

TERM SHEET
FOR
GRANT AWARD AGREEMENT
BETWEEN
TRIUMPH GULF COAST, INC.

AND

THE WALTON COUNTY ECONOMIC ALLIANCE, WALTON COUNTY, FLORIDA, AND THE
CITY OF DEFUNIAK SPRINGS, FLORIDA
(Project #190)

This Term Sheet summarizes the basic terms upon which Triumph Gulf Coast, Inc. (“**Triumph**”) is considering awarding a grant to the Walton County Economic Development Alliance (“**WEDA**”). Walton County, Florida, acting by and through its Board of County Commissioners (“**WC**”), and the City of DeFuniak Springs, Florida (“**DFS**”) (WEDA, WC, and DFS are sometimes collectively referred to herein as “**Grantee**”) 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 Grantee, and (b) does not create any binding obligations on Triumph or Grantee 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 Grantee with respect to any grant must be contained in a definitive grant award agreement (the “**Agreement**”), approved by Grantee of Directors of Triumph and Grantee and executed by Triumph and Grantee. At any time prior to such execution of the Agreement, either Triumph or Grantee may terminate negotiations, and upon such termination, neither party shall have any liabilities or obligations to the other.

GRANT AMOUNT: \$1,742,407.00

PURPOSE: To provide partial funding for an infrastructure project that will extend water and sewer service along the west side of US Highway 331, from approximately I-10 south to just north of Eglin Range Road (the “**Project**”), which infrastructure shall connect to a business, industrial, and commercial park to be developed on parcels of land to be purchased by WEDA (the “**Park**”), all as further described in Grantee’s Application for Funds submitted to Triumph (the “**Grant Application**”).

COMPETITIVE
BIDS:

Grantee shall obtain competitive bids for completion of the Project. Grantee shall issue an invitation to bid to solicit competitive bids for materials and labor for the construction portion of the Project pursuant to Sections 180.24 and 255 et seq., Florida Statutes, or pursuant to the Consultant’s Competitive Negotiation Act as set forth in Section 287.055, Florida Statutes, as applicable. In awarding the contract, Grantee shall award the contract to the lowest, responsive bidder considering the selection criteria contained within the invitation to bid. Triumph shall have the right to approve the proposed award and the final contract (the “**Contract**”).

FUNDING:

Prior to Triumph funding any of the grant funds, Grantee shall spend all of the \$3,000,000 of the Matching Funds (as defined below) on the Project. Provided that Grantee (i) has expended all of the Matching Funds on the Project, and (ii) has submitted to Triumph satisfactory evidence that the Matching Fund were in fact used for the Project pursuant to the budget/timeline attached hereto as Exhibit "A," then thereafter, and not more than once per calendar month, Grantee may submit to Triumph a written Application for Funding (an "**Application for Funding**") for the amounts of the invoice(s) owing by Grantee to the contractors, materialmen, or vendors under the Contract for the Project; provided, however, that in no event shall the cumulative fundings made by Triumph exceed the \$1,742,407.00 maximum amount of the grant. Each Application for Funding shall have attached thereto (i) a copies invoice(s) paid or to be paid by Grantee, (ii) documentation evidencing the completion of the work that is the subject of the invoices, and (iii) such other documents as Triumph shall require in order to determine that the requested funding is consistent with the purposes of the grant. None of the grant funds shall be used as a reimbursement of items purchased by Grantee prior to the date of the Agreement. Triumph shall have forty-five (45) days from receipt to review and approve or disapprove of an Application for Funding, and if approved, thirty (30) days to fund the Grant funds to Grantee.

The total Project cost is estimated to be \$4,742,407.00, of which (i) Grantee shall be responsible for providing not less than \$3,000,000.00 in matching funds (the "**Matching Funds**"), and (ii) Triumph shall provide a maximum of \$1,742,407.00 under the grant. To the extent that the actual cost of the Project exceeds \$4,742,407.00, Grantee shall be solely responsible for such excess.

