

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

AND

PANAMA CITY PORT AUTHORITY (Project #227)

This Term Sheet summarizes the basic terms upon which Triumph Gulf Coast, Inc. (“**Triumph**”) is considering awarding a grant to the Panama City Port Authority (“**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 Board of Directors of Triumph and the Board of Trustees of 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: \$3,000,000 (the “**Maximum Grant Amount**”).

PURPOSE: To provide partial funding for improvements to Grantee’s Intermodal Distribution Center (the “**Center**”), including an extension of Commerce Boulevard to provide access to industrial sites and the realignment and extension of water, sewer, and electrical service, and construction of storm-water ponds and the improvement of forty-five acres of industrial property (collectively, the “**Project**”), all as further described in Grantee’s Application for Funds submitted to Triumph (the “**Grant Application**”).

COMPETITIVE

BIDS: For contracts expected to exceed \$195,000, Grantee shall issue an invitation to bid to solicit competitive bids pursuant to 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. Grantee shall not be allowed to submit a bid to do the work in-house. Grantee shall not be allowed to submit a bid to do the work in-house. 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.

FUNDING:

The total Project cost including the related work already completed (Phase I) is estimated to be \$7,419,221. Of the \$7,419,221 the (i) Grantee has previously paid \$4,275,085 and the Florida Department of Transportation (“**FDOT**”) has previously paid \$144,136 for the (Phase I) improvements. The Phase II improvements to be funded by the grant are estimated to cost \$4,500,000, of which Grantee shall pay \$1,500,000 and Triumph will fund \$3,000,000 from the grant. To the extent that the actual cost of the Project exceeds \$7,419,221, Grantee shall be solely responsible for such excess. The grant and the Matching Funds shall be allocated as shown in the Budget/Timeline attached hereto as Exhibit A (the “**Budget**”). Each funding under a Budget category shall be made pro rata with the Matching Funds for that category so that the grant funds and the Matching Funds are being used simultaneously for each category.

The grant shall be funded as follows:

Not more than once per calendar month, Grantee shall submit to Triumph a separate Request for Funding for each Budget category in accordance with the Budget and shall submit information pursuant to a SmartSheet system by Grantee’s authorized users. 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 construction; (C) invoices, purchase orders, or contracts from vendors providing equipment, materials, and services; (D) payroll ledgers, state and federal payroll returns, and other employment data, (E) documentation evidencing the completion of the work that is the subject of the requested funding, (F) to the extent that any portion of the current funding request is for reimbursement of amounts already paid by Grantee, copies of cancelled checks evidencing that Grantee paid vendors, and 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, (G) evidence of payment and use of Matching Funds, and (H) such other documents as Triumph shall require in order to determine that the funding is consistent with the purposes of the Grant. Grantee shall notify the Triumph Program Administrator via email each time a Request for Funding is submitted. Other than the final Request for Funding, no single Request for Funding shall be submitted for a funding request amount of less than \$100,000. In no event shall the cumulative fundings made by Triumph

exceed the \$3,000,000 maximum amount of the Grant. 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 from receipt to review and either approve or disapprove of a Request for Funding. If Triumph approves a Request for Funding, then it shall fund the approved amount to Grantee within thirty (30) days after approval. If Triumph disapproves a 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 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 Grant shall be used as a reimbursement of items purchased by Grantee prior to the date of the Agreement. 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.

Grantee shall seek funding only for costs of the Project as shown or contemplated under the Budget attached to the Agreement. All amounts paid by Grantee with respect to the Project shall be supported by properly executed invoices, contracts, vouchers, and payroll 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 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, payroll records, 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.

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

(a) Grantee fails to satisfy the conditions for funding and/or there is missing or incomplete documentation;

(b) The Request for Funding seeks funding for items other than as described above or as shown in the Budget;

(c) The amount requested for funding under the Request for Funding, together with all amounts previously funded under the Grant, would exceed the \$3,000,000 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; 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 the 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, the Agreement, or funding of the Grant;

(f) Grantee has 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 a violation of the prohibited interests provisions of the Agreement;

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

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

(j) Any federal, state, or local organization or agency (including Grantee and FDOT) 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;

(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 \$5,000 shall not be subject to approval under the Agreement;

(p) Intentionally Omitted;

(q) Without the prior approval of Triumph, the total Project cost as set forth in the Budget, 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 below.

