

TERM SHEET FOR
GRANT AWARD AGREEMENT BETWEEN
TRIUMPH GULF COAST, INC.
AND
CITY OF PENSACOLA
(American Magic/Project #315)

This Term Sheet summarizes the basic terms upon which Triumph Gulf Coast, Inc. (“**Triumph**”) is considering awarding a grant to the City of Pensacola (“**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: \$8,500,000

PURPOSE: To provide partial funding for the following project (the “**Project**”): design, renovation, and finish of the partially completed Warehouse 10 at the Port of Pensacola (to include a 50’ addition) and the design and construction of a dock and boat ramp (collectively, the “**Facility**”), to support the operations of the BMQRA America’s Cup racing project of the New York City Yacht Club’s Bella Mente Quantum Racing Association (“**BMQRA**”), which operations will provide at least 170 net new jobs (150 jobs provided by BMQRA at the Facility and 20 other port-related jobs at the Port of Pensacola) paying an average wage of \$105,000 per year, all as further described in Grantee’s Application for Funds submitted to Triumph (the “**Grant Application**”).

TOTAL PROJECT
COST:

The total cost of the Project is \$49,100,000, of which a match is being contributed by Grantee and others in the amount of \$40,600,000 (the “**Matching Funds**”), and (ii) \$8,500,000 is being provided by the grant. The total estimated cost of the Project is based upon the Budget attached hereto (the “**Budget**”). To the extent that the actual cost of the Project exceeds \$49,100,000, Grantee shall be solely responsible for such excess.

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 there are irrevocable and legally enforceable Matching Funds commitments from Grantee and other sources described in the Budget totaling not less than \$40,600,000 to be used exclusively toward completion of the Facility as shown in the Budget.

(b) **Lease.** No Grant funds shall be disbursed to Grantee unless Grantee, as lessor, and BMQRA, as lessee, shall have entered into a binding and enforceable lease agreement (the “**Lease**”), pursuant to which Grantee agrees to lease the Facility to BMQRA (i) at a rental rate of not less than an economic development rate, (ii) for a term of not less than ten (10) years, and (iii) with a provision that, upon expiration or earlier termination of the Lease, the Facility and all other improvements on the leased land shall be owned by Grantee. Triumph shall have forty-five (45) days from receipt of the Lease to approve or disapprove it, and Triumph’s failure to either approve or disapprove the Lease within such forty-five (45) day period shall be deemed approval.

(c) **Use of Matching Funds.** No Grant funds shall be disbursed to Grantee unless and until Grantee and/or BMQRA have (i) spent from Matching Funds at least Three Million Dollars (\$3,000,000) on design and/or construction of the Facility (the “**Initial Matching Funds Expenditures**”), and (ii) provided to Triumph satisfactory evidence of the payment of such Initial Matching Funds Expenditures.

COMPETITIVE
BIDS:

For contracts and/or purchases exceeding \$325,000 for services, commodities, or construction or renovations to public property, Grantee shall obtain competitive bids when required under Grantee’s own purchasing standards and procedures and under applicable statutes, rules, and regulations, including, but not limited to, Section 255,

Florida Statutes. Grantee shall upload a copy of Grantee's applicable standards or procedures to Triumph's SmartSheet system upon request. When awarding contracts according to the applicable statutes, rules, and regulations, Grantee shall award the contract to the lowest cost qualified responsive bidder considering the selection criteria contained within the solicitation. Triumph shall have the right to review and approve the proposed award.

FUNDING:

After the Initial Matching Funds Expenditures have been made and Triumph has received satisfactory evidence of the payment thereof as required by contingency (c) above, Grantee shall submit to Triumph a separate Request for Funding for each Budget category (a "**Request for Funding**") 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

\$106,250. In no event shall the cumulative fundings made by Triumph exceed the \$8,500,000 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.

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.

None of the grant funds or the Matching Funds shall be used to pay, reimburse, or recover any overhead or other indirect costs, including, but not limited to, general and/or administrative overhead, facilities overhead, continuing education fees, and auxiliary fees.

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

(a) Any of the conditions and contingencies described above have not been satisfied, and/or there is missing or incomplete documentation;

(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 \$8,500,000 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 and/or any federal, state, or local government, organization or agency 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 the Budget, 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 December 31, 2026, completion deadline for the Project, 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 \$65,000 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 the Matching Funds have 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 described 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/
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 toward achieving not less than the 170 new jobs, and (d) Grantee's most recent audited financial statements. In addition, 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 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 improvements, the cost of which was in whole or in part was paid for using Triumph grant funds, but only to the extent that such improvements can in fact be insured

PERFORMANCE
METRICS/
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, then

Grantee shall upon written demand by Triumph repay to Triumph all portions of Grant theretofore funded to and received by Grantee. In addition, in the event both of the following performance metrics (the “**Performance Metrics**”) set forth in subparagraphs (a) and (b) below are not achieved, then the Grantee shall upon written demand by Triumph be solely liable to repay to Triumph some or all portions of Grant theretofore funded to and received by Grantee:

(a) **Performance Metric #1:** By the date (the “**Ramp-Up Deadline**”) which is the earlier of (i) three (3) years after the date that the construction of the improvements for the Facility have been substantially completed as evidenced by a certificate of occupancy or other reasonable evidence, or (ii) by December 31, 2029, BMQRA will have created at least 150 New Jobs (as defined below) and the Port of Pensacola will have created at least 20 New Jobs; and

(b) **Performance Metric #2:** All of the 170 New Jobs shall have been maintained for at least four (4) years after the Ramp-Up Deadline.

