described herein and in the Agreement have been satisfied, Triumph will commit \$13,500,000 of the grant amount out of previously uncommitted funds then held by Triumph, and such committed funds shall thereafter be funded from time to time in accordance with the funding mechanism described above and in the Agreement. The remainder of the grant amount (\$50,600,000) shall be committed from future tranches of funding received by Triumph from the Deepwater Horizon Settlement Agreement and then funded from time to time in accordance with the funding mechanism described above and in the Agreement; provided, however, that it is expressly understood and agree that funds for the grant are not and shall not be deemed a general obligation of the State of Florida, nor is the grant or the Agreement backed by the full faith and credit of the State of Florida. Accordingly, Triumph’s obligation to fund the grant or any portion thereof is expressly contingent upon Triumph having sufficient</p>

	funds on hand to fund the grant. If for any reason such funds are not retained by Triumph, are depleted, are frozen or sequestered, or are in any manner unavailable for full or partial funding to the County and/or other awardees of grants, Triumph shall not be obligated to make fundings under the Agreement and shall therefore not be deemed to be in breach of the Agreement. To the extent some funds are available to for funding to the County and other awardees of grants, Triumph shall allocate such funds among the County and such other awardees in such amounts as it shall determine in its sole and absolute discretion and shall not be deemed to be in breach of the Agreement for failure to fully fund the grant.
INDEMNIFICATION	The County shall indemnify and hold Triumph harmless from and against any and all claims, losses, damages, costs, charges, or expenses (including, but not limited to, attorneys' fees and costs) arising out of or related to the Agreement, the grant, and/or the Project, including, but not limited to, claims, lawsuits and other legal challenges to the awarding of the grant and/or the validity or enforceability of the Agreement.
OTHER TERMS AND CONDITIONS:	The Agreement shall contain such other terms and conditions as required by Triumph and its counsel.

By signing below, the parties are indicating a willingness to proceed with having a draft Agreement prepared on substantially the terms set forth herein. However, as indicated above, this Term Sheet is merely intended for discussion and negotiation purposes only and (a) does not constitute a grant, or an approval of a grant, by Triumph to the County, and (b) does not create any binding obligations on Triumph or the County with respect to (i) any grant, (ii) any approval of a grant, or (iii) engaging in any further discussions or negotiations with respect to a grant. Any binding agreement between Triumph and the County with respect to any grant must be contained in a definitive Agreement, approved by the Board of Directors of Triumph and by the Board of County Commissioners of the County and executed by Triumph and the County. At any time prior to such execution of an Agreement, either Triumph or the County may terminate negotiations, and upon such termination neither party shall have any liabilities or obligations to the other.

Dated: _____, 2019

Triumph Gulf Coast, Inc.
a Florida not-for-profit corporation

Okaloosa County, Florida

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "A"
BUDGET/TIMELINE
#46 Southwestern Crestview Bypass

Project Expenses

	Pre-award	Year 1	Year 2	Year 3	Year 4	Year 5	Project Total
		Award Begin- 12/31/2019	1/1/2020 – 12/31/2020	1/1/2021 – 12/31/2021	1/1/2022 – 12/31/2022	1/1/2023 – 12/31/2023	
Personnel + Fringe	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Design, other prof services and permitting	\$ 4,113,000	\$ 3,755,000	\$10,580,000	\$ 2,128,000	\$ -	\$ -	\$ 20,576,000
Right-of Way Acquisition	\$ 5,313,000	\$ 780,000	\$10,230,000	\$ 1,400,000	\$ -	\$ -	\$ 17,723,000
Construction	\$ -	\$ 1,000,000	\$ 8,420,000	\$50,480,000	\$59,360,000	\$41,460,000	\$160,720,000
Total	\$ 9,426,000	\$ 5,535,000	\$29,230,000	\$54,008,000	\$59,360,000	\$41,460,000	\$199,019,000

Grant/Match Funds

Okaloosa 20% (\$38,953,000)

Personnel + Fringe	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Design, other prof services and permitting	\$ 1,788,000	\$ 2,130,000	\$ 600,000	\$ -	\$ -	\$ -	\$ 4,518,000
Right-of-Way Acquisition	\$ 1,635,000	\$ 300,000	\$ 6,980,000	\$ -	\$ -	\$ -	\$ 8,915,000
Construction	\$ -	\$ 400,000	\$ 820,000	\$ 11,000,000	\$ 6,400,000	\$ 6,900,000	\$ 25,520,000
Total	\$ 3,423,000	\$ 2,830,000	\$ 8,400,000	\$ 11,000,000	\$ 6,400,000	\$ 6,900,000	\$ 38,953,000

FDOT 48% (\$95,966,000)

Personnel + Fringe	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Design, other prof services and permitting	\$ 2,325,000	\$ 1,625,000	\$ 5,380,000	\$ 2,128,000	\$ -	\$ -	\$ 11,458,000
Right-of-Way Acquisition	\$ 3,678,000	\$ 480,000	\$ 3,250,000	\$ 1,400,000	\$ -	\$ -	\$ 8,808,000
Construction	\$ -	\$ 600,000	\$ 6,200,000	\$ 13,780,000	\$ 27,560,000	\$ 27,560,000	\$ 75,700,000
Total	\$ 6,003,000	\$ 2,705,000	\$ 14,830,000	\$ 17,308,000	\$ 27,560,000	\$ 27,560,000	\$ 95,966,000

Triumph 32% (\$64,100,000)

Personnel + Fringe	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Design, other prof services and permitting	\$ -	\$ -	\$ 4,600,000	\$ -	\$ -	\$ -	\$ 4,600,000
Construction	\$ -	\$ -	\$ 1,400,000	\$ 25,700,000	\$ 25,400,000	\$ 7,000,000	\$ 59,500,000
Total	\$ -	\$ -	\$ 6,000,000	\$ 25,700,000	\$ 25,400,000	\$ 7,000,000	\$ 64,100,000