

GRANT AWARD AGREEMENT
(City of Pensacola/American Magic Project #315)

THIS GRANT AWARD AGREEMENT (this "Agreement") is made and entered into effective as of the date set forth on the signature page below (the "Effective Date"), by and between TRIUMPH GULF COAST, INC., a Florida not for profit corporation ("Triumph"), and the CITY OF PENSACOLA, a Florida municipal corporation ("Grantee").

WITNESSETH:

WHEREAS, pursuant to its authority under Section 288.8017, Florida Statutes, Triumph has agreed to make a Grant (as defined below) to Grantee, on and subject to the terms and conditions set forth in this Agreement, to provide partial funding for the following project (the "Project"): the design, renovation, finish, and equipping 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"), which Grant Application is incorporated herein by reference.

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

1. **Purpose of Agreement.** The purpose of this Agreement is to (i) award the Grant, (ii) state the terms and conditions upon which the Grant will be funded, and (iii) set forth certain requirements as to the manner in which the Project will be undertaken and completed.

2. **Grant Award.** On and subject to the terms and conditions set forth herein, Triumph hereby agrees to make a grant to Grantee in the aggregate maximum amount of Eight Million Five Hundred Thousand Dollars (\$8,500,000) (the "Grant") to provide partial funding for the Project. The estimated total cost of the Project is \$49,100,000, as more fully shown in the Budget attached hereto as Exhibit "A" and incorporated herein (the "Budget"), with the Grant providing \$8,500,000 of that amount and Grantee, BMQRA, and other federal, state, or local government, organizations or agencies providing \$40,600,000 of that amount (the "Matching Funds").

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

3.1 **Matching Funds.** No Grant funds shall be disbursed to Grantee unless there are irrevocable and legally enforceable Matching Funds commitments from Grantee, BMQRA, and other federal, state, or local government, organizations or agencies described in the Budget totaling not less than \$40,600,000 to be used toward the completion of the Project as shown in the Budget.

3.2 **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 notification by Grantee that the Lease has been uploaded to Triumph's SmartSheet system 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 disapproval. In the event of disapproval, Grantee shall have thirty (30) days to cure any specific objections raised by Triumph.

3.3 **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.

3.4 **Competitive Bids.** Grantee shall, with respect to contracts and/or purchases exceeding \$325,000 for services, commodities, or construction or renovations to public property, 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.

4. Funding of Grant:

4.1 **General Allocation of Grant in Budget Categories.** The Grant shall be allocated as more fully shown in the Budget.

4.2 **Funding of the Grant.** After the Initial Matching Funds Expenditures have been made and Triumph has received satisfactory evidence of the payment thereof as required by contingency 3.3 above, and after all other contingencies set forth in Section 3 above have been satisfied, Grantee shall submit to Triumph a separate Request for Funding on the form attached hereto as Exhibit "B" and incorporated herein (a "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 this 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 this 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 funding if:

- (a) Any of the conditions and contingencies described in Section 3 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 this Agreement;
- (e) There is any pending litigation with respect to the performance by Grantee and/or BMQRA of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement, or funding of the Grant;
- (f) Grantee has taken any action pertaining to the Project which, under this Agreement, requires the approval of Triumph, and Grantee failed to obtain such approval;
- (g) There has been a violation of Sections 9.1, 9.4, or 9.5 (the prohibited interests provisions) of this Agreement;
- (h) Grantee is in material violation, default, or breach of or under any provision of this Agreement;
- (i) Grantee is in breach of any material representation or warranty contained in this Agreement;
- (j) Grantee, BMQRA, 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 as described below, Grantee and/or BMQRA has abandoned or discontinued the Project, or for any reason the commencement, prosecution, or timely completion of the Project by Grantee and/or BMQRA 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 this 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 this Agreement;

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

5. Completion of the Project:

5.1 **General Requirements.** Grantee shall commence (or cause to be commenced), and complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement and all applicable laws. Grantee agrees to complete construction of the Facility by December 31, 2026 (the "**Completion Deadline**"). Notwithstanding the foregoing, the Completion Deadline shall be extended on a day-for-day basis by reason of *force majeure* events. The term "*force majeure*" as used herein shall mean that which is beyond the control of Grantee, including, but not limited to, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or of the state or any civil or military authority, insurrections, riots, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies, or any acts or omissions of third parties not under Grantee's control, and other such events or circumstances which are beyond the control of Grantee despite all reasonable efforts to prevent, avoid, delay, or mitigate such causes, and to include acts of God (such as pandemics or other public health emergencies (including any epidemic, pandemic; or disease outbreak (including the COVID-19 disease, variants and subvariants thereof, and similar diseases/viruses), lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts and adverse weather conditions).

