

TERM SHEET FOR
GRANT AWARD AGREEMENT BETWEEN
TRIUMPH GULF COAST, INC.
AND
THE PORT ST. JOE PORT AUTHORITY
(Project #237)

This Term Sheet summarizes the basic terms upon which Triumph Gulf Coast, Inc. (“**Triumph**”) is considering awarding a grant to The Port St. Joe 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 any grant, (ii) any approval of a grant, or (iii) engaging in any further discussions or negotiations with respect to a grant. Any binding agreement between Triumph and Grantee with respect to any grant must be contained in a definitive grant award agreement (the “**Agreement**”), approved by Grantee and the Board of Directors of Triumph 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: \$15,000,000 (the “**Grant**”)

PURPOSE: To provide partial funding for a project (the “**Project**”) that will dredge the shipping channel to the Port of St. Joe (the “**Port**”) to a depth of 32’ plus 1’ to support access by domestic and international trade activity at the Port, all as further described in Grantee’s Application for Funds submitted to Triumph (the “**Grant Application**”).

TOTAL PROJECT
COST:

The estimated total cost of the Project is \$56,308,646, as more fully shown in the Budget attached hereto as **Exhibit “A”** and incorporated herein (the “**Budget**”), with the Grant providing \$15,000,000 of that amount and other funding sources providing \$41,308,646 of that amount (the “**Matching Funds**”).

CONDITIONS
FOR GRANT:

Triumph's approval of the Grant, and any obligation to disburse the Grant, are expressly conditioned and contingent upon the following:

- (a) **Matching Funds.** No Grant funds shall be disbursed to Grantee unless and until (i) Grantee has delivered Triumph, on or before July 3, 2023 (the "**Contingency Deadline**"), evidence of irrevocable and legally enforceable funding commitments (the "**Matching Funds Commitments**") from governmental entities and/or private entities (the "**Matching Funds Sources**") totaling not less than \$41,308,646 to be used exclusively toward completion of the Project, and (ii) Triumph approves, in its sole and absolute discretion, the Matching Funds Sources and the Matching Funds Commitments. The Matching Funds Sources may include, but shall not be limited to, the Florida Department of Transportation, the Gulf County Board of County Commissioners, and the St. Joe Corporation. In the event that either (a) Grantee fails to deliver the identities of the Matching Funds Sources and evidence of the Matching Funds Commitments to Triumph by the Contingency Deadline, and/or (b) Triumph fails to approve in writing the Matching Funds Commitments and/or the identity of the Matching Funds Sources within ninety (90) days after delivery thereof to Triumph (the "**Matching Funds Review Deadline**"), the Grant shall be deemed automatically rescinded and revoked and the Agreement shall be deemed automatically terminated and of no further force or effect and the parties hereto shall have no further liabilities or obligations to each other; provided, however, that Triumph reserves the right, exercisable in its sole and absolute discretion, to extend the Contingency Deadline and/or the Matching Funds Review Deadline.
- (b) **Guaranties.** No Grant funds shall be disbursed to Grantee unless and until (i) Grantee has delivered Triumph, on or before the Contingency Deadline, one or more Guaranty Agreements (individually, a "**Guaranty Agreement**," and collectively, the "**Guaranty Agreements**") in the form attached to the Agreement, each executed by a governmental entity and/or private entity (each, a "**Guarantor**"), pursuant to which each Guarantor agrees to assume liability for payment of some or all of the clawback amounts described below, and (ii) Triumph approves, in its sole and absolute discretion, all of the Guaranty Agreements. The aggregate liability of the Guarantors under the Guaranty Agreements shall not be less than \$15,000,000. The Guarantors may include, but shall not be limited to, Grantee. In the event that either (a) Grantee fails to deliver executed Guaranty Agreements to Triumph by the Contingency Deadline, and/or (b) Triumph fails to approve in writing the executed Guaranty

Agreements within ninety (90) days after delivery thereof to Triumph (the “**Guarantor Review Deadline**”), the Grant shall be deemed automatically rescinded and revoked and the Agreement shall be deemed automatically terminated and of no further force or effect and the parties hereto shall have no further liabilities or obligations to each other; provided, however, that Triumph reserves the right, exercisable in its sole and absolute discretion, to extend the Contingency Deadline and/or the Guarantor Review Deadline.