Triumph will honor requests for funding; provided, however, that Triumph may elect by notice in writing not to make a funding payment if, among other things:

- (a) There is missing or incomplete documentation;
- (b) The request for funding seeks funding for more than the amounts actually invoiced by contractors, materialmen, or vendors under the Contract;
- (c) The amount requested for funding, together with all amounts previously funded under the grant, would exceed the \$1,742,407.00 maximum amount of the grant; or the amount requested for funding under the Application for Funding for a particular budget category, together with all amounts previously funded for such budget category, would exceed the maximum amount allocated to such budget category;
- (d) Grantee made a misrepresentation or omission of a material nature in the grant application, or any supplement or amendment to the grant application, or with respect to any document or data furnished to Triumph;
- (e) There is any pending litigation with respect to the performance by Grantee of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement, or the funding of the grant;
- (f) Grantee has taken any action pertaining to the Project which requires the approval of Triumph, and Grantee failed to obtain such approval;
- (g) There has been a violation of the prohibited interests (conflicts of interests) provisions the Agreement;
- (h) Grantee is in violation, default, or breach of or under any provision of the Agreement;

- (i) Grantee is in breach of any representation or warranty contained in the Agreement;
- (j) Any federal, state or local agency providing financial assistance to the Project (including Grantee) has revoked, suspended, or terminated that financial assistance to the Project, including, but not limited to, the Matching Funds;
- (k) The Matching Funds were not expended for the intended purposes and in the amounts and at the times as set forth in a schedule of expenses approved by Triumph and/or Grantee has failed to provide Triumph with evidence of payment of the Matching Funds toward completion of the Project;
- (l) With respect to previous fundings of the grant, Grantee has failed to pay, or has failed to provide Triumph with evidence of payment of, the grant for the purposes of such funding;
- (m) Grantee has abandoned or, before completion, discontinued the Project, or for any reason the commencement, prosecution, or timely completion of the Project by Grantee will be rendered improbable, infeasible, impossible, or illegal; or
- (n) All or any portion of the requested funding includes costs that are not shown or contemplated under the budget for the Project;
- (o) The Contract or any other contract in connection with the Project that has been previously approved or deemed approved by Triumph has been modified, amended, or terminated without the actual or deemed prior consent or approval of Triumph; provided, however, that any change order under \$25,000 shall not be subject to approval under the Agreement.

ELIGIBLE COSTS/
DOCUMENT-
ATION:

Grantee shall seek funding only for costs of the Project as shown or contemplated under the attached budget/timeline. All amounts paid by Grantee with respect to the Project shall be supported by properly executed invoices, contracts, and other records evidencing in proper detail the nature and propriety of the charges and use of the Matching Funds. Any check or order drawn by Grantee with respect to any item which is or will be chargeable against the Project account (as defined below) will be drawn only in accordance with a properly signed voucher then on file in the office of Grantee stating in proper detail the purpose for which such check or order is drawn. All checks, 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.

MAINTENANCE
OF RECORDS:

Grantee shall establish separate accounts to be maintained within its existing accounting system or establish independent accounts (the "Project account"). 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 final grant payment is made. Copies of these documents and records shall be furnished to Triumph upon request. Records of costs incurred include Grantee's general accounting records and the Project records, together with supporting documents and records, of Grantee and all consultants and sub-consultants performing work on the Project and all other

records of Grantee and consultants considered necessary by the Triumph for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the eight (8) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

AUDITS: The grant shall be subject to audits and/or monitoring by Triumph. Grantee shall submit an annual report to Triumph on or before October 31 of each year reporting on the progress of the Project and the achievement of the forecasted number of certifications. Such annual report shall include copies of Grantee's audited financial statements.

**TERMINATION
OR SUSPENSION
OF PROJECT:**

If Grantee abandons or, before completion, finally discontinues the Project; or for any other reason, the commencement, prosecution, or timely completion of the Project by Grantee is rendered improbable, infeasible, impossible, or illegal, Triumph will, by written notice to Grantee, 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, Grantee shall upon demand by Triumph remit to Triumph all or a portion of the grant previously received.