5.2 **Total Project Cost.** The total cost of the Project is \$49,100,000, of which (i) a match is being contributed in the amount of \$40,600,000 shall be Matching Funds, and (ii) \$8,500,000 shall be provided by the Grant. The total estimated cost of the Project is based upon the Budget. To the extent that the actual cost of the Project exceeds \$49,100,000, 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 decreases by greater than five percent (5%), (b) the total Budget decreases by greater than five percent (5%), and/or (c) the Budget decreases by greater than five percent (5%) within a particular Budget category. If Grantee proposes a 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 decrease and the proposed amended Budget. If Grantee fails to obtain Triumph's approval, that failure shall be sufficient cause for nonpayment by Triumph as provided in Section 4.2(f). Using the Grant, its own funds, and funds from other sources (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 shall ensure that the expenditure of all of the Matching Funds is as contemplated in the Budget; and agrees that its failure to do so shall be

deemed a material breach of this Agreement.

5.3 Requirement to Provide Reports/Triumph Right to Inspect. Grantee shall 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 BMQRA is progressing toward achieving the Performance Metrics, (d) Grantee's most recent audited financial statements with respect to the Project, (e) a completed detailed Project account spreadsheet (i.e., in a tab on the Budget), (f) a completed Expense Itemization Sheet for each category of Grant funds previously disbursed and for Matching Funds category, together with invoices, receipts, or contracts from vendors providing equipment, materials, and services; (g) documentation evidencing the completion of the work to date, (h) copies of front and back of cancelled checks, (i) evidence that Grantee maintains the insurance required under Sections 5.4 and 5.10 hereof, and (j) such other documents as Triumph shall reasonably require in order to determine that the Grant funds previously disbursed and Matching Funds used to date are consistent with the purposes of the Grant. Triumph shall have the right, at any time and from time to time upon reasonable notice to Grantee and BMQRA, 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.

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

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

5.6 Plans and Specifications. Until such time as the Performance Metrics have been achieved, Triumph shall have the right to review any plans and specifications for the Project and any material changes to said plans and specifications solely to confirm that the Project described in the plans and specifications is consistent with the project described in the Grant Application, such confirmation not to be unreasonably withheld, conditioned or delayed. Triumph shall have fifteen (15) days from each receipt of the plans and specifications or proposed material change to notify Grantee of its confirmation or denial that the Project described in the plans and specifications is consistent with the project described in the Grant Application. If Triumph issues a denial, such denial shall be in writing and shall state the specific manner in which the Project described by the plans and specifications is not consistent with the project described in the Grant Application. If Triumph fails to deliver such confirmation

or denial within such fifteen (15) day period, the plans and specifications or proposed material change shall be deemed confirmed by Triumph. If Grantee fails to obtain such confirmation as provided herein, that failure shall be sufficient cause for nonpayment by Triumph.

5.7 Changes to Lease. Once Triumph approves the Lease and until such time as the Performance Metrics have been achieved, Triumph shall have the right to review and approve any and all proposed Lease amendments, modifications, or other written changes thereto before Grantee executes or obligates itself in any manner. Triumph shall have fifteen (15) days from receipt of a proposed amendment, modification, waiver, or other change to notify Grantee of its approval or disapproval. If Triumph fails to approve or disapprove within such fifteen (15) day period, the proposed amendment, modification, or other written change shall be deemed approved.

