

TERM SHEET
FOR
GRANT AWARD CONTRACT
BETWEEN
TRIUMPH GULF COAST, INC.
AND
PANAMA CITY PORT AUTHORITY

This Term Sheet summarizes the basic terms upon which Triumph Gulf Coast, Inc. (“Triumph”) is considering awarding a grant to the Panama City Port Authority (the “Authority”) 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 the Authority, and (b) does not create any binding obligations on Triumph or the Authority 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 the Authority with respect to any grant must be contained in a definitive grant award contract (“Contract”), approved by the respective Boards of Directors of Triumph and the Authority and executed by Triumph and the Authority. At any time prior to such execution of a Contract, either Triumph or the Authority may terminate negotiations, and upon such termination, neither party shall have any liabilities or obligations to the other.

GRANT AMOUNT: Ten Million Dollars (\$10,000,000)

PURPOSE: To provide partial funding for the following projects (collectively, the “Projects”) at the East Terminal property at the Port of Panama City: (i) construction of a 100,000 square foot warehouse, (ii) construction of on-site road and rail infrastructure, (iii) construction of outside cargo staging yards, and (iv) reconstruction of the bulkhead and related improvements to the berth, all as further described in the Authority’s Application for Funds submitted to Triumph on February 23, 2018.

FUNDING: The Authority shall first pay the contractors and other vendors as invoices are received in accordance with the construction and vendor contracts. The Authority shall then submit to Triumph requests for reimbursement for up to 50% of the amount of the invoice(s) paid to the contractor or vendor, with the cumulative reimbursements made by Triumph not to exceed \$10,000,000. Each request for reimbursement shall include (i) a copy of the invoice(s) paid by the Authority, (ii) evidence of the Authority’s payment

of the invoice(s), (iii) documentation evidencing the completion of the work that is the subject of the invoices, and (iv) such other documents as Triumph shall require in order to determine that the requested reimbursement is consistent with the purposes of the grant.

Triumph will honor requests for reimbursement to the Authority; however, Triumph may elect by notice in writing not to make a payment if:

(a) The Authority shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to the Contract;

(b) There is any pending litigation with respect to the performance by the Authority of any of its duties or obligations which may jeopardize or adversely affect the Project, the contract, or payments to the Project;

(c) The Authority shall have taken any action pertaining to the Project which requires the approval of Triumph under the or has made related expenditures or incurred related obligations without having been advised by Triumph that same are approved;

(d) There has been any violation of any conflict of interest provisions contained in Contract;

(e) The Authority has been determined by Triumph to be in default under any of the provisions of the Contract;

(f) Any federal or state agency (including the Florida Department of Transportation (“FDOT”) providing financial assistance to the Project suspends or terminates that financial assistance to the Project. Without limiting the generality of the foregoing, any disbursement of the grant shall be conditioned upon continued approval and availability throughout the term of the Contract of the following grant funds relating to projects at the East Terminal: (a) \$10,336,000 from FDOT for construction of the warehouse and related facilities, (b) \$6,000,000 from FDOT to reinforce the bulkhead, and (c) \$2,315,000 from FDOT for channel and berth dredging; or

(g) All or any portion of the requested reimbursement includes costs that are not shown or contemplated under the budget attached to the Contract.

**ELIGIBLE COSTS/
DOCUMENT-
ATION:**

The Authority shall seek reimbursement only for costs of the as shown or contemplated under the budget attached to the Contract. All amounts paid by the Authority with respect to the Project shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges. Any check or order drawn by the Authority with respect to any item which is or will be

chargeable against the Project account (as defined below) will be drawn only in accordance with a properly signed voucher then on file in the office of the Authority stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, 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:**

The Authority shall establish for the Project, in conformity with requirements established by FDOT's program guidelines/procedures and "Principles for State and Local Governments", 2 CFR Part 225, 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 Contract 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 the Authority's general accounting records and the Project records, together with supporting documents and records, of the Authority and all sub-consultants performing work on the Project and all other records of the Authority and sub-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. Triumph shall have substantially the same audit rights as FDOT, and the Authority shall have substantially the same audit reporting requirements to Triumph as it does to FDOT, all as contained in any existing Joint Participation Agreement ("JPA") related to the Project between the Authority and FDOT.

