

GRANT AWARD AGREEMENT
(Okaloosa County – Crestview Bypass/Project #46)

THIS GRANT AWARD AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of November, 2019 (the “**Effective Date**”), by and between TRIUMPH GULF COAST, INC., a Florida not-for-profit corporation (“**Triumph**”), and Okaloosa County, Florida (“**Grantee**”).

WITNESSETH:

WHEREAS, pursuant to its authority under Section 288.8017, Florida Statutes, Triumph has agreed to make a Grant (as defined below) to Grantee, on and subject to the terms and conditions set forth in this Agreement, to provide partial funding for the construction of Phased IV and V of the Southwestern Crestview Bypass and East-West Connector in Crestview, Okaloosa County (the “**Project**”), all as further described in Grantee’s Application for Funds submitted to Triumph (the “**Grant Application**”), which Grant Application is incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to (i) award the Grant, (ii) state the terms and conditions upon which the Grant will be funded, and (iii) set forth certain requirements as to the manner in which the Project will be undertaken and completed.
2. **Grant Award.** On and subject to the terms and conditions set forth herein, Triumph hereby agrees to make a grant to Grantee in the aggregate maximum amount of Sixty Four Million One Hundred Thousand Dollars (\$64,100,000) (the “**Grant**”) to provide partial funding for the Project.
3. **Contingencies for Grant.** Triumph’s funding of the Grant is expressly contingent upon all of the following:

3.1 Grantee 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 Grant being \$64,100,000, so Grantee’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 Grantee from the new local option sales tax revenues (approved in November 2018), TIF 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 Grant funds shall be funded unless and until Grantee 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 this 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

3.2 Grantee entering into either (i) a guaranteed maximum price contract within the Budget (as defined in Section 5.2 below) with a construction manager at risk (“CMAR”), no later than December 31, 2020, (ii) a contract within the Budget with a qualified contractor under a design-build contract, no later than December 31, 2020, or (iii) a contract within the Budget with a qualified contractor under a design-bid-build contract, no later than December 31, 2020. Grantee 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 this Agreement shall be deemed automatically terminated and any Grant funds funded by Triumph to Grantee shall be returned to Triumph. However, in the event that Grantee 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 Grantee, 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.

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

3.4 For all Contracts (as defined in Section 5.7 below) in excess of \$250,000, Grantee shall comply with Sections 180.24 and 255 et seq., Florida Statutes, the Consultant’s Competitive Negotiation Act as set forth in Section 287.055, Florida Statutes, and/or Grantee’s established competitive bidding procedures (a copy of which shall be uploaded to Triumph’s SmartSheet system), as applicable. Upon determination of the winning bidder, but before Grantee formally accepts the bid, enters into any Contract, or in any way obligates itself to accept the bid, Grantee shall submit to Triumph for its approval, the name of the proposed vendor and all documentation relating to the evaluation of the various bids submitted. Triumph shall have fifteen (15) days from the receipt of the submitted material to notify Grantee of its approval or disapproval of such proposed award. If Triumph fails to approve or disapprove of the election within such fifteen (15) day period, the award shall be deemed approved. Upon approval, Grantee shall issue its intent to award to that vendor. Triumph shall have the right to review and approve all Contracts in accordance with Section 5.7 below.

4. Funding of Grant: Subject to the satisfaction of the contingencies set forth in Sections 3.1 through 3.4 above and in Section 4.2 below, the Grant shall be funded as follows:

4.1 **General Allocation of Grant in Budget Categories.** The Grant funds shall be allocated among the various components of the Project in the amounts as set forth in the Budget. As indicated on the Budget, Grantee shall use its own funds to acquire right of way and have the design prepared before any Triumph Grant funds are used.

4.2 **Funding of the Grant.** Not more than once per calendar month, Grantee shall submit to Triumph a separate Request for Funding for each Budget category on the form attached hereto as **Exhibit “A”** and incorporated herein (a **“Request for Funding”**) in accordance with the Budget and shall submit information pursuant to a SmartSheet system by Grantee’s authorized users listed in **Exhibit “C”** attached hereto and incorporated herein. Each Request for Funding shall request no more than Triumph’s percentage share of the Budget category that are the subject of the Request for Funding (with Grantee incurring the remaining costs out of the Matching Funds). Each Request for Funding shall include (A) reports in budget categories with copies of general ledger detail for the Project account (as defined below) showing itemized expenditures, (B) invoices from architects, engineers, contractors, materialmen, and other vendors performing the construction; (C) invoices, purchase orders, or contracts from vendors providing equipment, materials, and services; (D) documentation evidencing the completion of the work that is the subject of the requested funding, (E) to the extent that all or any portion of the prior month’s funding was a disbursement for items to be paid rather than a reimbursement of amounts already paid, receipts evidencing that the funds disbursed in the prior month were in fact paid in the proper amounts to the proper vendors for such items, (F) such other documents as Triumph shall require in order to determine that the funding is consistent with the purposes of the Grant, and (G) evidence that FDOT has timely funded their portion of the Matching Funds to date and the use of such funds, and evidence of payment and use of any other Matching Funds. Grantee shall notify the Triumph Program Administrator via email each time a Request for Funding is submitted. Upon Triumph’s receipt of (a) notification to the Program Administrator, and (b) a Request for Funding that includes all required supporting documents, Triumph shall have forty-five (45) days to either approve or disapprove of the Request for Funding. If Triumph approves the Request for Funding, then it shall fund the approved amount to Grantee within thirty (30) days after approval. If Triumph disapproves the Request for Funding, Triumph shall deliver a notice of disapproval within such forty-five (45) day period that states the reasons for such disapproval. If the stated reasons for disapproval can be cured by Grantee’s submittal of missing or corrective items, Grantee shall have thirty (30) days following receipt of the notice of disapproval to submit such missing or corrective items. If Triumph fails to notify Grantee of its disapproval of the Request for Funding within forty-five (45) days of receipt, such Request for Funding shall be deemed disapproved.

All amounts funded to Grantee pursuant to a Request for Funding shall be (check as applicable):

paid to Grantee as a disbursement, in which case Grantee shall then pay vendors supplying equipment, materials, or services, and/or to employees performing work, in each case consistent with the Budget; or

paid to Grantee as a reimbursement of amounts Grantee has already paid to vendors supplying equipment, materials, or services, and/or to employees performing work, in each case consistent with the Budget, in which case the Grant funds shall be retained by Grantee.