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

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

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

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

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

6. Representations and Warranties

- (a) **Representations and Warranties of Triumph:** Triumph hereby makes the following representations and warranties to Grantee, each of which shall be

deemed to be a separate representation and warranty, all of which have been made for the purpose of inducing Grantee to enter into this Agreement, and in reliance on which Grantee has entered into this Agreement, and such representations and warranties shall be deemed made as of the date hereof, as of the dates on which Triumph funds the Grant:

- (i) **Organization, Power and Authority.** Triumph is a not for profit corporation and has all requisite power and authority to fund the Grant pursuant to the terms of this Agreement.
- (ii) **Authorization and Binding Obligation.** Triumph has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Triumph. This Agreement has been duly executed and delivered by Triumph and, assuming the due authorization, execution, and delivery of this Agreement by Grantee, constitutes the legal, valid, and binding obligation of Triumph, enforceable against Grantee in accordance with its terms. This Agreement and the funding of the Grant by Triumph pursuant to the terms of this Agreement complies with applicable laws and regulations, including, without limitation, Sections 288.80 – 288.8018, Florida Statutes.
- (iii) **No Violations.** The execution and delivery by Triumph of this Agreement and the performance by it of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of Triumph's corporate documents, or (ii) violate any applicable law or regulation.

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

- (i) **Organization; Power and Authority.** The City is a municipal corporation of the State of Florida, and has all requisite power and authority to own, lease, and operate its properties and to carry on its affairs as currently conducted.
- (ii) **Authorization and Binding Obligation.** Grantee has all necessary power

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

- (iii) **No Violations.** The execution and delivery by Grantee of this Agreement and the performance by it of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of Grantee's charter or other corporate document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of Grantee's loan agreements, indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. Grantee has not been convicted of a "public entity crime" (as such term is defined in Section 287.133 of the Florida Statutes) nor has Grantee been placed on the "discriminatory vendor list" (as such term is defined in Section 287.134 of the Florida Statutes). Neither Grantee nor any person or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of Grantee, is listed on the Specially Designated Nationals List or the Foreign Sanctions Evaders List, in each case, as maintained by the United States Department of the Treasury. Neither Grantee nor its officers, directors, agents, distributors, employees, or other persons or entities acting on its behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business for any person or entity in violation of applicable law.
- (iv) **No Material Adverse Change.** No event, change or condition has occurred that has had, or would reasonably be expected to have, a material adverse effect on the assets, operations or financial condition of Grantee, or the Project, in each case, since the date of the Grant Application.
- (v) **Litigation; Compliance with Laws.** No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental agency is pending or, to the knowledge of Grantee, threatened by or against Grantee or against any of its properties

or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of Grantee, the Project, or Grantee's ability to perform its obligations under this Agreement. No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, any other prosecutorial or law enforcement authority in the State of Florida, or any regulatory body in the State of Florida is pending or, to the knowledge of Grantee, threatened by or against Grantee in, or with respect to any conduct in, the State of Florida. No permanent injunction, temporary restraining order or similar decree has been issued against Grantee which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the assets, operations, or financial condition of Grantee, the Project, or Grantee's ability to perform its obligations under this Agreement. Neither Grantee, nor any of its material properties or assets has in the last three years been in violation of, nor will the continued operations of its material properties and assets as currently conducted, violate any law, rule, or regulation applicable to Grantee (including any zoning or building ordinance, code or approval, or any building permit where such violation or default would be material to Grantee), or is in default with respect to any judgment, writ, injunction, decree, or order applicable to Grantee of any governmental agency, in each case, where such violation or default could, individually or in the aggregate, reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of Grantee, the Project, or Grantee's ability to perform its obligations under this or constitutes a crime under the laws of the United States, Florida, or any other state or territory of the United States.

- (vi) **Express Representations and Warranties: No Material Misstatements.** All statements made by Grantee in the Grant Application were true, complete, and correct. No information, report, financial statement, exhibit or schedule (other than forward-looking statements and projections) furnished by Grantee to Triumph in connection with the Grant Application and/or the negotiation of this Agreement, or delivered pursuant to this Agreement, when taken together, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.
- (vii) **Matching Funds.** Grantee has obtained, or will obtain prior to requesting or receiving any Grant funds from Triumph, commitments for the Matching Funds to be used for the Project.
- (viii) **Bonus or Commission.** Grantee has not paid, and agrees not to pay, any

bonus or commission for the purpose of obtaining an approval of the Grant Application or the entering into of this Agreement.