**APPROVAL OF
CONTRACTS/
COMPLIANCE
WITH LAWS:**

Triumph shall have the right to review and approve any and all third party contracts (including the Contract) with respect to the Project before Grantee executes or obligates itself in any manner requiring the funding of Triumph funds. Grantee shall also comply with all applicable laws regarding public records, third party contracts, labor laws, civil rights laws, and environmental laws.

INSURANCE: At all times during the term of the Agreement, Grantee shall keep and maintain casualty insurance on all improvements, the cost of which was in whole or in part was paid for using Triumph grant funds, but only to the extent that such improvements can in fact be insured.

CLAWBACK: Any grant funds funded by Triumph to Grantee shall be subject to being repaid ("clawed back") in the event (i) Grantee made any materially false certification or representation to Triumph in connection with its application for the grant, under the Agreement, and/or in connection with any request for funding, and/or (ii) Grantee breached, violated, or is in any way in default under any of its obligations under the Agreement, and/or (iii) Grantee fails to timely achieve both of the following performance metrics (the "Performance Metrics"):

(a) **Performance Metric #1:** As of the Ramp-up Date (as defined below), not less than 100 New Jobs (as defined below) shall have been created and exist at the Park.

As used herein, the term “**Ramp-up Date**” shall mean the date which is four (4) years after the Commencement Date (as defined below). As used herein, “**Commencement Date**” shall mean the date which is the earlier to occur of (i) the date on which the Project is completed, or (ii) December 31, 2020. As used herein a “**New Job**” shall mean a full-time equivalent (FTE) job that qualifies under the Florida Qualified Target Industry (QTI) Tax Refund Program, paying a wage that is at or above 115% of the Walton County average wage as of the Commencement Date (based on the EFI/DEO incentive wage chart) in one of Florida's Qualified Target Industries; and

(b) **Performance Metric #2:** The 100 New Jobs described in subparagraph (a) above are intended to be durable. Accordingly, during each consecutive one (1) year period after the Ramp-up Date, for a total of three (3) consecutive one (1) year periods, not less than 100 New Jobs shall be maintained at the Park.

All obligations under the Agreement, including, but not limited to, the claw back obligations, shall be joint and several among WEDA, WC, and DFS. Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under the claw back provisions if (i) it determines in its sole and absolute discretion that, based on quantitative evidence, the metrics were not achieved due to negative economic conditions beyond Grantee’s control, (ii) it determines in its sole and absolute discretion that Grantee made a good faith effort to achieve full performance metrics and its failure to fully achieve the metrics 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 Grantee’s ability to achieve the metrics.

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 grant award 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 Grantee, and (b) does not create any binding obligations on Triumph or Grantee 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 Grantee with respect to any grant must be contained in a definitive grant award Agreement, approved by the Board of Directors of Triumph and the Grantee and executed by Triumph and Grantee. At any time prior to such execution of the Agreement either Triumph or Grantee may terminate negotiations, and upon such termination neither party shall have any liabilities or obligations to the other.

Dated: _____, 2019

TRIUMPH:

Triumph Gulf Coast, Inc.

By: _____

Name: _____

Title: _____

GRANTEE:

WEDA:

Walton County Economic
Development Alliance

By: _____

Name: _____

Title: _____

Walton County, Florida

By: _____

Name: _____

Title: _____

The City of DeFuniak Springs, Florida

By: _____

Name: _____

Title: _____

EXHIBIT "A"

PROJECT # 190

US 331 WATER AND SEWER

BUDGET/TIMELINE

Project Expenses

	Calendar 2019	Calendar 2020	TOTAL
Project contract	\$364,800	\$4,377,607	\$4,742,407

Project Funding

County-Restore Act	\$364,800	\$2,635,200	\$3,000,000
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Triumph Funding	\$-0-	\$1,742,407	\$1,742,407
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TOTAL FUNDING	\$364,800	\$4,377,607	\$4,742,407
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Figures are estimates based upon engineering estimates and their timeline.