None of the amounts paid by Grantee in connection with the invoices submitted in a Request for Funding and then funded by Triumph shall also have been or will in the future be in any manner (a) reimbursed, returned, refunded, rebated, or otherwise credited to, Grantee by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to Grantee by the State of Florida, the United States, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution, it being expressly understood and agreed that Grantee shall not receive payments, refunds, reimbursements, rebates or credits from any sources in amounts collectively exceeding 100% of the amounts paid or owing by Grantee. Notwithstanding the foregoing, amounts in the Budget that have already been spent on the Project shall be counted within the Matching Funds.

Grantee shall seek funding only for costs as shown or contemplated under the Budget. All amounts paid by Grantee with respect to the Project shall be supported by properly executed invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges. Any check or order drawn by Grantee 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 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.

Reasons for disapproving a Request for Funding must include one or more of the following:

- (a) Missing or incomplete documentation required under Section 4.2 above;
- (b) The Request for Funding seeks funding for items other than items set forth in the Budget or seeks funding for more than amounts actually invoiced by contractors, materialmen, or other vendors under the Contracts;
- (c) The amount requested for funding under the Request for Funding, together with all amounts previously funded under the Grant, would exceed the \$64,100,000.00 maximum amount of the Grant; or the amount requested for funding under the Request 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 under Section 4.1 above; or the amount requested for funding under the Request for Funding for a particular Budget category exceeds Triumph's percentage share of funding for that Budget category; or Grantee failed to use any Grant funds funded to date in the amounts and for the purposes stated in the Budget;
- (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 with the Grant Application or pursuant to this Agreement;

(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, this Agreement, or funding of the Grant;

(f) Grantee has taken any action pertaining to the Project which, under this Agreement, requires the approval of Triumph, and Grantee failed to obtain such approval;

(g) There has been a violation of Sections 9.1, 9.4, and/or 9.5 of this Agreement;

(h) Grantee is in material violation, default, or breach of or under any provision of this Agreement;

(i) Grantee is in breach of any material representation or warranty contained in this Agreement;

(j) Any federal, state, or local agency (including Grantee) providing financial assistance to the Project has revoked, suspended, or terminated that financial assistance to the Project, including, but not limited to, the Matching Funds (as defined in Section 5.2 below);

(k) The Matching Funds are not being used 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 and payments under Contracts, Grantee has failed to pay, or has failed to provide Triumph with evidence of payment of, the Grant for the purposes of such funding. Such evidence shall include, but not be limited to, payroll ledgers, state and federal payroll returns, job descriptions, cancelled checks, wire transfer confirmations;

(m) Prior to the Completion Deadline (as defined in Section 5.1 below), Grantee has abandoned or discontinued the Project, or for any reason the commencement, prosecution, or timely completion of the Project by Grantee is rendered improbable, infeasible, impossible, or illegal;

(n) All or any portion of the requested funding includes funding for items that are outside the scope of the Project that is contemplated under the Budget;

(o) One or more of the contracts previously approved or deemed approved by Triumph have been modified, amended, or terminated, or have been subject to a change order, without the prior written consent or deemed approval of Triumph; provided, however, that any change order under \$250,000 shall not be subject to approval under this Agreement;

- (p) Intentionally omitted;
- (q) Without the prior approval of Triumph, the total Project cost as set forth in Section 5.2 below, the overall Budget, and/or a particular Budget category, has been increased or decreased by more than 5%; and/or Grantee's share of the Matching Funds has decreased by more than 5%;
- (r) Completion of the Project is not on schedule for completion by the Completion Deadline;
- (s) Grantee has failed to maintain in full force and effect all insurance required under Sections 5.4 and 5.10 below;
- (t) Grantee is not in compliance with all applicable environmental laws and regulations in accordance with Section 5.5 below;
- (u) Grantee is not in compliance with the competitive bidding requirements set forth in Section 3 above; and/or
- (v) Grantee is not in compliance with the equal employment opportunity and other labor provisions as required by Section 9.3 of this Agreement.

5. Completion of the Project:

5.1 **General Requirements.** Grantee shall commence, and complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement and all applicable laws. Grantee agrees to complete the Project on or before December 31, 2024 (the "**Completion Deadline**"). Grantee shall notify the Triumph Program Administrator by email within thirty (30) days after each of (i) commencement of any construction activities, and (ii) completion of the Project. If Grantee does not complete the Project by the Completion date, Triumph's obligation to make the Grant will expire unless an extension of the time period is requested by Grantee and granted in writing by Triumph prior to such expiration date. Notwithstanding the foregoing, the Completion Deadline shall be extended on a day-for-day basis by reason of *force majeure* events. The term "*force majeure*" as used herein shall mean that which is beyond the control of Grantee, including, but not limited to, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or of the state or any civil or military authority, insurrections, riots, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies, or any acts or omissions of third parties not Grantee's control, and other such events or circumstances which are beyond the control of Grantee despite all reasonable efforts to prevent, avoid, delay, or mitigate such causes, and to include acts of God (such as epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts and adverse weather conditions).

5.2 **Total Project Cost.** The total cost of the Project is \$199,019,000, of which (i) \$64,100,000 shall be provided by the Grant on the terms set forth herein, and (ii) \$134,919,000 shall be provided by Grantee's cash and other funding commitments as follows (the "**Matching Funds**"): (a) \$38,953,000 has been committed by Grantee from the new local option sales tax revenues (approved in November 2018), TIFFF proceeds, and local option gas tax revenues, and (b) \$95,966,000 is expected to be committed by FDOT. The total estimated cost of the Project is based upon the budget set forth in **Exhibit "B"** attached to and incorporated into this Agreement (the "**Budget**"). Grantee shall monitor the Budget and submit an amended Budget to Triumph in the event that (a) the total cost of the Project increases or decreases by greater than five percent (5%), (b) total the Budget increases or decreases by greater than five percent (5%), (c) the Budget increases or decreases by greater than five percent (5%) within a particular Budget category, and/or (d) Grantee's portion of the Matching funds decreases by greater than five percent (5%). If Grantee proposes an increase or decrease by greater than five percent (5%) as described above as compared to the most recently approved Budget, such proposal shall be submitted to Triumph in writing along with a proposed amended Budget, and Triumph shall have the right to approve or disapprove both the proposed Budget category increase or decrease and the proposed amended Budget. Triumph shall have fifteen (15) days from the receipt of a proposed amended Budget to notify Grantee of its approval or disapproval. If Triumph fails to approve or disapprove the proposed Budget category increase or decrease and/or the proposed amended Budget within such fifteen (15) day period, the proposed Budget category increase or decrease and/or the amended Budget, as applicable, shall be deemed approved as submitted. If Grantee fails to obtain Triumph's approval or deemed approval, that failure shall be sufficient cause for nonpayment by Triumph as provided in Section 4.2(f). Using the Grant, its own funds, and funds from other grants (including, but not limited to, the Matching Funds), Grantee agrees to bear the entire cost and expense of the Project, including but not limited to, all costs and all expenses in excess of the total estimated cost of the Project, it being expressly understood and agreed that the Grant shall operate only to pay, on and subject to the terms and conditions set forth herein, a portion of the costs and expenses of the Project. Furthermore, Grantee agrees to spend all of the Matching Funds as contemplated in the Grant Application, and agrees that its failure to do so shall be deemed a material breach of this Agreement.