- (c) **Competitive Bids.** No Grant funds shall be disbursed to Grantee unless and until, with respect to contracts and/or purchases related to the Project exceeding \$325,000, Grantee shall have obtained competitive bids using (a) 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, and/or (b) any statutory or regulatory procedures applicable to Grantee. In awarding contracts, Grantee shall award the contract to the lowest cost qualified responsive bidder considering the selection criteria contained within the invitation to bid. Triumph shall review the proposed award and all other contracts before the bid is awarded. 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 or contract. If Triumph fails to approve or disapprove of the award or contract within such fifteen (15) day period, the award or contract shall be deemed approved.

FUNDING:

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. After the first Request for Funding, each subsequent Request for Funding may only be submitted after Triumph’s approval of the immediately preceding Request for Funding. Each Request for Funding shall include the following items (A) through (H): (A) completed detailed Project account spreadsheet (i.e., in a tab on the Budget), (B) a completed Expense Itemization Sheet in a form provided by Triumph (“**Expense Itemization Sheet**”) for each category of funds requested and for Matching Funds category, together with invoices, receipts, or contracts from vendors providing equipment, materials, and services; (C) payroll ledgers, percentage of time dedicated to the Project, and job descriptions as they relate to the Project, (D) documentation evidencing the completion of the work that is the subject of the requested funding, (E) to the extent that any portion of the current funding request is for reimbursement of amounts already paid by Grantee, copies of front and back of cancelled checks for funding, (F) to the extent that all or any

portion of the prior funding was a disbursement for items to be paid rather than a reimbursement of amounts already paid, a completed Expense Itemization Sheet and receipts or other documentation evidencing that the funds disbursed previously were in fact paid in the proper amounts to the proper vendors for such items, including copies of front and back of cancelled checks for funding (G) copies of the insurance policies required under the Agreement and evidence that such policies are in current force and effect, 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 \$375,000. In no event shall the cumulative fundings made by Triumph exceed the \$15,000,000 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.

During the period commencing on the date that all Matching Funds Sources and Guarantors have been approved by Triumph and ending eighteen (18) months thereafter, all amounts funded to Grantee pursuant to a Request for Funding shall be 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. Thereafter, 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. The final funding shall not be funded unless and until Grantee has provided to Triumph satisfactory evidence that all Matching Funds have been expended on the Project.

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. 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) The any of the conditions and contingencies described above have not been satisfied, and/or there is any missing or incomplete documentation in the Request for Funding;

(b) The Request for Funding seeks funding for items other than as shown in the Budget or seeks funding for more than amounts actually invoiced by contractors, materialmen, or other vendors under any contracts;

(c) The amount requested for funding under the Request for Funding, together with all amounts previously funded under the Grant, would exceed the \$15,000,000 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) Grantee, any federal, state, or local organization or agency, and/or any private entity providing financial assistance to the Project (including, but not limited to, any of the Matching Funds Sources) have revoked, suspended, or terminated that financial assistance to the Project, including, but not limited to, the Matching Funds and the Matching Funds Commitments;

(k) Not all of the Matching Funds have been used for the intended purposes and in the amounts and at the times as set forth in the Budget, and/or Grantee has failed to provide Triumph with evidence that such Matching Funds have been timely used 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, front and back of cancelled checks, wire transfer confirmations;

(m) 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 \$195,000 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 construction of the Project is not on schedule for completion by December 31, 2025 (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 as required by the Agreement;

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

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

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. 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 five (5) 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 five (5) 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 on an annual basis on or before October 31 of each year submit to Triumph an activity report which contains, in addition to any other information requested by Triumph (a) the progress of the Project, (b) costs incurred to date, (c) how Grantee is progressing with attainment toward achieving the Performance Metrics (as defined below), and (d) Grantee's most recent audited financial statements. 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 also make available to Triumph copies of any and all invoices, contracts, plans and specifications, and other documentation relating to the Project.

**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 contracts and/or proposed change orders with a value in excess of \$195,000 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:

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 funded by Triumph to Grantee shall be subject to being repaid (“clawed back”) in the event (i) Grantee made any materially false certification or representation to Triumph in connection with its application for the grant, under the Agreement, and/or in connection with any request for funding, and/or (ii) Grantee breached, violated, or is in any way in default under any of its obligations under the Agreement, and/or (iii) at least one of the three (3) following performance metrics (the “**Performance Metrics**”) set forth in subparagraphs (a), (b), and (c) below are not achieved, 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:**

(i) By the date (the “**Performance Commencement Date**”) which is three (3) years after the date that the dredging of the shipping channel to the Port has been substantially completed as evidenced by written confirmation from the Army Corp of Engineers, the Project will have created at least 375 New Jobs (as defined below); and

(ii) all of the 375 New Jobs shall have been maintained for at least three (3) years after the Performance Commencement Date.