ELIGIBLE COSTS/
DOCUMENT-
ATION:

Grantee shall seek funding only for costs of the Project 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, 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 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 equipment and improvements, the cost of which was in whole or in part was paid for using Triumph grant funds.

CLAWBACK:

All grant funds funded by Triumph to Grantee shall be subject to being repaid upon demand by Triumph (“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. In addition, some or all grant funds funded by Triumph to Grantee shall be subject to being clawed back upon demand by Triumph in the amounts described below in the event Grantee fails to achieve both of the Performance Metrics described below:

(a) **Performance Metric #1:** As of the Ramp-up Date (as defined below), not less than 135 New Jobs (as defined below) shall have been created and exist at the Center. 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, 2021. 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 Bay 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 135 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 135 New Jobs shall be maintained at the Center.

In the event that, at the end of each of the Ramp-up Date and/or each consecutive one (1) year period after the Ramp-up Date, Grantee has failed to

achieve the creation and maintenance of 135 New Jobs, Grantee shall pay to Triumph upon demand an amount calculated based on the following formula: (A) (1) 135 minus, (2) the actual number of New Jobs as of the applicable date, multiplied by (B) \$22,222.22.

Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due above if it determines in its sole and absolute discretion that (i) a breach of a representation and warranty in the Agreement or in the Grant Application, or a breach, violation, or default of or under any other provision of the 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 the Performance Metrics, 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.

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 Grantee 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: _____, 2020

TRIUMPH:

Triumph Gulf Coast, Inc.

By: _____

Name: _____

Title: _____

GRANTEE:

Panama City Port Authority

By: _____

Name: _____

Title: _____

EXHIBIT "A"

BUDGET/TIMELINE

Exhibit A

Project #, Expand and Improve the Intermodal Distribution Center (IDC)

Budget

Estimated construction start date if applicable

Estimated education component start date if applicable

	Entrance Road Ext. Phase I	Site Impr. Phase I	Entrance Road Ext. Phase II	Site Impr. Phase II	Total
Project Total					
2012	41,446.00	-	-	-	41,446.00
2013	421,300.00	1,490,777.00	-	-	1,912,077.00
2014	-	965,698.00	-	-	965,698.00
2015	-	-	-	-	-
2016	-	-	-	-	-
2017	-	-	-	-	-
2018	-	-	-	-	-
2019	-	-	-	-	-
2020	-	-	75,000.00	150,000.00	225,000.00
2021	-	-	925,000.00	3,350,000.00	4,275,000.00
Project Total	462,746.00	2,456,475.00	1,000,000.00	3,500,000.00	7,419,221.00
Triumph					
2012	-	-	-	-	-
2013	-	-	-	-	-
2014	-	-	-	-	-
2015	-	-	-	-	-
2016	-	-	-	-	-
2017	-	-	-	-	-
2018	-	-	-	-	-
2019	-	-	-	-	-
2020	-	-	50,000.00	100,000.00	150,000.00
2021	-	-	617,000.00	2,233,000.00	2,850,000.00
Triumph Total	-	-	667,000.00	2,333,000.00	3,000,000.00
Port					
2012	30,707.00	-	-	-	30,707.00
2013	287,903.00	1,490,777.00	-	-	1,778,680.00
2014	-	965,698.00	-	-	965,698.00
2015	-	-	-	-	-
2016	-	-	-	-	-
2017	-	-	-	-	-
2018	-	-	-	-	-
2019	-	-	-	-	-
2020	-	-	25,000.00	50,000.00	75,000.00
2021	-	-	308,000.00	1,117,000.00	1,425,000.00
Port Total	318,610.00	2,456,475.00	333,000.00	1,167,000.00	4,275,085.00
FDOT					
2012	10,739.00	-	-	-	10,739.00

2013	133,397.00				133,397.00
2014					-
2015					-
2016					-
2017					-
2018					-
2019					-
2020					-
2021					-
FDOT Total	144,136.00	-	-	-	144,136.00
Match Source 2					
2012					-
2013					-
2014					-
2015					-
2016					-
2017					-
2018					-
2019					-
2020					-
2021					-
Match Source 2 Total		-	-	-	-