5.3 **Requirement to Provide Reports/Triumph Right to Inspect.** Grantee shall submit to Triumph such data, reports, records, contracts and other documents relating to the Project as Triumph may require at any time and from time to time. In addition, Grantee shall on an annual basis on or before October 31 of each year submit to Triumph an activity report which outlines the progress of the Project, costs incurred to date, the progress of satisfaction of the Performance Metrics set forth in Section 8.3 below, the amounts FDOT has paid toward the Project for the prior period and to date, the amounts of other Matching Funds paid for the prior period and to date, and Grantee's most recent audited financial statements. In connection with its inspection of the Project, Grantee shall make available to Triumph copies of any and all invoices, contracts, plans and specifications, and other documentation relating to the Project. Triumph shall have the right, at any time and from time to time upon reasonable notice to Grantee, to access the Project and inspect any work being performed or as completed. Upon completion of the Project, Grantee 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 Grantee within thirty (30) days of such determination; if not, no Grant funds shall be funded unless and until Grantee 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, Grantee 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.

5.4 **Insurance.** Grantee shall keep and maintain or cause to be maintained casualty insurance on all improvements, fixtures, and equipment, that constitute the Project, the cost of which was in whole or in part funded using the Grant, but only to the extent that such equipment and improvements can in fact be insured. In the event of the loss of such equipment or improvements, Grantee shall either replace the improvements, fixtures, and equipment, or reimburse Triumph to the extent the Grant was used to purchase or such improvements, fixtures, and equipment.

5.5 **Compliance with Applicable Laws, Including Environmental Regulations.** Grantee shall obtain all required clearances and permits required for the Project from the appropriate permitting authorities. Grantee covenants and agrees that the Project will be completed in conformance with all applicable federal, state and local statutes, rules and regulations, and standards, including, but not limited to, applicable environmental laws and regulations including the securing of any applicable permits. Grantee will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations.

5.6 **Plans and Specifications.** Triumph shall have the right to review the plans and specifications for the Project and any material changes to said plans and specifications solely to confirm that the Project described in the plans and specifications is consistent with the project described in the Grant Application, such confirmation not to be unreasonably withheld, conditioned or delayed. Triumph shall have fifteen (15) days from each receipt of the plans and specifications or proposed material change to notify Grantee of its confirmation or denial that the Project described in the plans and specifications is consistent with the project described in the Grant Application. If Triumph issues a denial, such denial shall be in writing and shall state the specific manner in which the Project described by the plans and specifications is not consistent with the project described in the Grant Application. If Triumph fails to deliver such confirmation or denial within such fifteen (15) day period, the plans and specifications or proposed material change shall be deemed confirmed by Triumph. If Grantee fails to obtain such confirmation as provided herein, that failure shall be sufficient cause for nonpayment by Triumph.

5.7 **Contracts.** Triumph shall have the right to review and approve any contracts (“**Contracts**”) (including bid process and bid documents and the CMAR, Design-Build contract, or Design-Bid-Build contract) in excess of \$250,000 that will be paid for, in whole or part, with Grant funds. Triumph shall have fifteen (15) days from receipt thereof to approve or disapprove such Contracts. Triumph’s failure to approve or disapprove a Contract within said fifteen (15) days shall be deemed approval. The parties acknowledge that, as a result of the time parameters required for the Project, Grantee has already entered into various consultant Contracts to provide preliminary services as to the Project. In addition, any proposed amendments or change orders to previously approved Contracts in excess of \$250,000 must be approved by Triumph before Grantee executes or obligates itself in any manner thereunder. Triumph shall have fifteen (15) days from receipt of a proposed amendment, or change order to notify Grantee of its approval or disapproval of such amendment, or change order. If Triumph fails to approve or disapprove of an amendment or change order within such fifteen (15) day period, the subject amendment or change order shall be deemed approved. Triumph also reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of same.

5.8 **Compliance with Consultants' Competitive Negotiation Act.** Grantee shall be deemed an "Agency" under, and shall comply in full with, the provisions of Chapter 287.055, Florida Statutes, Consultants' Competitive Negotiation Act with respect to engineering, architecture or surveying services, and shall certify to Triumph that all selections have been accomplished in compliance with said statute.

5.9 **Grantee Responsible for Payments.** Grantee expressly assumes any and all liability for payment to its agents, employees, contractors, subcontractors, consultants, and subconsultants, and to contractors under the Contracts, and shall indemnify and hold Triumph harmless from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to any denial or reduction of any application submitted by Grantee to Triumph for funding of the Grant under this Agreement.

5.10 **Worker's Compensation Insurance.** Grantee shall carry or cause contractors under the Contracts to carry and keep in force Worker's Compensation insurance as required for the State of Florida under the Worker's Compensation Law.

5.11 **Contractual Indemnities.** Grantee shall include or cause to be included the following indemnification in the Contracts and all other contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless Triumph Gulf Coast, Inc., a Florida not-for-profit corporation, Grantee, a public body corporate, and all of its officers, directors, agents and employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor / subcontractor/ consultant/ and its officers, agents or employees."

6. Representations and Warranties of Grantee: Grantee hereby makes the following representations and warranties to Triumph, each of which shall be deemed to be a separate representation and warranty, all of which have been made for the purpose of inducing Triumph to enter into this Agreement, and in reliance on which Triumph has entered into this Agreement, and such representations and warranties shall be deemed made as of the date hereof, as of the dates on which Grantee submits a Request for Funding, and as of the dates on which Grantee receives any funding of the Grant:

(a) **Organization; Power and Authority.** Grantee is a public body corporate, and has all requisite power and authority to own, lease, and operate its properties and to carry on its affairs as currently conducted.