7. Accounting, Audits, and Records:

7.1 Establishment and Maintenance of Accounting Records. Grantee shall establish separate accounts to be maintained within its existing accounting system or establish independent accounts with respect to the Project, including, but not limited to, if applicable, payroll ledgers, state and federal payroll returns, and job descriptions, with respect to personnel used in connection with the Matching Funds. Such accounts are referred to herein collectively as the "Project account." Records of costs incurred under terms of this Agreement shall be maintained in the Project account and made available upon request to Triumph at all times during the period of this Agreement and for five (5) 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 five (5) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

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

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

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

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

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

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

(iv) Grantee shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued and shall allow Triumph, or its designee, DFS or State of Florida Auditor General access to such records upon request. Grantee shall ensure that the audit working papers are made available to Triumph, or its designee, DFS or State of Florida Auditor General upon request for a period of five (5) years from the date the audit report is issued unless extended in writing by Triumph.

7.3 Public Records. The parties acknowledge that each are public entities and, as such, are obligated to comply with the provisions of Chapter 119 of the Florida Statutes applicable to this Agreement as the same may be limited or construed by other applicable law. In the event that either party receives a request for a "public record" (as such term is defined in Section 119.011 of the Florida Statutes) in connection with this Agreement, that party shall provide written notice to the other party of such request as soon as practicable after that party's receipt of such request. If either party submits records to the other party that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075 (3) of the Florida Statutes or proprietary confidential business information pursuant to Section 288.075(4) of the Florida Statutes, such records should be marked accordingly by the submitting party prior to submittal to the other party. In the event that either party's claim of exemption asserted in response to the submitting party's assertion of confidentiality is challenged in a court of law, the submitting party shall defend, assume and be responsible for all fees, costs and expenses in connection with such challenge. It is expressly understood and agreed that all Back-up Data (as defined in Section 8 below) and Performance Metrics under Section 8.3 below shall be deemed "public records" under

Section 119.011 of the Florida Statutes.

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

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

8.2 Breach of Agreement.

(a) In the event Grantee shall (i) have made any misrepresentation of a material nature in the Grant Application, or any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to this Agreement, (ii) have breached a representation or warranty of a material nature made in this Agreement, and/or (iii) have materially breached, violated, or defaulted under any of its obligations under this Agreement, and Grantee fails to cure such misrepresentation, breach, violation or default within thirty (30) days after notice from Triumph to Grantee specifying the facts constituting such misrepresentation, breach, violation or default, or if the misrepresentation, violation, breach or default is not reasonably capable of being cured within such thirty (30) day period, then for such longer period of time as long as Grantee is diligently prosecuting the cure of such default, then in accordance with Section 8.4 below Grantee shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore funded to and received by Grantee.

(b) In the event Triumph shall (i) have breached a representation or warranty of a material nature made in this Agreement, and/or (ii) have materially breached, violated, or defaulted under any of its obligations under this Agreement, and Triumph fails to cure such misrepresentation, breach, violation or default within thirty (30) days after notice from Grantee to Triumph specifying the facts constituting such misrepresentation, breach, violation or default, or if the misrepresentation, violation, breach or default is not reasonably capable of being cured within such thirty (30) day period, then for such longer period of time as long as Triumph is diligently prosecuting the cure of such default, Grantee shall

have all remedies available at law and in equity.

8.3 Performance Metrics. In the event both of the following performance metrics (the “**Performance Metrics**”) set forth in subparagraphs (a) and (b) below are not achieved, then Grantee shall pay to Triumph the Performance Metric Clawback Amounts under Section 8.4 below:

(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.

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

any Back-up Data needed to be obtained from third parties.

8.4 Clawback of Grant under Sections 8.1, 8.2, and 8.3. Upon the occurrence of any of the events described in Sections 8.1 or 8.2 above, which are not cured by Grantee pursuant to the terms thereof, then Grantee shall pay to Triumph, within thirty (30) days of demand therefor, all amounts of the Grant that were theretofore funded, plus interest as described below. In the event the Performance Metrics are not timely achieved as described above, then, upon written demand by Triumph (the "Demand Notice"), 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 ten (10) days after delivery of the Demand Notice and shall continue to accrue until the amount demanded is repaid in full. The amount due, including any 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.

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

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

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

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

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

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

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

(b) Grantee shall not enter into any contract or arrangement in

connection with the Project or any property included or planned to be included in the Project, with any person or entity who was represented before Grantee by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of Grantee.