**TERMINATION
OR SUSPENSION
OF PROJECT:**

If the Authority abandons or, before completion, finally discontinues the Project; or for any other reason, the commencement, prosecution, or timely completion of the Project by the Authority is rendered improbable, infeasible, impossible, or illegal, Triumph will, by written notice to the Authority, suspend any or all of its obligations under the Contract 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 Contract. Upon receipt of any final termination or suspension notice, the Authority shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the grant is to be computed; (2) furnish a statement of the Project activities and contracts, and other undertakings the cost of which are otherwise includable as Project costs; and, (3) remit to Triumph such portion of the grant and any advance payment previously received as is determined by Triumph to be due under the provisions of the Contract.

**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 the Authority executes or obligates itself in any manner requiring the disbursement of Triumph funds, including consultant, purchase of commodities contracts or amendments thereto. The Authority shall also comply with all applicable laws regarding third party contracts, labor laws, civil rights laws, and other matters as set forth in Sections 10 and 11 of the JPA.

INSURANCE:

At all times during the term of the Contract, the Authority shall keep and maintain casualty insurance on all improvements, the cost of which was in whole or in part was reimbursed using Triumph grant funds, to the extent such improvements can in fact be insured.

CLAWBACK:

Any grant funds disbursed by Triumph to the Authority shall be subject to being repaid (“clawed back”) in the event (i) the Authority made any materially false certification or representation to Triumph in connection with its application for the grant, under the Contract, and/or in connection with any request for reimbursement, and/or (ii) the Authority fails to achieve at least one of the following performance metrics: (a) within three (3) years from completion on the warehouse as evidenced by a certificate of occupancy, the Project will have created (i) at least the 148 new jobs with the Authority that were mentioned in the 2016 Martin Associates economic impact report, plus (ii) 250 more new jobs created in port-dependent manufacturing, and all of those 398 new jobs will have been maintained for at least three (3) years thereafter; or (b) the annual tonnage handled by the Authority will have increased an average of 6% per year

between (i) the date of completion of the warehouse as evidenced by a certificate of occupancy, and (ii) the fifth (5th) anniversary of such date of completion; or (c) gross revenues of the Authority will have increased an average of 4% per year between (i) the date of completion of the warehouse as evidenced by a certificate of occupancy, and (ii) the fifth (5th) anniversary of such date of completion. Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under the claw back provisions if (i) it determines in its sole and absolute discretion that, based on quantitative evidence, the metrics were not achieved due to negative economic conditions in the Authority's business, (ii) it determines in its sole and absolute discretion that the Authority made a good faith effort to achieve full performance metrics and its failure to fully achieve the metrics does not substantially frustrate the general purpose of the grant, or (iii) it determines in its sole and absolute discretion that, based on quantitative evidence, the effects of a named hurricane or tropical storm, or specific acts of terrorism, adversely affected the Authority's ability to achieve the metrics.

OTHER TERMS

AND

CONDITIONS: The Contract 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 Contract 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 the Authority, and (b) does not create any binding obligations on Triumph or the Authority 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 the Authority with respect to any grant must be contained in a definitive grant award Contract, approved by the respective Boards of Directors of Triumph and the Authority and executed by Triumph and the Authority. At any time prior to such execution of a Contract either Triumph or the Authority may terminate negotiations, and upon such termination neither party shall have any liabilities or obligations to the other.

Dated: April 27, 2018

Triumph Gulf Coast, Inc.

By: _____

Name: _____

Title: _____

Panama City Port Authority

By: _____

Name: _____

Title: _____