(b) **Authorization and Binding Obligation.** Grantee has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all

necessary corporate action on the part of Grantee. This Agreement has been duly executed and delivered by Grantee and, assuming the due authorization, execution, and delivery of this Agreement by Triumph, constitutes the legal, valid, and binding obligation of Grantee, enforceable against Grantee in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

(c) **No Violations.** The execution and delivery by Grantee of this Agreement and the performance by it of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of Grantee's charter or other corporate document, if applicable, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of Grantee's loan agreements, indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. Grantee has not been convicted of a "public entity crime" (as such term is defined in Section 287.133 of the Florida Statutes) nor has Grantee been placed on the "discriminatory vendor list" (as such term is defined in Section 287.134 of the Florida Statutes). Neither Grantee nor any person or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of Grantee, is listed on the Specially Designated Nationals List or the Foreign Sanctions Evaders List, in each case, as maintained by the United States Department of the Treasury. Neither Grantee nor its officers, directors, agents, distributors, employees, or other persons or entities acting on its behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business for any person or entity in violation of applicable law.

(d) **No Material Adverse Change.** No event, change or condition has occurred that has had, or would reasonably be expected to have, a material adverse effect on the assets, operations or financial condition of Grantee, or the Project, in each case, since the date of the Grant Application.

(e) **Litigation; Compliance with Laws.** No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental agency is pending or, to the knowledge of Grantee, threatened by or against Grantee or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of Grantee, the Project, or Grantee's ability to perform its obligations under this Agreement. No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, any other prosecutorial or law enforcement authority in the State of Florida, or any regulatory body in the State of Florida is pending or, to the knowledge of Grantee, threatened by or against Grantee in, or with respect to any conduct in, the State of Florida. No permanent injunction, temporary restraining order or similar decree has been issued

against Grantee which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the assets, operations, or financial condition of Grantee, the Project, or Grantee's ability to perform its obligations under this Agreement. Neither Grantee, nor any of its material properties or assets has in the last three years been in violation of, nor will the continued operations of its material properties and assets as currently conducted, violate any law, rule, or regulation applicable to Grantee (including any zoning or building ordinance, code or approval, or any building permit where such violation or default would be material to Grantee), or is in default with respect to any judgment, writ, injunction, decree, or order applicable to Grantee of any governmental Grantee, in each case, where such violation or default could, individually or in the aggregate, reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of Grantee, the Project, or Grantee's ability to perform its obligations under this or constitutes a crime under the laws of the United States, Florida, or any other state or territory of the United States.

(f) **Express Representations and Warranties: No Material Misstatements.** All statements made by Grantee in the Grant Application were true, complete, and correct. Triumph shall be deemed to have relied upon the express statements, representations and warranties set forth herein and in the Grant Application notwithstanding any knowledge on the part of Triumph of any untruth of any such representation or warranty of Grantee expressly set forth in this Agreement, regardless of whether such knowledge was obtained through Triumph's own investigation or otherwise, and regardless of whether such knowledge was obtained before or after the execution and delivery of this Agreement. No information, report, financial statement, exhibit or schedule (other than forward-looking statements and projections) furnished by Grantee to Triumph in connection with the Grant Application and/or the negotiation of this Agreement, or delivered pursuant to this Agreement, when taken together, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

(g) **Matching Funds.** Grantee has legally enforceable commitments for the Matching Funds, all dedicated to completion of the Project as contemplated in the Grant Application.

(h) **Bonus or Commission.** Grantee has not paid, and agrees not to pay, any bonus or commission for the purpose of obtaining an approval of the Grant Application or the entering into of this Agreement.

7. Accounting, Audits, and Records:

7.1 Establishment and Maintenance of Accounting Records. Grantee shall establish separate accounts to be maintained within its existing accounting system or establish independent accounts with respect to the Project, including, but not limited to, if applicable, payroll ledgers, state and federal payroll returns, and job descriptions, with respect to personnel used in connection with the Matching Funds. Such accounts are referred to herein collectively as the “**Project account.**” Records of costs incurred under terms of this Agreement shall be maintained in the Project account and made available

upon request to Triumph at all times during the period of this Agreement and for eight (8) years after final payment of the Grant is made. Copies of these documents and records shall be made available 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 performing work on the Project and all other records of Grantee and consultants considered necessary by 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.

7.2 Audits. The administration of the Grant and any federal, state, or local resources awarded to Grantee shall be subject to audits and/or monitoring by 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, and other state agencies, and by the federal government and agencies and representatives thereof. Without limiting the generality of the foregoing, Grantee shall comply with all audit and audit reporting requirements as specified below, and such requirements do not limit the authority of Triumph to conduct or arrange for the conduct of additional audits or evaluations of the Grant and federal, state, or local awards or funding, or limit the authority of Triumph or any state or federal official.

(a) In addition to reviews of audits conducted in accordance with Chapter 218, Florida Statutes, monitoring procedures to monitor Grantee's use of the Grant may include but not be limited to on-site visits by Triumph and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to the Grant awarded by Triumph by this Agreement. By entering into this Agreement, Grantee agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by Triumph. Grantee further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by Triumph, the Florida Department of Financial Services (DFS), or the State of Florida Auditor General.

(b) Grantee may be subject to the following requirements:

(i) Chapter 218, Florida Statutes; applicable rules of the Department of Financial Services (DFS); and applicable of the Rules of the Auditor General. Within ten (10) days of Grantee's receipt, Grantee shall submit a copy of the audit to Triumph at the address set forth in Section 10.11 below;

(ii) Upon receipt, and within six months, Triumph may review Grantee's corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the Grant provided through Triumph by this Agreement. If Grantee fails to have an audit conducted consistent with Chapter 218, Florida Statutes, Triumph may take appropriate corrective actions to enforce compliance.

(iii) As a condition of receiving the Grant, Grantee shall permit Triumph, or its designee, DFS or the Auditor General access to Grantee's records including financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

(iv) Grantee shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of eight (8) years from the date the audit report is issued and shall allow Triumph, or its designee, DFS or State of Florida Auditor General access to such records upon request. Grantee shall ensure that the audit working papers are made available to Triumph, or its designee, DFS or State of Florida Auditor General upon request for a period of eight (8) years from the date the audit report is issued unless extended in writing by Triumph.