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

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

9.6 Grant Funds. Grantee acknowledges and agrees that the funds for the Grant are not and shall not be deemed a general obligation of the State of Florida, nor is the Grant or this Agreement backed by the full faith and credit of the State of Florida. Triumph's obligation to fund the Grant or any portion thereof is expressly contingent upon Triumph having sufficient funds on hand to fund the Grant. If for any reason such funds are not retained by Triumph, are depleted, are frozen or sequestered, or are in any manner unavailable for full or partial funding to Grantee and/or other awardees of grants, Triumph shall not be obligated to make fundings hereunder and shall therefore not be deemed to be in breach of this Agreement. To the extent some funds are available to for funding to Grantee and other awardees of grants, Triumph shall allocate such funds among Grantee and such other awardees in such amounts as it shall determine in its sole and absolute discretion and shall not be deemed to be in breach of this Agreement for failure to fully fund the Grant.

10. Miscellaneous Provisions:

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

10.2 When Rights and Remedies Not Waived. In no event shall the making by Triumph of any payment to Grantee constitute or be construed as a waiver by Triumph of any breach of covenant or any default which may then exist, on the part of Grantee, and the making of such payment by Triumph while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to Triumph with respect to such breach or default.

10.3 Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

10.4 Contractual Indemnity. To the extent permitted by Section 768.28, Florida Statutes, Grantee shall indemnify, defend, and hold harmless Triumph and all of its officers, agents,

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

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

10.6 Non-Assignment. Grantee shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Triumph, which consent may be withheld in Triumph's sole and absolute discretion. Triumph shall at all times without the consent of Grantee be entitled to assign or transfer its rights, duties, or obligations under this Agreement to any other person or entity, or to another governmental entity in the State of Florida, upon giving prior written notice to Grantee. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*.

10.7 Intentionally Omitted.

10.8 Construction; Interpretation. The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term "this Agreement"

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

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

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

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

forth below, unless another address has been previously specified in writing in accordance with this Section 10.11:

If to Triumph:

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

If to Grantee:

City of Pensacola
222 West Main Street
Pensacola, FL 32502
Attention: City Attorney

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

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

10.13 TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY CLAIM, DISPUTE OR ACTION ARISING OUT OF, RELATED OR PERTAINING TO THIS AGREEMENT, THE GRANT APPLICATION, AND/OR THE GRANT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE AND EACH PARTY HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

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


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

[signature page follows]


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

GRANTEE:

CITY OF PENSACOLA, a Florida municipal corporation

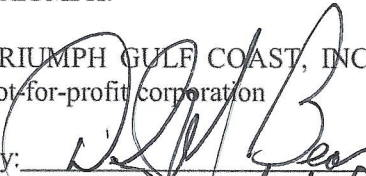
By: 
Print Name: Kerrith Fiddler
Title: City Administrator

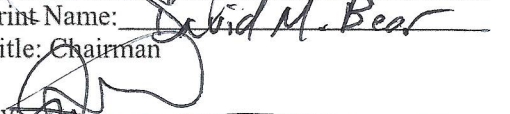
ATTEST:

By: 
Print Name: ROBYN M. TICE
Title: ASSISTANT CITY CLERK

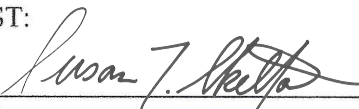
TRIUMPH:

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

By: 
Print Name: David M. Bear
Title: Chairman

By: 
Print Name: Reynolds Henderson
Title: Treasurer

ATTEST:

By: 
Print Name: Susan Skelton
Title: Secretary

Effective Date: October 2, 2023

Exhibit A
 American Magic at the Port of Pensacola
 Project 315

Oct-23

		Design, Construction and Equipment	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>- 32,000,000.00</u>

EXHIBIT "B"

Form of

Request for Funding of Grant

(City of Pensacola /American Magic Project #315)

Budget Category: _____
Funding Request #: _____

Pursuant to Section 4.2 of that certain Grant Award Agreement dated _____, 2022 (the "Agreement"), by and between the City of Pensacola ("Grantee") and Triumph Gulf Coast, Inc., a Florida not-for-profit corporation ("Triumph"), Grantee hereby requests a funding from the Grant (as defined in the Agreement) as follows (all capitalized terms herein shall have the same meanings ascribed to them as set forth in the Agreement):