As used herein, a “**New Job**” shall mean a job in Gulf County, Florida, that (a) has an average wage of not less than \$44,165, (b) was created after the date of the Agreement, (c) could not be sustained absent the availability of a functioning Port, and (d) is performed by a full-time employee or a full-time equivalent employee working at least 35 paid hours per week. Jobs are not considered New Jobs if they are (A) moved from one business unit or location of a business or any of its affiliates or subsidiaries in Florida to another business unit or location of that business or any of its affiliates or subsidiaries in Florida, unless the relocated positions are back-filled with net new-to-Florida full-time-equivalent jobs paying at least the wage of the transferred position(s); or (B) temporary construction jobs involved with the construction or renovation of facilities in connection with the Project, or temporary or seasonal jobs associated with cyclical business activities or to substitute for permanent employees on a leave of absence.

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

(b) **Performance Metric #2:** During the three (3) year period immediately following the Performance Commencement Date, the annual tonnage handled at the Port shall average not less than 530,000 tons per year. The calculation of annual tonnage shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph.

(c) **Performance Metric #3:** During the three (3) year period immediately following the Performance Commencement Date, annual gross revenues generated by Port operations shall average not less than

Four Million Eight Hundred Thousand Dollars (\$4,800,000) per year. The calculation of gross revenues shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph.

Upon the triggering of a clawback event, Triumph shall have the right to demand payment of all amounts of the Grant that were theretofore funded, together 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 (the amount due under this provision, including interest thereon, is referred to herein as the “**Clawback Amount**”). The entire Clawback Amount shall be due and payable in full within thirty (30) days of demand by Triumph. In the event that Grantee fails or otherwise refuses to timely pay the full Clawback Amount, Triumph shall have the right to enforce one or more of the Guaranty Agreements against the applicable Guarantor parties thereto, concurrently and in any order and for up to the maximum liability under each Guaranty Agreement, until the entire Clawback Amount has been paid in full to Triumph. In no event shall Triumph be entitled to collect an amount in excess of the Clawback Amount plus attorney’s fees, and nothing shall prohibit one Guarantor from pursuing an action for contribution against another Guarantor.

Notwithstanding the foregoing, Triumph shall have the discretion to waive, reduce, extend, or defer any Clawback Amount 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 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 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 the Board of Directors of Triumph and Grantee and executed by Triumph and Grantee. At any time prior to such execution of the Agreement either Triumph or Grantee may terminate negotiations, and upon such termination neither party shall have any liabilities or obligations to the other.

[signature page follows]

Dated: October 13, 2021
October 19 DJG

TRIUMPH:

Triumph Gulf Coast, Inc.

By: 
Name: Don Gaetz
Title: Chair

GRANTEE:

The Port St. Joe Port Authority


By: 
Name: Guerry P. Magidson
Title: Chairman

EXHIBIT “A”

BUDGET

[see attached]

Exhibit B as of
Port St. Joe Dredge 237
\$

56,308,646.00
Jan-22

Estimated Constuction start date

	Engineering and Construction	Total
Project Total		
2021	1,750,000.00	1,750,000.00
2022	18,058,646.00	18,058,646.00
2023	21,000,000.00	21,000,000.00
2024	11,800,000.00	11,800,000.00
2025	3,700,000.00	3,700,000.00
Project Total	56,308,646.00	56,308,646.00
Triumph		
2021	-	-
2022	8,000,000.00	8,000,000.00
2023	5,000,000.00	5,000,000.00
2024	1,800,000.00	1,800,000.00
2025	200,000.00	200,000.00
Triumph Total	15,000,000.00	15,000,000.00
Match Funding		
2021	1,750,000.00	1,750,000.00
2022	10,058,646.00	10,058,646.00
2023	16,000,000.00	16,000,000.00
2024	10,000,000.00	10,000,000.00
2025	3,500,000.00	3,500,000.00
Grantee Total	41,308,646.00	41,308,646.00