7.3 Public Records. The parties acknowledge that each are public entities and, as such, are obligated to comply with the provisions of Chapter 119 of the Florida Statutes applicable to this Agreement as the same may be limited or construed by other applicable law. In the event that either party receives a request for a "public record" (as such term is defined in Section 119.011 of the Florida Statutes) in connection with this Agreement, that party shall provide written notice to the other party of such request as soon as practicable after that parties receipt of such request. If either party submits records to the other party that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075 (3) of the Florida Statutes or proprietary confidential business information pursuant to Section 288.075(4) of the Florida Statutes, such records should be marked accordingly by the submitting party prior to submittal to the other party. In the event that either parties claim of exemption asserted in response to the submitting parties assertion of confidentiality is challenged in a court of law. The submitting party shall defend, assume and be responsible for all fees, cost s and expenses in connection with such challenge. It is expressly understood and agreed that all Back-up Data (as defined in Section 8.3 below) and Performance Metrics under Section 8.3 below shall be deemed "public records" under Section 119.011 of the Florida Statutes.

8. Termination or Suspension of Project/Breach of Agreement/Failure to Achieve Performance Metrics/Clawback of Grant:

8.1 Termination, Suspension, or Expiration of Project. If Grantee abandons, suspends, or discontinues the Project, or fails to complete the Project by the Completion Deadline set forth in Section 5.1 above (subject to *force majeure* events), or for any other reason, the commencement, prosecution, or timely completion of the Project by Grantee is rendered improbable, infeasible, impossible, or illegal, Triumph shall have the right, by written notice to Grantee, to (i) suspend any further fundings of the Grant and/or any or all of Triumph's other obligations under this Agreement until such time as the event or condition resulting in such abandonment, suspension, or discontinuation has ceased or been corrected, and/or (ii) revoke and terminate the Grant. If Triumph issues a final termination or revocation notice for any reason other than *force majeure* events, then in accordance with Section 8.4 below Grantee shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore funded to and received by Grantee.

8.2 Breach of Agreement. In the event Grantee shall (i) have made any misrepresentation 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 with the Grant Application or pursuant to this Agreement, (ii) have breached a representation or warranty made in this Agreement, and/or (iii) have breached, violated, or is in any way in default under any of its obligations under this Agreement, then in accordance with Section 8.4 below Grantee shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore funded to and received by Grantee.

8.3 Performance Metrics. In the event Grantee fails to timely achieve the following performance metrics (the “**Performance Metrics**”), then in accordance with Section 8.4 below Grantee shall upon written demand by Triumph repay to Triumph all portions of Grant theretofore funded to and received by Grantee:

- (a) By the 10th anniversary of the date of this 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 16,295. 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).

The calculation to determine whether or not the above stated Performance Metrics were satisfied shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph.

At any time and from time to time, upon written request by Triumph, Grantee shall within thirty (30) days of such request, deliver to Triumph such data, reports, payroll ledgers, state and federal payroll returns, financial statements and reporting, and other documents, instruments, and information, as well as its State of Florida employment reporting forms (collectively, “**Back-up Data**”) as Triumph requires in order to determine whether Grantee achieved the above Performance Metrics. Grantee’s refusal or failure to timely provide any requested Back-up Data shall be deemed Grantee’s failure to timely achieve all of the above Performance Metrics. Notwithstanding the foregoing, so long as Grantee is making diligent efforts to obtain the Back-up Data from third parties, the thirty (30) day deadline described above shall be reasonably extended with respect to any Back-up Data needed to be obtained from third parties.

8.4 Clawback of Grant under Sections 8.1, 8.2, and 8.3. Upon the occurrence of any of the events described in Sections 8.1 or 8.2 above, then, upon written demand by Triumph, Grantee shall within ninety (90) days of such demand repay to Triumph all amounts of the Grant that were theretofore funded to and received by Grantee. In the event Grantee fails to timely achieve the Performance Metrics described in Section 8.3(a) above, then, upon written demand by Triumph, Grantee shall within ninety (90) days of

such demand repay to Triumph an amount of the Grant 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 amount owed 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 amount owed 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. All amounts owed shall be repaid with interest at the rate *Wall Street Journal Prime Rate* plus three percent (3%) per annum on such amounts to be repaid. Such interest shall accrue commencing on the date of such written demand by Triumph and shall continue to accrue until the amount demanded is repaid in full. Notwithstanding the foregoing, Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under this Section 8.4 if it determines in its sole and absolute discretion that (i) a breach of a representation and warranty herein or in the Grant Application, or a breach, violation, or default of or under any other provision of this Agreement, was not material in nature, (ii) based on quantitative evidence, the Performance Metrics were not achieved due to negative economic conditions beyond Grantee's reasonable control, (iii) Grantee made a good faith effort to achieve full performance of the Performance Metrics and its failure to do so does not substantially frustrate the general purpose of the Grant, and/or (iv) 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 Performance Metrics.

As indicated above, the clawback would be proportional, with the clawback per job shortfall as of ten years from the signing of this 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 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 (16,052 + 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.

8.5 Maximum Clawback Amount. Excluding interest, in no event shall the total amount clawed back under Section 8.4 above exceed the total amount of the Grant actually funded to Grantee. Grantee and Triumph acknowledge and agree that any amounts clawed back under Section 8.4 above are intended as a repayment of Grant funds conditionally funded to Grantee and are due and payable to Triumph as a result of the occurrence of any of the events described in Sections 8.1, 8.2, or 8.3 above. Such amounts are not intended as and shall not be deemed damages or a penalty. Notwithstanding the foregoing, to the extent that for any reason such amounts are deemed damages, Grantee and Triumph agree that (i) such amounts shall constitute liquidated damages, (ii) the actual damages suffered by Triumph would be unreasonably difficult to determine and that Triumph, (iii) Triumph would not have a convenient and adequate alternative to the liquidated damages, (iv) the amounts due Triumph bear a reasonable relationship to any anticipated harm and is a genuine pre-estimate suffered by Triumph, and (v) Grantee irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive.

9. Other Covenants, Restrictions, Prohibitions, Controls, and Labor Provisions:

9.1 No Lobbying/Gifts. Pursuant to Sections 11.062 and 216.347 of the Florida Statutes, Grantee shall use no portion of the Grant for the purpose of lobbying the Florida Legislature, executive branch, judicial branch, any state agency, or Triumph. Grantee shall not, in connection with this or any other agreement, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Triumph or State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any Triumph or State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of Triumph or any authorized State official, Grantee shall provide any type of information Triumph or such official deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement.