1. Amount of Grant Funding Requested Hereby for this Category: \$ _____

2. (a) Grant Amount for this Category (Budget Amount): \$ _____
(b) Less Amounts Previously Received in this Category: \$ _____
(c) Less This Requested Amount (Note: the amount requested here MUST match the amount on the Expense Itemization Sheet) \$ _____
(d) Remaining Funds of Category to be Awarded: \$ _____

3. Attached hereto are (1) a true, correct, and complete Expense Itemization Sheet, together with true, correct, and complete copies of the receipts, invoices and other supporting documentation referenced therein, (2) photographs and/or reports evidencing the completion of the work that is the subject of the invoices referenced in Item 1 above, (3)

evidence of use of Matching Funds for their intended purpose, and (4) Project account documentation under Section 7.1 of the Agreement.

4. None of the amounts paid by Grantee in connection with the receipts, invoices and other supporting documentation referenced in the Expense Itemization Sheet for which funding is requested hereunder shall also have been or will in the future be in any manner (a) reimbursed, returned, refunded, rebated, or otherwise credited to, Grantee by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to Grantee by the State of Florida, the United States, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution.
5. None of the contracts under which amounts paid by Grantee in connection with the receipts, invoices and other supporting documentation referenced in the Expense Itemization Sheet have heretofore been modified, amended, or terminated, except as otherwise approved by Triumph.
6. Grantee hereby certifies, represents, and warrants to Triumph that the following statements are true and correct:
 - (a) All of the conditions and contingencies described in Section 3 of the Agreement have been satisfied and there is no missing or incomplete documentation;
 - (b) The Request for Funding does not seek funding for items other than as shown in the Budget and does not seek 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, does not exceed the \$8,500,000 maximum amount of the Grant; 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, does not exceed the maximum amount allocated to such Budget category; and Grantee has used all Grant funds funded to date in the amounts and for the purposes stated in the Budget;
 - (d) Grantee has not made any misrepresentation or omission of a material nature in the Grant Application, or in any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to this Agreement;
 - (e) There is no pending litigation with respect to the performance by Grantee and/or New York City Yacht Club's Bella Mente Quantum Racing Association ("BMQRA") of any of their respective duties or obligations which may jeopardize or adversely affect the Project, this Agreement, or funding of the Grant;

- (f) Grantee has not taken any action pertaining to the Project which, under this Agreement, requires the approval of Triumph, and Grantee failed to obtain such approval;
- (g) There have been no violations of Sections 9.1, 9.4, or 9.5 (the prohibited interests provisions) of the Agreement;
- (h) Grantee is not in material violation, default, or breach of or under any provision of the Agreement;
- (i) Grantee has not breached any material representation or warranty contained in the Agreement;
- (j) Neither Grantee nor BMQR, nor 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 being used for the intended purposes and in the amounts and at the times as set forth in the Budget, and Grantee has provided 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 paid and provided Triumph with evidence of payment of, the grant for the purposes of such funding;
- (m) Neither Grantee has abandoned or discontinued the Project, and the commencement, prosecution, and timely completion of the Project by Grantee has not been rendered improbable, infeasible, impossible, or illegal;
- (n) No portion of the requested funding includes funding for items that are outside the scope of the Project that is contemplated under the Budget;
- (o) None of the contracts 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;
- (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 not been increased or decreased by more than 5%; and/or the Matching Funds have not decreased by more than 5%;

- (r) Completion of the Project is on schedule for completion by the Completion Deadline;
- (s) Grantee has maintained in full force and effect all insurance required under this Agreement;
- (t) Grantee is in compliance with all applicable environmental laws and regulations in accordance with the Agreement;
- (u) Grantee is in compliance with the competitive bidding requirements described in the Agreement; and/or
- (v) Grantee is in compliance with the equal employment opportunity and other labor provisions as required by the Agreement.

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

Date: _____

Print Name: _____

EXHIBIT "C"

SmartSheet Authorized Users

Date _____

Name address	User Type (check one)*	Title	Email
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1.
 View Only
 Edit

2.
 View Only
 Edit

Future changes to Authorized Users of SmartSheet (additions and deletions) must be delivered via a revised Exhibit "C" uploaded to SmartSheet and via email to the Program Administrator.

***User Types:**

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

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

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