As used herein, a “**New Job**” shall mean a job at the Port of Pensacola that (a) has an average annual wage of not less than One Hundred Five Thousand Dollars (\$105,000), (b) was created after June 22, 2023, (c) could not be sustained absent the availability of the Facility, 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 or government entity to another business or government entity within the State of 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 of the Facility, 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.

Upon the occurrence of (i) Grantee having 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 having breached, violated, or is in any way in material default under any of its obligations under the Agreement, then 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.

In the event the Performance Metrics are not timely achieved as described above, then, upon written demand by Triumph, Grantee shall repay to Triumph an amount of the Grant proportional to the jobs shortfall, based on \$50,000 per job (see the basis for this number below). For example, if there is a shortfall of 1 job (169 jobs created or maintained instead of 170), then the amount owed would be \$50,000 (1 x 50,000), and if there is a shortfall of 25 jobs (145 jobs created or maintained instead of 170), then the amount owed would be \$1,250,000 (25 x \$50,000). The \$50,000 per job amount is determined by dividing the \$8,500,000 Grant amount by the 170 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. The amount due, including interest thereon, is referred to herein as the “**Clawback Amount**”). The amount due, including interest thereon, is referred to herein as the “**Clawback Amount**”).

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 the Agreement, was not material in nature, (ii) based on quantitative evidence, the Performance Metrics were not achieved due to negative economic conditions beyond BMQRA’s and Grantee’s reasonable control, (iii) BMQRA and 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 the 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: _____, 2023

TRIUMPH:

Triumph Gulf Coast, Inc.

By: _____

Name: _____

Title: _____

GRANTEE:

City of Pensacola

By: _____

Name: _____

Title: _____

BUDGET

[see attached]

Exhibit A
 American Magic at the Port of Pensacola
 Project 315

Oct-23

		Design, Construction and Equipment	Lease Payments	State &/or County Tax Incentives	Existing Building	Total
Please change year # to actual year						
Project Total						
	pre2022-2022	-	-	-	3,200,000.00	3,200,000.00
	2023	1,500,000.00	-	-	-	1,500,000.00
	2024	8,500,000.00	-	-	-	8,500,000.00
	2025	35,900,000.00	-	-	-	35,900,000.00
Calendar Year 5		-	-	-	-	-
Calendar Year 6		-	-	-	-	-
Calendar Year 7		-	-	-	-	-
Calendar Year 8		-	-	-	-	-
Calendar Year 9		-	-	-	-	-
Calendar Year 10		-	-	-	-	-
Calendar Year 11		-	-	-	-	-
Calendar Year 12		-	-	-	-	-
Project Total		45,900,000.00	-	-	3,200,000.00	49,100,000.00
Triumph						
	pre2022-2022	-	-	-	-	-
	2023	-	-	-	-	-
	2024	6,500,000.00	-	-	-	6,500,000.00
	2025	2,000,000.00	-	-	-	2,000,000.00
Calendar Year 5		-	-	-	-	-
Calendar Year 6		-	-	-	-	-
Calendar Year 7		-	-	-	-	-
Calendar Year 8		-	-	-	-	-
Calendar Year 9		-	-	-	-	-
Calendar Year 10		-	-	-	-	-
Calendar Year 11		-	-	-	-	-
Calendar Year 12		-	-	-	-	-
Triumph Total		8,500,000.00	-	-	-	8,500,000.00
Grantee						
	pre2022-2022	-	-	-	3,200,000.00	3,200,000.00
	2023	1,500,000.00	-	-	-	1,500,000.00
	2024	2,000,000.00	-	-	-	2,000,000.00
	2025	1,900,000.00	-	-	-	1,900,000.00
Calendar Year 5		-	-	-	-	-
Calendar Year 6		-	-	-	-	-
Calendar Year 7		-	-	-	-	-
Calendar Year 8		-	-	-	-	-
Calendar Year 9		-	-	-	-	-
Calendar Year 10		-	-	-	-	-
Calendar Year 11		-	-	-	-	-
Calendar Year 12		-	-	-	-	-
Grantee Total		5,400,000.00	-	-	3,200,000.00	8,600,000.00
American Magic Capital Investment						
	pre2022-2022	-	-	-	-	-
	2023	-	-	-	-	-
	2024	-	-	-	-	-
	2025	32,000,000.00	-	-	-	32,000,000.00
Calendar Year 5		-	-	-	-	-
Calendar Year 6		-	-	-	-	-
Calendar Year 7		-	-	-	-	-

Calendar Year 8	-	-	-	-	-
Calendar Year 9	-	-	-	-	-
Calendar Year 10	-	-	-	-	-
Calendar Year 11	-	-	-	-	-
Calendar Year 12	-	-	-	-	-
Match Source 1 Total	<u>32,000,000.00</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>32,000,000.00</u>