9.2 Costs of Investigations. Grantee shall reimburse Triumph for the reasonable costs of investigation incurred by the Auditor General or other authorized State official for investigations of Grantee's compliance with the terms of this or any other agreement between Grantee and the State which results in the suspension or debarment of Grantee. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Grantee shall not be responsible for any costs of investigations that do not result in Grantee's suspension or debarment. Grantee understands and will comply with the requirements of s. 20.055(5), F.S., including but not necessarily limited to, the duty of Grantee and any of Grantee's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to s. 20.055, F.S.

9.3 Equal Employment Opportunity/Labor Laws. In connection with the carrying out of the Project, Grantee shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. In addition, Grantee shall comply with all other applicable labor and employment laws and regulations, including, but not limited to, wage and hour and workplace safety laws and regulations

9.4 Prohibited Interests. Except as otherwise permitted under Section 112.313(12), Florida Statutes, Grantee shall not enter into a contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any officer, director or employee of Grantee, or any entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.

(a) "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.

(b) Grantee shall not enter into any contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any person or entity who was represented before Grantee by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of Grantee.

(c) The provisions of this subsection shall not be applicable to any agreement between Grantee and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between Grantee and an agency of state government.

9.5 Interest of Members of, or Delegates to, Congress or Legislature. No member or delegate to the Congress of the United States, or member of the State of Florida legislature, or any director, staff member, or consultant of Triumph, shall be permitted to share in or be a part of this Agreement or any benefit arising hereunder.

9.6 Grant Funds. Grantee acknowledges and agrees that the funds for the Grant are not and shall not be deemed a general obligation of the State of Florida, nor is the Grant or this Agreement backed by the full faith and credit of the State of Florida. Upon and subject to the satisfaction of the funding contingencies set forth in Sections 3 and 4 above, Triumph agrees to 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 in Section 4.2 of this 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 in in Section 4.2 of this Agreement; provided, however, that, as provided above, 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 this 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 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 Grantee and/or other awardees of grants, Triumph shall not be obligated to make fundings under this Agreement and shall therefore not be deemed to be in breach of this Agreement. To the extent some funds are available to for funding to Grantee and other awardees of grants, Triumph shall allocate such funds among Grantee 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 this Agreement for failure to fully fund the Grant.

10. Miscellaneous Provisions:

10.1 Triumph Not Obligated to Third Parties. Triumph shall not be obligated or liable hereunder to any party other than Grantee. Without limiting the generality of the foregoing, no person or entity providing other funding to the Project (other than Grantee), nor any vendor, contractor, subcontractor, or materialman, shall be a third-party beneficiary under this Agreement.

10.2 When Rights and Remedies Not Waived. In no event shall the making by Triumph of any payment to Grantee constitute or be construed as a waiver by Triumph of any breach of covenant or any default which may then exist, on the part of Grantee, and the making of such payment by Triumph

while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to Triumph with respect to such breach or default.

10.3 Severability. 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.

10.4 Indemnifications. To the extent permitted by Section 768.28, Florida Statutes, Grantee shall indemnify, defend, and hold harmless Triumph and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Grantee, its agents, or employees, during the performance of this Agreement, except that neither Grantee, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Triumph or any of its officers, agents, or employees during the performance of this Agreement. Nothing in this Agreement shall be construed as a waiver by Grantee of any sovereign immunity protections that may be provided by Section 768.28, Florida Statutes. When Triumph receives a notice of claim for damages that may have been caused by Grantee in the performance of services required under this Agreement, Triumph will immediately forward the claim to Grantee. Grantee and Triumph will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, Triumph will determine whether to require the participation of Grantee in the defense of the claim or to require that Grantee defend Triumph in such claim as described in this Section 10.4. Triumph's failure to promptly notify Grantee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Grantee. Triumph and Grantee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial. Triumph may, in addition to other remedies available to it at law or equity and upon notice to Grantee, retain such monies from Grant amounts due Grantee hereunder as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

In addition, Grantee 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 this 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 this

Agreement.

10.5 Limitations of Liability. Neither Grantee nor Triumph shall be liable to the other for any special, indirect, punitive, or consequential damages, even if the other party has been advised that such damages are possible. Neither Grantee nor Triumph shall be liable for lost profits, lost revenue, or lost institutional operating savings. In addition, Triumph shall not assume or incur any liability related to its approval or deemed approval of any contractor, any Contract, any plans or specifications for the Project, or any other matter for which Triumph has the right or obligation to review and/or approve under this Agreement

10.6 Non-Assignment. Grantee shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written

consent of Triumph, which consent may be withheld in Triumph's sole and absolute discretion. Triumph shall at all times without the consent of Grantee be entitled to assign or transfer its rights, duties, or obligations under this Agreement to any other person or entity, or to another governmental entity in the State of Florida, upon giving prior written notice to Grantee. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*.

10.7 Intentionally Omitted.

10.8 Construction: Interpretation. The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term “this Agreement” means this Agreement together with all Exhibits hereto, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. All words used in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. The use in this Agreement of the term “including” and other words of similar import mean “including, without limitation” and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word “or” is not exclusive and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole, including any Exhibits, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the parties hereto. Time is of the essence with respect to the performance of all obligations under this Agreement. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.9 Preservation of Remedies; Severability. No delay or omission to exercise any right, power, or remedy accruing to either party hereto upon breach or default by either party hereto under this Agreement, will impair any such right, power, or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, such term or provision will be deemed stricken, and the remainder of this Agreement will remain in full force and effect.

10.10 Entire Agreement; Amendment; Waiver. This Agreement embodies the entire agreement of the parties hereto with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of Grantee and the authorized officer of Triumph. No waiver by a party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party hereto shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall

any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.11 Notices. All notices and demands to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, (ii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or (iii) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices and shall be sent to the applicable address set forth below, unless another address has been previously specified in writing in accordance with this Section 10.11:

If to Triumph:

Triumph Gulf Coast, Inc.
P.O. Box 12007
Tallahassee, FL 32317
Attention: Executive Director

If to Grantee:

Okaloosa County, Florida
c/o Grants Administration
1250 North Eglin Parkway
Suite 102
Shalimar, FL 32579
Attention: Grants and RESTORE Manager
Email: jevans@myokaloosa.com

