

SUMMARY
OF
GRANT AWARD AGREEMENT
BETWEEN
TRIUMPH GULF COAST, INC.
AND
PANAMA CITY PORT AUTHORITY
(Project #227)

This summarizes the basic terms of a grant award agreement (the “**Agreement**”) that has been negotiated between the staffs of Triumph Gulf Coast, Inc. (“**Triumph**”) and Panama City Port Authority (“**Grantee**”) under the Triumph Gulf Coast Trust Fund. This summary is intended for notice 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. The final terms and conditions of the grant (the “**Grant**”) will be contained in the definitive Agreement approved by the Board of Directors of Triumph and Grantee and executed by Triumph and Grantee.

GRANT AMOUNT: Three Million and 00/100 Dollars (\$3,000,000) (the “**Grant**”).

PURPOSE: To provide partial funding 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 (including, but not limited to, utilization of any continuing services agreements with approved vendors) (a copy of which established procedures shall be uploaded to Triumph's SmartSheet system), as applicable; provided, however, that Grantee may, without further bid, use its current design consultant that was engaged under Grantee's established competitive bid process. 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 Grant shall be allocated as shown in the Budget/Timeline attached hereto as Exhibit "A" (the "**Budget**")

Not more than once per calendar month, Grantee shall submit to Triumph a separate Request for Funding for each Budget in accordance with the Budget and shall submit information pursuant to a SmartSheet system by Grantee's authorized users. Each Request for Funding shall be for an amount not to exceed 67% of the amount of the invoice(s) owing by Grantee to the contractors, materialmen, or vendors under the Contracts (such 67% is determined as described below). 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 (as defined below), and (H) such other documents as Triumph shall require in order to determine that the funding is consistent with the purposes of the Grant. In addition, the first Request for Funding shall also include evidence satisfactory to Triumph that Grantee has spent the applicable portion of the Matching Funds for Phase I improvements as shown on the Budget. 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 \$3,000,00 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. 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) 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 \$3,000,00 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; 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 Sections 9.1, 9.4, and/or 9.5 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/or FDOT (as defined below)) 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 the Agreement), 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 \$100,000 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 the Agreement;

(t) Grantee is not in compliance with all applicable environmental laws and regulations in accordance with the Agreement;

(u) Grantee is not in compliance with the competitive bidding requirements set forth above; and/or

(v) Grantee is not in compliance with the equal employment opportunity and other labor provisions as required by the Agreement.

ELIGIBLE COSTS/
DOCUMENTATION:

The total Project cost including the related work already completed (Phase I) is estimated to be \$7,419,221. Of the \$7,419,221 (i) Grantee has previously paid \$2,775,085 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 (the “**Matching Funds**”) and Triumph will fund \$3,000,000 from the Grant. The total estimated cost of the Project is based upon the Budget attached hereto. To the extent that the actual cost of the Project exceeds \$7,419,221, Grantee shall be solely responsible for such excess. 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. 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 the Agreement.

MAINTENANCE OF RECORDS:

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 the Agreement, 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.

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, and class enrollment and attendance records. Such accounts are referred to herein collectively as the "**Project account.**" Records of costs incurred under terms of the Agreement 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 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.

AUDITS: The Grant shall be subject to audits and/or monitoring by Triumph and applicable public records laws.

TERMINATION
OR SUSPENSION
OF PROJECT:

If Grantee abandons, suspends, or discontinues the Project, or fails to complete the Project by the Completion Deadline (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 disbursements of the Grant and/or any or all of Triumph's other obligations under the 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, then Grantee shall, upon written demand by Triumph, repay to Triumph all portions of the Grant theretofore disbursed to and received by Grantee.

APPROVAL OF
CONTRACTS:

Triumph shall have the right to review and approve any and all proposed Contracts in connection with the Project and any proposed amendments or change orders to previously approved Contracts in excess of \$65,000 before Grantee executes or obligates itself in any manner. Triumph shall have fifteen (15) days from receipt of a proposed Contract, amendment, or change order to notify Grantee of its approval or disapproval of such Contract, amendment, or change order. If Triumph fails to approve or disapprove of a Contract, amendment, or change order within such fifteen (15) day period, the subject Contract, 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.

COMPLIANCE

WITH LAWS: Grantee shall also comply with all applicable laws regarding third party contracts, labor laws, and civil rights laws. The Agreement also has prohibitions on conflicts of interest.

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.

CLAWBACK: Any Grant funds disbursed by Triumph to Grantee shall be subject in being repaid (“clawed back”) in the event (i) Grantee abandons, suspends or discontinues the Project, or fails to complete the Project by Completion Deadline, and/or (ii) 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 reimbursement, and/or (iii) Grantee breaches any obligation under the Agreement, and/or (iv) Grantee fails to timely achieve the following performance metrics (the “Performance Metrics”), then Grantee shall upon written demand by Triumph repay to Triumph all portions of Grant theretofore funded to and received by Grantee:

(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.

The calculation of the number of New Jobs and the other Performance Metrics shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph.

Triumph shall have the discretion to waive, reduce, extend, or defer any clawback amounts due 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 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 full performance of at least one 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 at least one of the performance metrics.

OTHER TERMS
AND
CONDITIONS:

This is a summary only. The Agreement contains such other covenants, representations and warranties, and other terms and conditions as agreed to by Triumph and Grantee.

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		-	-	-	-