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN ALL CASES WHERE TRIUMPH IS REQUIRED OR HAS THE RIGHT TO REVIEW, APPROVE, TAKE ACTION, OR RECEIVE REQUESTS FOR FUNDING AND OTHER NOTICES, ALL OF GRANTEE'S SUCH REQUESTS FOR REVIEW, APPROVAL, ACTION, REQUESTS FOR FUNDING, AND OTHER NOTICES TO TRIUMPH MUST ALSO BE DELIVERED VIA EMAIL TO THE TRIUMPH PROGRAM ADMINISTRATOR. NO TIME PERIODS OR OTHER DEADLINES APPLICABLE TO TRIUMPH SHALL COMMENCE UNLESS AND UNTIL THE TRIUMPH PROGRAM ADMINISTRATOR RECEIVES SUCH EMAIL AND CONFIRMS THE COMPLETENESS OF THE REQUEST. ONCE THE TRIUMPH PROGRAM ADMINISTRATOR HAS CONFIRMED THE COMPLETENESS OF THE REQUEST, ANY TIME PERIODS OR OTHER DEADLINES SHALL BE DEEMED TO HAVE COMMENCED AS OF THE DATE THAT GRANTEE FIRST SUBMITTED THE FULLY COMPLETE REQUEST.

10.12 Attorney's Fees. In the event litigation arises (at the trial or appellate level) in connection with this Agreement, the prevailing party will be entitled to be reimbursed for all costs incurred in connection with such litigation, including without limitation reasonable attorneys' fees and costs.

10.13 TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY CLAIM, DISPUTE OR ACTION ARISING OUT OF, RELATED OR PERTAINING TO THIS AGREEMENT, THE GRANT APPLICATION, AND/OR THE GRANT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE AND EACH PARTY HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY

JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

10.14 Governing Law. The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Escambia. The parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Escambia County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement.

10.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement be executed as of the day and year first above written.

GRANTEE:

Okaloosa County, Florida

By: _____
Print Name: Charles K. Windes, Jr.
Title: Chairman

ATTEST:

By: _____
Print Name: J.D. Peacock, II
Title: Clerk of the Court

TRIUMPH:

TRIUMPH GULF COAST, INC., a Florida
not-for-profit corporation

By: _____
Print Name: _____
Title: Chairman

By: _____
Print Name: _____
Title: Treasurer

ATTEST:

By: _____
Print Name: _____
Title: Secretary

A3632442.DOCX

EXHIBIT "A"

Form of

Request for Funding of Grant

(Okaloosa County – Crestview Bypass/Project #46)

Budget Category: _____
Funding Request #: _____

Pursuant to Section 4.1 of that certain Grant Award Agreement dated November ____, 2019 (the "Agreement"), by and between the _____ ("Grantee") and Triumph Gulf Coast, Inc., a Florida not-for-profit corporation ("Triumph"), Grantee hereby requests a funding from the Grant (as defined in the Agreement) as follows (all capitalized terms herein shall have the same meanings ascribed to them as set forth in the Agreement):

1. Invoices/Purchase Orders/Contracts/ (List all that are the subject of this Request):

| Vendor | Amount of Invoice |
|--------|-------------------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| Total: | \$ _____ |

2. Amount of Grant Funding Requested Hereby:

\$ _____

3. (a) Amounts of Grant Previously Funded Under the Agreement: \$ _____

(b) Amounts of Funding Requested in Item 2 above: \$ _____

(c) Cumulative Amounts Funded from Grant if this request is approved (add (a) and (b) above): \$ _____

(f) Remaining Amount of Grant to be funded \$ _____
\$ _____ .00 minus the amounts in (c) above:

4. Attached hereto are (1) true, correct, and complete copies of the invoices referenced in Item 1 above, (2) photographs and/or reports evidencing the completion of the work that is the subject of the invoices referenced in Item 1 above, (3) evidence of use of Matching Funds for their intended purpose, and (4) Project account documentation under Section 7.1 of the Agreement.
5. None of the amounts paid by Grantee in connection with the invoices described in Item 1 above for which funding is requested hereunder shall also have been or will in the future be in any manner (a) reimbursed, returned, refunded, rebated, or otherwise credited to, Grantee by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to Grantee by the State of Florida, the United States, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution.
6. None of the Contracts under which amounts paid by Grantee in connection with the invoices described in Item 1 above have heretofore been modified, amended, or terminated, except as otherwise approved by Triumph.
7. Grantee hereby certifies, represents, and warrants to Triumph that the following statements are true and correct:
 - (a) Attached to this Request for Funding is all requested documentation required under Section 4.2 of the Agreement;
 - (b) This Request for Funding does not seek funding for items other than for the Budget category shown above;
 - (c) The amount requested, together with all amounts previously funded under the Grant, does not exceed the \$64,100,000.00 maximum amount of the Grant; the amount requested for the above-shown Budget category, together with all amounts previously funded for such Budget category, does not exceed the maximum amount allocated to such Budget category; and Grantee has used all Grant funds released to date in the amounts and for the purposes stated in the Budget;
 - (d) Grantee made no 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 with the Grant Application or pursuant to the Agreement;

(e) There is no 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 funding of the Grant;

(f) Grantee has not taken any action pertaining to the Project which, under the Agreement, requires the approval of Triumph, and Grantee failed to obtain such approval;

(g) There has been no violation of the anti-lobbying/gift or prohibited interest provisions of Sections 9.1, 9.4, or 9.5 of the Agreement;

(h) Grantee is not in material violation, default, or breach of or under any provision of the Agreement;

(i) All representations and warranties contained in the Agreement are accurate as of the date hereof;

(j) Grantee is not in breach of any representation or warranty contained in the Agreement;

(k) No federal, state, or local agency (including Grantee) providing financial assistance to the Project has revoked, suspended, or terminated that financial assistance to the Project, including, but not limited to, the Matching Funds;

(l) With respect to previous fundings of the Grant and payments under Contracts, Grantee has paid, and has provided Triumph with evidence of payment of, the Matching Funds toward completion of the Project;

(m) Grantee has not abandoned or discontinued the Project, nor has the commencement, prosecution, or timely completion of the Project by Grantee been rendered improbable, infeasible, impossible, or illegal;

(n) No portion of the requested funding includes funding for items that are outside the scope of the Project that is contemplated under the Budget;

(o) None of the Contracts have been modified, amended, or terminated, or have been subject to a change order, without the prior written consent or deemed approval of Triumph; provided, however, that any change order under \$250,000 shall not be subject to approval under the Agreement

(p) Intentionally Omitted;

(q) The Budget has not been amended or increased or decreased by more than 5%;

(r) Completion of the Project is on schedule for completion by the Completion Deadline;

(s) Grantee maintains in full force and effect all insurance required under Section 5.4 of the Agreement;

(t) Grantee is in compliance with all applicable environmental laws and regulations in accordance with Section 5.5 of the Agreement;

(u) Grantee is in compliance with the competitive bidding requirements set forth in Section 3 of the Agreement; and

(v) Grantee is in compliance with the equal employment opportunity and other labor provisions as required by Section 9.3 of the Agreement.

The undersigned, in his capacity as _____ of Grantee, hereby certifies to Triumph that the above statements are true and correct. The undersigned also agrees to provide Triumph with such other documents as Triumph shall require in order to determine that the requested funding is consistent with the purposes of the Grant

Date: _____

Print Name: _____

EXHIBIT "B"
BUDGET/TIME
LINE

#46 Southwestern Crestview Bypass

Project Expenses

| | Pre-award | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Project Total | Design | Construction |
|---------------------------------|--------------------|-------------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------|---------------------|----------------------|
| | | 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 | \$4,113,000 | \$ 3,755,000 | \$10,580,000 | \$ 2,128,000 | \$ - | \$ - | \$ 20,576,000 | \$5,200,000 100% | |
| 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 | | \$85,020,000 100% |
| 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 (\$38,953,000)

| | | | | | | | | Design | Construction |
|--|---------------------|--------------------|---------------------|---------------------|---------------------|--------------------|----------------------|------------------|---------------------|
| Personnel + Fringe | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | |
| Equipment | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | |
| Design, other prof services and permitting | \$ 1,788,000 | \$2,130,000 | \$ 600,000 | \$ - | \$ - | \$ - | \$ 4,518,000 | \$600,000 12% | |
| 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 | | \$25,520,000 30% |
| Total | \$ 3,423,000 | \$2,830,000 | \$ 8,400,000 | \$11,000,000 | \$ 6,400,000 | \$6,900,000 | \$ 38,953,000 | | |

FDOT Interchange (\$83,129,161)

| | | | | | | | | |
|--|-------------------|---------------------|----------------------|----------------------|----------------------|----------------------|----------------------|--------------|
| Personnel + Fringe | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Equipment | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Design, other prof services and permitting | \$ 625,000 | \$ 1,625,000 | \$ 5,380,000 | \$ 2,128,000 | \$ - | \$ - | \$ - | \$ 9,758,000 |
| Right-of-Way Acquisition | \$ - | \$ - | \$ 3,730,000 | \$ 1,400,000 | \$ - | \$ - | \$ - | \$ 5,130,000 |
| Construction | \$ - | \$ - | \$ 2,770,580 | \$ 11,330,410 | \$ 26,580,171 | \$ 27,560,000 | \$ 68,241,161 | |
| Total | \$ 625,000 | \$ 1,625,000 | \$ 11,880,580 | \$ 14,858,410 | \$ 26,580,171 | \$ 27,560,000 | \$ 83,129,161 | |

FDOT pass-through (\$12,836,839)

| | | | | | | | |
|--|--------------|------------|--------------|--------------|------------|------|---------------|
| Personnel + Fringe | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Equipment | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Design, other prof services and permitting | \$ 1,700,000 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 1,700,000 |
| Right-of-Way Acquisition | \$ 3,678,000 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 3,678,000 |
| Construction | \$ - | \$ 600,000 | \$ 3,429,420 | \$ 2,449,590 | \$ 979,829 | \$ - | \$ 7,458,839 |
| Total | \$ 5,378,000 | \$ 600,000 | \$ 3,429,420 | \$ 2,449,590 | \$ 979,829 | \$ - | \$ 12,836,839 |

Triumph (\$64,100,000)

| | | | | | | | | Design | Construction |
|--|------|------|--------------|--------------|--------------|-------------|---------------|--------------------|---------------------|
| Personnel + Fringe | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | |
| Equipment | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | |
| Design, other prof services and permitting | \$ - | \$ - | \$ 4,600,000 | \$ - | \$ - | \$ - | \$ 4,600,000 | \$4,600,000 88% | |
| Construction | \$ - | \$ - | \$ 1,400,000 | \$25,700,000 | \$25,400,000 | \$7,000,000 | \$ 59,500,000 | | \$59,500,000 70% |
| Total | \$ - | \$ - | \$6,000,000 | \$25,700,000 | \$25,400,000 | \$7,000,000 | \$ 64,100,000 | | |

EXHIBIT “C”

SmartSheet Authorized Users

Date _____

| Name | Title | Email address | User Type* |
|---------------|--------------------------|--|------------|
| Jane Evans | Grants & RESTORE Manager | jevans@myokaloosa.com | Edit |
| Don Pardue | Grant Accountant | dpardue@myokaloosa.com | Edit |
| Steve Schmidt | Surtax Project Manager | sschmidt@myokaloosa.com | View Only |

Future changes to Authorized Users of SmartSheet (additions and deletions) must be made in writing by notifying the Program Administrator via email and uploading a new Exhibit “C” to SmartSheet.

*User Types:

View Only – users with view only rights will be able to click and read all attachments and notes but will not be able to comment, upload or edit documents.

Edit - users with Edit rights will be able to upload documents and make notes/comment in the sheet.

PLEASE NOTE: IN ALL CASES WHERE TRIUMPH IS REQUIRED OR HAS THE RIGHT TO REVIEW, APPROVE, TAKE ACTION, OR RECEIVE REQUESTS FOR FUNDING AND OTHER NOTICES, ALL OF GRANTEE’S SUCH REQUESTS FOR REVIEW, APPROVAL, ACTION, REQUESTS FOR FUNDING, AND OTHER NOTICES TO TRIUMPH MUST ALSO BE DELIVERED VIA EMAIL TO THE TRIUMPH PROGRAM ADMINISTRATOR. NO TIME PERIODS OR OTHER DEADLINES APPLICABLE TO TRIUMPH SHALL COMMENCE UNLESS AND UNTIL THE TRIUMPH PROGRAM ADMINISTRATOR RECEIVES SUCH EMAIL AND CONFIRMS THE COMPLETENESS OF THE REQUEST. ONCE THE TRIUMPH PROGRAM ADMINISTRATOR HAS CONFIRMED THE COMPLETENESS OF THE REQUEST, ANY TIME PERIODS OR OTHER DEADLINES SHALL BE DEEMED TO HAVE COMMENCED AS OF THE DATE THAT GRANTEE FIRST SUBMITTED THE FULLY COMPLETE REQUEST.